

By Senator Berman

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1 A bill to be entitled
2 An act relating to domestic violence; amending s.
3 790.065, F.S.; revising a prohibition on the sale or
4 transfer of firearms to persons convicted of
5 misdemeanor domestic violence offenses; amending s.
6 790.233, F.S.; defining the term "misdemeanor offense
7 of domestic violence"; prohibiting persons convicted
8 of a misdemeanor offense of domestic violence from
9 possessing a firearm or ammunition; requiring persons
10 convicted of misdemeanor offenses of domestic violence
11 to surrender all firearms and ammunition in their
12 possession upon conviction; requiring a court to order
13 the defendant to surrender to the local law
14 enforcement agency all firearms and ammunition and any
15 license to carry a concealed weapon or firearm;
16 providing requirements for law enforcement officers
17 carrying out the court order and taking possession of
18 the firearms and ammunition; authorizing a law
19 enforcement officer to seek a search warrant under
20 certain circumstances; requiring the law enforcement
21 officer taking possession of the firearms, ammunition,
22 and license to issue a receipt to the defendant, file
23 the original with the court, and ensure his or her law
24 enforcement agency retains a copy; requiring a court
25 to make a certain determination upon a sworn statement
26 or testimony that the defendant did not comply with
27 the required surrender of any firearms, ammunition, or
28 license; authorizing the court to issue a warrant if
29 it finds that probable cause exists; providing for the

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30 return of firearms and ammunition to a lawful owner
31 under certain circumstances; requiring all law
32 enforcement agencies to develop certain policies and
33 procedures; authorizing a defendant to elect to
34 transfer all firearms and ammunitions that he or she
35 owns to another person under certain circumstances;
36 providing criminal penalties; creating s. 790.234,
37 F.S.; requiring a law enforcement officer to remove
38 firearms from the scene of an alleged act of domestic
39 violence under certain circumstances; providing
40 requirements for the law enforcement officer removing
41 such firearms; authorizing the owner of the firearms
42 to retake possession within a specified timeframe;
43 providing an exception; providing an effective date.
44

45 Be It Enacted by the Legislature of the State of Florida:
46

47 Section 1. Paragraph (a) of subsection (2) of section
48 790.065, Florida Statutes, is amended to read:

49 790.065 Sale and delivery of firearms.—

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

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

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

57 2. Has been convicted of a misdemeanor crime of domestic
58 violence~~7~~ and 1, therefore, 1 is prohibited from purchasing a

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59 firearm under 18 U.S.C. s. 922(d)(9) or s. 790.233;

60 3. Has had adjudication of guilt withheld or imposition of
61 sentence suspended on any felony or misdemeanor crime of
62 domestic violence, unless 3 years have elapsed since probation
63 or any other conditions set by the court have been fulfilled or
64 expunction has occurred; or

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

69 a. As used in this subparagraph, "adjudicated mentally
70 defective" means a determination by a court that a person, as a
71 result of marked subnormal intelligence, or mental illness,
72 incompetency, condition, or disease, is a danger to himself or
73 herself or to others or lacks the mental capacity to contract or
74 manage his or her own affairs. The phrase includes a judicial
75 finding of incapacity under s. 744.331(6)(a), an acquittal by
76 reason of insanity of a person charged with a criminal offense,
77 and a judicial finding that a criminal defendant is not
78 competent to stand trial.

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

81 (I) Involuntary commitment, commitment for mental
82 defectiveness or mental illness, and commitment for substance
83 abuse. The phrase includes involuntary inpatient placement under
84 ~~as defined in~~ s. 394.467, involuntary outpatient placement under
85 ~~as defined in~~ s. 394.4655, involuntary assessment and
86 stabilization under s. 397.6818, and involuntary substance abuse
87 treatment under s. 397.6957, but does not include a person in a

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88 mental institution for observation or discharged from a mental
89 institution based upon the initial review by the physician or a
90 voluntary admission to a mental institution; or

91 (II) Notwithstanding sub-sub-subparagraph (I), voluntary
92 admission to a mental institution for outpatient or inpatient
93 treatment of a person who had an involuntary examination under
94 s. 394.463 if, ~~where~~ each of the following conditions have been
95 met:

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

98 (B) The examining physician certified that if the person
99 did not agree to voluntary treatment, a petition for involuntary
100 outpatient or inpatient treatment would have been filed under s.
101 394.463(2)(g)4., or the examining physician certified that a
102 petition was filed and the person subsequently agreed to
103 voluntary treatment prior to a court hearing on the petition.

