

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Asencio offered the following:

2  
3 **Substitute Amendment for Amendment (008383) (with title**  
4 **amendment)**

5 Remove lines 674-677 and insert:

6 Section 11. Present subsection (13) of section 790.065,  
7 Florida Statutes, is redesignated as subsection (14), subsection  
8 (2) is amended, and a new subsection (13) is added to that  
9 section, to read:

10 790.065 Sale and delivery of firearms.—

11 (2) Upon receipt of a request for a criminal history  
12 record check, the Department of Law Enforcement shall, during

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13 the licensee's call or by return call or electronic means, and  
14 in writing, forthwith:

15 (a) Review any records available to determine if the  
16 potential buyer or transferee:

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

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

21 3. Has had adjudication of guilt withheld or imposition of  
22 sentence suspended on any felony or misdemeanor crime of  
23 domestic violence unless 3 years have elapsed since probation or  
24 any other conditions set by the court have been fulfilled or  
25 expunction has occurred; or

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

30 a. As used in this subparagraph, "adjudicated mentally  
31 defective" means a determination by a court that a person, as a  
32 result of marked subnormal intelligence, or mental illness,  
33 incompetency, condition, or disease, is a danger to himself or  
34 herself or to others or lacks the mental capacity to contract or  
35 manage his or her own affairs. The phrase includes a judicial  
36 finding of incapacity under s. 744.331(6)(a), an acquittal by  
37 reason of insanity of a person charged with a criminal offense,

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38 and a judicial finding that a criminal defendant is not  
39 competent to stand trial.

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

42 (I) Involuntary commitment, commitment for mental  
43 defectiveness or mental illness, and commitment for substance  
44 abuse. The phrase includes involuntary inpatient placement as  
45 defined in s. 394.467, involuntary outpatient placement as  
46 defined in s. 394.4655, involuntary assessment and stabilization  
47 under s. 397.6818, and involuntary substance abuse treatment  
48 under s. 397.6957, but does not include a person in a mental  
49 institution for observation or discharged from a mental  
50 institution based upon the initial review by the physician or a  
51 voluntary admission to a mental institution; or

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

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

59 (B) The examining physician certified that if the person  
60 did not agree to voluntary treatment, a petition for involuntary  
61 outpatient or inpatient treatment would have been filed under s.  
62 394.463(2)(g)4., or the examining physician certified that a

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63 petition was filed and the person subsequently agreed to  
64 voluntary treatment prior to a court hearing on the petition.

65 (C) Before agreeing to voluntary treatment, the person  
66 received written notice of that finding and certification, and  
67 written notice that as a result of such finding, he or she may  
68 be prohibited from purchasing a firearm, and may not be eligible  
69 to apply for or retain a concealed weapon or firearms license  
70 under s. 790.06 and the person acknowledged such notice in  
71 writing, in substantially the following form:

72 "I understand that the doctor who examined me believes I am a  
73 danger to myself or to others. I understand that if I do not  
74 agree to voluntary treatment, a petition will be filed in court  
75 to require me to receive involuntary treatment. I understand  
76 that if that petition is filed, I have the right to contest it.  
77 In the event a petition has been filed, I understand that I can  
78 subsequently agree to voluntary treatment prior to a court  
79 hearing. I understand that by agreeing to voluntary treatment in  
80 either of these situations, I may be prohibited from buying  
81 firearms and from applying for or retaining a concealed weapons  
82 or firearms license until I apply for and receive relief from  
83 that restriction under Florida law."

84 (D) A judge or a magistrate has, pursuant to sub-sub-  
85 subparagraph c.(II), reviewed the record of the finding,  
86 certification, notice, and written acknowledgment classifying  
87 the person as an imminent danger to himself or herself or

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88 others, and ordered that such record be submitted to the  
89 department.

90 c. In order to check for these conditions, the department  
91 shall compile and maintain an automated database of persons who  
92 are prohibited from purchasing a firearm based on court records  
93 of adjudications of mental defectiveness or commitments to  
94 mental institutions.

