

By the Committee on Criminal Justice; and Senator Gibson

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1 A bill to be entitled

2 An act relating to the purchase of firearms by
3 mentally ill persons; amending s. 790.065, F.S.;
4 providing conditions under which a person who has been
5 voluntarily admitted to a mental institution for
6 treatment and has undergone an involuntary examination
7 under the Baker Act may be prohibited from purchasing
8 a firearm; providing requirements for the examining
9 physician; providing for judicial review of certain
10 findings; providing specified notice requirements;
11 providing form and contents of notice; providing
12 requirements with respect to the filing of specified
13 records with the court and presentation of such
14 records to a judge or magistrate; providing lawful
15 authority of a judge or magistrate to review specified
16 records and order such records be submitted to the
17 Department of Law Enforcement; providing a timeframe
18 for submission of records to the department upon order
19 by a judge or magistrate; providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Paragraph (a) of subsection (2) of section
24 790.065, Florida Statutes, is amended to read:

25 790.065 Sale and delivery of firearms.—

26 (2) Upon receipt of a request for a criminal history record
27 check, the Department of Law Enforcement shall, during the
28 licensee's call or by return call, forthwith:

29 (a) Review any records available to determine if the

591-03343-13

20131000c1

30 potential buyer or transferee:

31 1. Has been convicted of a felony and is prohibited from
32 receipt or possession of a firearm pursuant to s. 790.23;

33 2. Has been convicted of a misdemeanor crime of domestic
34 violence, and therefore is prohibited from purchasing a firearm;

35 3. Has had adjudication of guilt withheld or imposition of
36 sentence suspended on any felony or misdemeanor crime of
37 domestic violence unless 3 years have elapsed since probation or
38 any other conditions set by the court have been fulfilled or
39 expunction has occurred; or

40 4. Has been adjudicated mentally defective or has been
41 committed to a mental institution by a court or as provided in
42 sub-sub-subparagraph b. (II), and as a result is prohibited by
43 state or federal law from purchasing a firearm.

44 a. As used in this subparagraph, "adjudicated mentally
45 defective" means a determination by a court that a person, as a
46 result of marked subnormal intelligence, or mental illness,
47 incompetency, condition, or disease, is a danger to himself or
48 herself or to others or lacks the mental capacity to contract or
49 manage his or her own affairs. The phrase includes a judicial
50 finding of incapacity under s. 744.331(6)(a), an acquittal by
51 reason of insanity of a person charged with a criminal offense,
52 and a judicial finding that a criminal defendant is not
53 competent to stand trial.

54 b. As used in this subparagraph, "committed to a mental
55 institution" means:

56 (I) Involuntary commitment, commitment for mental
57 defectiveness or mental illness, and commitment for substance
58 abuse. The phrase includes involuntary inpatient placement as

591-03343-13

20131000c1

59 defined in s. 394.467, involuntary outpatient placement as
60 defined in s. 394.4655, involuntary assessment and stabilization
61 under s. 397.6818, and involuntary substance abuse treatment
62 under s. 397.6957, but does not include a person in a mental
63 institution for observation or discharged from a mental
64 institution based upon the initial review by the physician or a
65 voluntary admission to a mental institution; ~~or-~~

66 (II) Notwithstanding sub-sub-subparagraph (I), voluntary
67 admission to a mental institution for outpatient or inpatient
68 treatment of a person who had an involuntary examination under
69 s. 394.463, where each of the following conditions have been
70 met:

71 (A) An examining physician found that the person is an
72 imminent danger to himself or herself or others.

73 (B) The examining physician certified that if the person
74 did not agree to voluntary treatment, a petition for involuntary
75 outpatient or inpatient treatment would have been filed under s.
76 394.463(2)(i)4., or the examining physician certified that a
77 petition was filed and the person subsequently agreed to
78 voluntary treatment prior to a court hearing on the petition.

79 (C) Before agreeing to voluntary treatment, the person
80 received written notice of that finding and certification, and
81 written notice that as a result of such finding, he or she may
82 be prohibited from purchasing a firearm, and may not be eligible
83 to apply for or retain a concealed weapon or firearms license
84 under s. 790.06 and the person acknowledged such notice in
85 writing, in substantially the following form:

86
87 "I understand that the doctor who examined me believes I am a

591-03343-13

20131000c1

88 danger to myself or to others. I understand that if I do not
89 agree to voluntary treatment, a petition will be filed in court
90 to require me to receive involuntary treatment. I understand
91 that if that petition is filed, I have the right to contest it.
92 In the event a petition has been filed, I understand that I can
93 subsequently agree to voluntary treatment prior to a court
94 hearing. I understand that by agreeing to voluntary treatment in
95 either of these situations, I may be prohibited from buying
96 firearms and from applying for or retaining a concealed weapons
97 or firearms license until I apply for and receive relief from
98 that restriction under Florida law."

99 (D) A judge or a magistrate has, pursuant to sub-sub-
100 subparagraph c.(II), reviewed the record of the finding,
101 certification, notice, and written acknowledgement classifying
102 the person as an imminent danger to himself or herself or
103 others, and ordered that such record be submitted to the
104 department.