104 (C) Before agreeing to voluntary treatment, the person
105 received written notice of that finding and certification, and
106 written notice that as a result of such finding, he or she may
107 be prohibited from purchasing a firearm, and may not be eligible
108 to apply for or retain a concealed weapon or firearms license
109 under s. 790.06 and the person acknowledged such notice in
110 writing, in substantially the following form:

111 "I understand that the doctor who examined me believes I am
112 a danger to myself or to others. I understand that if I do not
113 agree to voluntary treatment, a petition will be filed in court
114 to require me to receive involuntary treatment. I understand
115 that if that petition is filed, I have the right to contest it.
116 In the event a petition has been filed, I understand that I can

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117 subsequently agree to voluntary treatment prior to a court
118 hearing. I understand that by agreeing to voluntary treatment in
119 either of these situations, I may be prohibited from buying
120 firearms and from applying for or retaining a concealed weapons
121 or firearms license until I apply for and receive relief from
122 that restriction under Florida law."

123 (D) A judge or a magistrate has, pursuant to sub-sub-
124 subparagraph c.(II), reviewed the record of the finding,
125 certification, notice, and written acknowledgment classifying
126 the person as an imminent danger to himself or herself or
127 others, and ordered that such record be submitted to the
128 department.

129 c. In order to check for these conditions, the department
130 shall compile and maintain an automated database of persons who
131 are prohibited from purchasing a firearm based on court records
132 of adjudications of mental defectiveness or commitments to
133 mental institutions.

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

140 (II) For persons committed to a mental institution pursuant
141 to sub-sub-subparagraph b.(II), within 24 hours after the
142 person's agreement to voluntary admission, a record of the
143 finding, certification, notice, and written acknowledgment must
144 be filed by the administrator of the receiving or treatment
145 facility, as defined in s. 394.455, with the clerk of the court

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146 for the county in which the involuntary examination under s.
147 394.463 occurred. No fee shall be charged for the filing under
148 this sub-sub-subparagraph. The clerk must present the records to
149 a judge or magistrate within 24 hours after receipt of the
150 records. A judge or magistrate is required and has the lawful
151 authority to review the records ex parte and, if the judge or
152 magistrate determines that the record supports the classifying
153 of the person as an imminent danger to himself or herself or
154 others, to order that the record be submitted to the department.
155 If a judge or magistrate orders the submittal of the record to
156 the department, the record must be submitted to the department
157 within 24 hours.

158 d. A person who has been adjudicated mentally defective or
159 committed to a mental institution, as those terms are defined in
160 this paragraph, may petition the court that made the
161 adjudication or commitment, or the court that ordered that the
162 record be submitted to the department pursuant to sub-sub-
163 subparagraph c.(II), for relief from the firearm disabilities
164 imposed by such adjudication or commitment. A copy of the
165 petition shall be served on the state attorney for the county in
166 which the person was adjudicated or committed. The state
167 attorney may object to and present evidence relevant to the
168 relief sought by the petition. The hearing on the petition may
169 be open or closed as the petitioner may choose. The petitioner
170 may present evidence and subpoena witnesses to appear at the
171 hearing on the petition. The petitioner may confront and cross-
172 examine witnesses called by the state attorney. A record of the
173 hearing shall be made by a certified court reporter or by court-
174 approved electronic means. The court shall make written findings

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175 of fact and conclusions of law on the issues before it and issue
176 a final order. The court shall grant the relief requested in the
177 petition if the court finds, based on the evidence presented
178 with respect to the petitioner's reputation, the petitioner's
179 mental health record and, if applicable, criminal history
180 record, the circumstances surrounding the firearm disability,
181 and any other evidence in the record, that the petitioner will
182 not be likely to act in a manner that is dangerous to public
183 safety and that granting the relief would not be contrary to the
184 public interest. If the final order denies relief, the
185 petitioner may not petition again for relief from firearm
186 disabilities until 1 year after the date of the final order. The
187 petitioner may seek judicial review of a final order denying
188 relief in the district court of appeal having jurisdiction over
189 the court that issued the order. The review shall be conducted
190 de novo. Relief from a firearm disability granted under this
191 sub-subparagraph has no effect on the loss of civil rights,
192 including firearm rights, for any reason other than the
193 particular adjudication of mental defectiveness or commitment to
194 a mental institution from which relief is granted.