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

102 (II) For persons committed to a mental institution  
103 pursuant to sub-sub-subparagraph b.(II), within 24 hours after  
104 the person's agreement to voluntary admission, a record of the  
105 finding, certification, notice, and written acknowledgment must  
106 be filed by the administrator of the receiving or treatment  
107 facility, as defined in s. 394.455, with the clerk of the court  
108 for the county in which the involuntary examination under s.  
109 394.463 occurred. No fee shall be charged for the filing under  
110 this sub-sub-subparagraph. The clerk must present the records to  
111 a judge or magistrate within 24 hours after receipt of the  
112 records. A judge or magistrate is required and has the lawful

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113 authority to review the records ex parte and, if the judge or  
114 magistrate determines that the record supports the classifying  
115 of the person as an imminent danger to himself or herself or  
116 others, to order that the record be submitted to the department.  
117 If a judge or magistrate orders the submittal of the record to  
118 the department, the record must be submitted to the department  
119 within 24 hours.

120 d. A person who has been adjudicated mentally defective or  
121 committed to a mental institution, as those terms are defined in  
122 this paragraph, may petition the court that made the  
123 adjudication or commitment, or the court that ordered that the  
124 record be submitted to the department pursuant to sub-sub-  
125 subparagraph c.(II), for relief from the firearm disabilities  
126 imposed by such adjudication or commitment. A copy of the  
127 petition shall be served on the state attorney for the county in  
128 which the person was adjudicated or committed. The state  
129 attorney may object to and present evidence relevant to the  
130 relief sought by the petition. The hearing on the petition may  
131 be open or closed as the petitioner may choose. The petitioner  
132 may present evidence and subpoena witnesses to appear at the  
133 hearing on the petition. The petitioner may confront and cross-  
134 examine witnesses called by the state attorney. A record of the  
135 hearing shall be made by a certified court reporter or by court-  
136 approved electronic means. The court shall make written findings  
137 of fact and conclusions of law on the issues before it and issue

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138 a final order. The court shall grant the relief requested in the  
139 petition if the court finds, based on the evidence presented  
140 with respect to the petitioner's reputation, the petitioner's  
141 mental health record and, if applicable, criminal history  
142 record, the circumstances surrounding the firearm disability,  
143 and any other evidence in the record, that the petitioner will  
144 not be likely to act in a manner that is dangerous to public  
145 safety and that granting the relief would not be contrary to the  
146 public interest. If the final order denies relief, the  
147 petitioner may not petition again for relief from firearm  
148 disabilities until 1 year after the date of the final order. The  
149 petitioner may seek judicial review of a final order denying  
150 relief in the district court of appeal having jurisdiction over  
151 the court that issued the order. The review shall be conducted  
152 de novo. Relief from a firearm disability granted under this  
153 sub-subparagraph has no effect on the loss of civil rights,  
154 including firearm rights, for any reason other than the  
155 particular adjudication of mental defectiveness or commitment to  
156 a mental institution from which relief is granted.

157 e. Upon receipt of proper notice of relief from firearm  
158 disabilities granted under sub-subparagraph d., the department  
159 shall delete any mental health record of the person granted  
160 relief from the automated database of persons who are prohibited  
161 from purchasing a firearm based on court records of

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162 adjudications of mental defectiveness or commitments to mental  
163 institutions.

164 f. The department is authorized to disclose data collected  
165 pursuant to this subparagraph to agencies of the Federal  
166 Government and other states for use exclusively in determining  
167 the lawfulness of a firearm sale or transfer. The department is  
168 also authorized to disclose this data to the Department of  
169 Agriculture and Consumer Services for purposes of determining  
170 eligibility for issuance of a concealed weapons or concealed  
171 firearms license and for determining whether a basis exists for  
172 revoking or suspending a previously issued license pursuant to  
173 s. 790.06(10). When a potential buyer or transferee appeals a  
174 nonapproval based on these records, the clerks of court and  
175 mental institutions shall, upon request by the department,  
176 provide information to help determine whether the potential  
177 buyer or transferee is the same person as the subject of the  
178 record. Photographs and any other data that could confirm or  
179 negate identity must be made available to the department for  
180 such purposes, notwithstanding any other provision of state law  
181 to the contrary. Any such information that is made confidential  
182 or exempt from disclosure by law shall retain such confidential  
183 or exempt status when transferred to the department.