105 c. In order to check for these conditions, the department
106 shall compile and maintain an automated database of persons who
107 are prohibited from purchasing a firearm based on court records
108 of adjudications of mental defectiveness or commitments to
109 mental institutions.

110 (I) Except as provided in sub-sub-subparagraph (II), clerks
111 of court shall submit these records to the department within 1
112 month after the rendition of the adjudication or commitment.
113 Reports shall be submitted in an automated format. The reports
114 must, at a minimum, include the name, along with any known alias
115 or former name, the sex, and the date of birth of the subject.

116 (II) For persons committed to a mental institution pursuant

591-03343-13

20131000c1

117 to sub-sub-subparagraph b.(II), within 24 hours after the
118 person's agreement to voluntary admission, a record of the
119 finding, certification, notice, and written acknowledgement must
120 be filed by the administrator of the receiving or treatment
121 facility, as defined in s. 394.455, with the clerk of the court
122 for the county in which the involuntary examination under s.
123 394.463 occurred. No fee shall be charged for the filing under
124 this sub-sub-subparagraph. The clerk must present the records to
125 a judge or magistrate within 24 hours after receipt of the
126 records. A judge or magistrate is required and has the lawful
127 authority to review the records ex parte and, if the judge or
128 magistrate determines that the record supports the classifying
129 of the person as an imminent danger to himself or herself or
130 others, to order that the record be submitted to the department.
131 If a judge or magistrate orders the submittal of the record to
132 the department, the record must be submitted to the department
133 within 24 hours.

134 d. A person who has been adjudicated mentally defective or
135 committed to a mental institution, as those terms are defined in
136 this paragraph, may petition the circuit court that made the
137 adjudication or commitment, or the court that ordered that the
138 record be submitted to the department pursuant to sub-sub-
139 subparagraph c.(II), for relief from the firearm disabilities
140 imposed by such adjudication or commitment. A copy of the
141 petition shall be served on the state attorney for the county in
142 which the person was adjudicated or committed. The state
143 attorney may object to and present evidence relevant to the
144 relief sought by the petition. The hearing on the petition may
145 be open or closed as the petitioner may choose. The petitioner

591-03343-13

20131000c1

146 may present evidence and subpoena witnesses to appear at the
147 hearing on the petition. The petitioner may confront and cross-
148 examine witnesses called by the state attorney. A record of the
149 hearing shall be made by a certified court reporter or by court-
150 approved electronic means. The court shall make written findings
151 of fact and conclusions of law on the issues before it and issue
152 a final order. The court shall grant the relief requested in the
153 petition if the court finds, based on the evidence presented
154 with respect to the petitioner's reputation, the petitioner's
155 mental health record and, if applicable, criminal history
156 record, the circumstances surrounding the firearm disability,
157 and any other evidence in the record, that the petitioner will
158 not be likely to act in a manner that is dangerous to public
159 safety and that granting the relief would not be contrary to the
160 public interest. If the final order denies relief, the
161 petitioner may not petition again for relief from firearm
162 disabilities until 1 year after the date of the final order. The
163 petitioner may seek judicial review of a final order denying
164 relief in the district court of appeal having jurisdiction over
165 the court that issued the order. The review shall be conducted
166 de novo. Relief from a firearm disability granted under this
167 sub-subparagraph has no effect on the loss of civil rights,
168 including firearm rights, for any reason other than the
169 particular adjudication of mental defectiveness or commitment to
170 a mental institution from which relief is granted.

171 e. Upon receipt of proper notice of relief from firearm
172 disabilities granted under sub-subparagraph d., the department
173 shall delete any mental health record of the person granted
174 relief from the automated database of persons who are prohibited

591-03343-13

20131000c1

175 from purchasing a firearm based on court records of
176 adjudications of mental defectiveness or commitments to mental
177 institutions.

178 f. The department is authorized to disclose data ~~the~~
179 collected pursuant to this subparagraph ~~data~~ to agencies of the
180 Federal Government and other states for use exclusively in
181 determining the lawfulness of a firearm sale or transfer. The
182 department is also authorized to disclose this ~~any collected~~
183 data to the Department of Agriculture and Consumer Services for
184 purposes of determining eligibility for issuance of a concealed
185 weapons or concealed firearms license and for determining
186 whether a basis exists for revoking or suspending a previously
187 issued license pursuant to s. 790.06(10). When a potential buyer
188 or transferee appeals a nonapproval based on these records, the
189 clerks of court and mental institutions shall, upon request by
190 the department, provide information to help determine whether
191 the potential buyer or transferee is the same person as the
192 subject of the record. Photographs and any other data that could
193 confirm or negate identity must be made available to the
194 department for such purposes, notwithstanding any other
195 provision of state law to the contrary. Any such information
196 that is made confidential or exempt from disclosure by law shall
197 retain such confidential or exempt status when transferred to
198 the department.

199 Section 2. This act shall take effect July 1, 2013.