195 e. Upon receipt of proper notice of relief from firearm
196 disabilities granted under sub-subparagraph d., the department
197 shall delete any mental health record of the person granted
198 relief from the automated database of persons who are prohibited
199 from purchasing a firearm based on court records of
200 adjudications of mental defectiveness or commitments to mental
201 institutions.

202 f. The department is authorized to disclose data collected
203 pursuant to this subparagraph to agencies of the Federal

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204 Government and other states for use exclusively in determining
 205 the lawfulness of a firearm sale or transfer. The department is
 206 also authorized to disclose this data to the Department of
 207 Agriculture and Consumer Services for purposes of determining
 208 eligibility for issuance of a concealed weapons or concealed
 209 firearms license and for determining whether a basis exists for
 210 revoking or suspending a previously issued license pursuant to
 211 s. 790.06(10). When a potential buyer or transferee appeals a
 212 nonapproval based on these records, the clerks of court and
 213 mental institutions shall, upon request by the department,
 214 provide information to help determine whether the potential
 215 buyer or transferee is the same person as the subject of the
 216 record. Photographs and any other data that could confirm or
 217 negate identity must be made available to the department for
 218 such purposes, notwithstanding any other provision of state law
 219 to the contrary. Any such information that is made confidential
 220 or exempt from disclosure by law shall retain such confidential
 221 or exempt status when transferred to the department.

222 Section 2. Section 790.233, Florida Statutes, is amended to
 223 read:

224 790.233 Possession of firearm or ammunition prohibited when
 225 person is subject to an injunction against committing acts of
 226 domestic violence, stalking, or cyberstalking; misdemeanor
 227 domestic violence offenses; surrender of firearms and
 228 ammunition; penalties.-

229 (2) As used in this section, the term "misdemeanor offense
 230 of domestic violence" means a misdemeanor conviction for any act
 231 constituting domestic violence, as defined in s. 741.313, and
 232 includes a misdemeanor conviction of domestic violence for

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233 dating violence, as defined in s. 784.046(1)(d).

234 (3)~~(1)~~ A person may not have in his or her care, custody,
235 possession, or control a ~~any~~ firearm or any ammunition if the
236 person:

237 (a) Has been issued a final injunction that is currently in
238 force and effect, restraining that person from committing acts
239 of domestic violence, as issued under s. 741.30, or from
240 committing acts of stalking or cyberstalking, as issued under s.
241 784.0485; or

242 (b) Has been convicted of a misdemeanor offense of domestic
243 violence.

244 (4) A person convicted of a misdemeanor offense of domestic
245 violence shall, upon conviction, be required to surrender all
246 firearms and ammunition in his or her possession as provided in
247 subsection (5).

248 (5) (a) Upon being convicted of a misdemeanor offense of
249 domestic violence under this section, the court shall order the
250 defendant to surrender to the local law enforcement agency all
251 firearms and ammunition owned by the defendant in the
252 defendant's custody, control, or possession except as provided
253 in subsection (6), and to surrender any license to carry a
254 concealed weapon or firearm issued under s. 790.06.

255 (b) The law enforcement officer carrying out the court
256 order shall request that the defendant immediately surrender all
257 firearms and ammunition owned by the defendant in his or her
258 custody, control, or possession and any license to carry a
259 concealed weapon or firearm issued under s. 790.06. The law
260 enforcement officer shall take possession of all firearms and
261 ammunition owned by the defendant and any license to carry a

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262 concealed weapon or firearm issued under s. 790.06 which are
263 surrendered. Alternatively, if personal service by a law
264 enforcement officer is not possible or is not required because
265 the defendant was present at the court hearing when the judge
266 entered the order, the defendant must surrender any firearms and
267 ammunition he or she owns and any license to carry a concealed
268 weapon or firearm issued under s. 790.06 in a safe manner to the
269 control of the local law enforcement agency immediately after
270 being served with the order by service or immediately after the
271 hearing at which the defendant was present. Notwithstanding ss.
272 933.02 and 933.18, a law enforcement officer may seek a search
273 warrant from a court of competent jurisdiction to conduct a
274 search for firearms or ammunition owned by the defendant if the
275 officer has probable cause to believe that there are firearms or
276 ammunition owned by the defendant in the defendant's custody,
277 control, or possession which have not been surrendered.