184 (b) Inform the licensee making the inquiry either that  
185 records demonstrate that the buyer or transferee is so

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186 prohibited and provide the licensee a nonapproval number, or  
187 provide the licensee with a unique approval number.

188 (c)1. Review any records available to it to determine  
189 whether the potential buyer or transferee has been indicted or  
190 has had an information filed against her or him for an offense  
191 that is a felony under either state or federal law, or, as  
192 mandated by federal law, has had an injunction for protection  
193 against domestic violence entered against the potential buyer or  
194 transferee under s. 741.30, has had an injunction for protection  
195 against repeat violence entered against the potential buyer or  
196 transferee under s. 784.046, or has been arrested for a  
197 dangerous crime as specified in s. 907.041(4)(a) or for any of  
198 the following enumerated offenses:

- 199 a. Criminal anarchy under ss. 876.01 and 876.02.
- 200 b. Extortion under s. 836.05.
- 201 c. Explosives violations under s. 552.22(1) and (2).
- 202 d. Controlled substances violations under chapter 893.
- 203 e. Resisting an officer with violence under s. 843.01.
- 204 f. Weapons and firearms violations under this chapter.
- 205 g. Treason under s. 876.32.
- 206 h. Assisting self-murder under s. 782.08.
- 207 i. Sabotage under s. 876.38.
- 208 j. Stalking or aggravated stalking under s. 784.048.

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210 If the review indicates any such indictment, information, or  
211 arrest, the department shall provide to the licensee a  
212 conditional nonapproval number.

213 2. Within 24 working hours, the department shall determine  
214 the disposition of the indictment, information, or arrest and  
215 inform the licensee as to whether the potential buyer is  
216 prohibited from receiving or possessing a firearm. For purposes  
217 of this paragraph, "working hours" means the hours from 8 a.m.  
218 to 5 p.m. Monday through Friday, excluding legal holidays.

219 3. The office of the clerk of court, at no charge to the  
220 department, shall respond to any department request for data on  
221 the disposition of the indictment, information, or arrest as  
222 soon as possible, but in no event later than 8 working hours.

223 4. The department must ~~shall~~ determine as quickly as  
224 possible within the allotted time period whether the potential  
225 buyer is prohibited from receiving or possessing a firearm.

226 5. If the potential buyer is not so prohibited, or if the  
227 department cannot determine the disposition information within  
228 the allotted time period, the department must ~~shall~~ provide the  
229 licensee with a conditional approval number.

230 6. If the buyer is so prohibited, the conditional  
231 nonapproval number shall become a nonapproval number.

232 7. The department shall continue its attempts to obtain  
233 the disposition information and may retain a record of all  
234 approval numbers granted without sufficient disposition

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235 information. If the department later obtains disposition  
236 information which indicates:

237 a. That the potential buyer is not prohibited from owning  
238 a firearm, it shall treat the record of the transaction in  
239 accordance with this section; or

240 b. That the potential buyer is prohibited from owning a  
241 firearm, it shall immediately revoke the conditional approval  
242 number and notify local law enforcement.

243 8. During the time that disposition of the indictment,  
244 information, or arrest is pending and until the department is  
245 notified by the potential buyer that there has been a final  
246 disposition of the indictment, information, or arrest, the  
247 conditional nonapproval number shall remain in effect.

248  
249 -----

**T I T L E A M E N D M E N T**

250 Remove line 65 and insert:

251 F.S.; revising requirements for notice from the  
252 Department of Law Enforcement when a potential buyer  
253 is prohibited from receiving or possessing a firearm;  
254 prohibiting a person younger than a certain age  
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