278 (c) At the time of surrender, a law enforcement officer
279 taking possession of any firearm or ammunition owned by the
280 defendant, or a license to carry a concealed weapon or firearm
281 issued under s. 790.06, shall issue a receipt identifying all
282 firearms surrendered, the quantity and type of ammunition
283 surrendered, and any license surrendered and shall provide a
284 copy of the receipt to the defendant. Within 72 hours after
285 service of the order, the law enforcement officer serving the
286 order shall file the original receipt with the court and shall
287 ensure that his or her law enforcement agency retains a copy of
288 the receipt.

289 (d) Notwithstanding ss. 933.02 and 933.18, upon the sworn
290 statement or testimony of any person alleging that the defendant

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291 has failed to comply with the surrender of firearms or
292 ammunition owned by the defendant, as required by an order
293 issued under this subsection, the court shall determine whether
294 probable cause exists to believe that the defendant has failed
295 to surrender all firearms or ammunition owned by the defendant
296 in the defendant's custody, control, or possession. If the court
297 finds that probable cause exists, the court must issue a warrant
298 describing the firearms or ammunition owned by the defendant and
299 authorizing a search of the locations where the firearms or
300 ammunition owned by the defendant are reasonably believed to be
301 found and requiring the seizure of any firearms or ammunition
302 owned by the defendant discovered pursuant to such search.

303 (e) If a person other than the defendant claims title to
304 any firearms or ammunition surrendered pursuant to this section
305 and he or she is determined by the law enforcement agency to be
306 the lawful owner of the firearm or ammunition, the firearm or
307 ammunition must be returned to him or her if:

308 1. The lawful owner agrees to store the firearm or
309 ammunition in a manner such that the defendant does not have
310 access to or control of the firearm or ammunition; and

311 2. The firearm or ammunition is not otherwise unlawfully
312 possessed by the owner.

313 (f) All law enforcement agencies must develop policies and
314 procedures regarding the acceptance, the storage, and the return
315 of firearms, ammunition, or licenses required to be surrendered
316 under this section.

317 (6) A defendant may elect to transfer all firearms and
318 ammunition he or she owns which have been surrendered to or
319 seized by a local law enforcement agency pursuant to subsection

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320 (5) to another person who is willing to receive the defendant's
321 firearms and ammunition. The law enforcement agency must allow
322 such a transfer only if it is determined that the chosen
323 recipient:

324 (a) Currently is eligible to own or possess a firearm and
325 ammunition under federal and state law after confirmation
326 through a background check;

327 (b) Attests to storing the firearms and ammunition in a
328 manner such that the defendant does not have access to or
329 control of the firearms and ammunition; and

330 (c) Attests not to transfer the firearms or ammunition back
331 to the defendant.

332 (7)~~(2)~~ A person who violates this section ~~subsection (1)~~
333 commits a misdemeanor of the first degree, punishable as
334 provided in s. 775.082 or s. 775.083.

335 (1)~~(3)~~ It is the intent of the Legislature that the
336 disabilities regarding possession of firearms and ammunition are
337 consistent with federal law. Accordingly, this section does not
338 apply to a state or local officer as defined in s. 943.10(14),
339 holding an active certification, who receives or possesses a
340 firearm or ammunition for use in performing official duties on
341 behalf of the officer's employing agency, unless otherwise
342 prohibited by the employing agency.

343 Section 3. Section 790.234, Florida Statutes, is created to
344 read:

345 790.234 Domestic violence; temporary custody of firearms.-

346 (1) As used in this section, the term "domestic violence"
347 means an act constituting domestic violence, as defined in s.
348 741.313, and includes acts of domestic violence between dating

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349 partners as provided in s. 784.046(1)(d).

350 (2) When at the scene of an alleged act of domestic
351 violence, a law enforcement officer must remove a firearm from
352 the scene if:

353 (a) The law enforcement officer has probable cause to
354 believe that an act of domestic violence has occurred; and

355 (b) The firearm is in plain view or is discovered during a
356 consensual or other lawful search.

357 (3) If a firearm is removed from the scene under subsection
358 (2), the law enforcement officer must:

359 (a) Provide to the owner a receipt identifying all firearms
360 seized and information concerning the process for retaking
361 possession of the firearm; and

362 (b) Provide for the safe storage of the firearm during the
363 pendency of any proceeding related to the alleged act of
364 domestic violence.

365 (4) Within 14 days after the conclusion of a proceeding on
366 the alleged act of domestic violence or dating violence, the
367 owner of the firearm may retake possession of the firearm unless
368 ordered to surrender the firearm pursuant to s. 790.233.

369 Section 4. This act shall take effect October 1, 2019.