

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative McBurney offered the following:

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4 **Amendment (with title amendment)**

5 Between lines 562 and 563, insert:

6 Section 11. Paragraph (a) of subsection (2) of section
 7 790.065, Florida Statutes, is amended to read:

8 790.065 Sale and delivery of firearms.—

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

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

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

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

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

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

27 a. As used in this subparagraph, "adjudicated mentally
28 defective" means a determination by a court that a person, as a
29 result of marked subnormal intelligence, or mental illness,
30 incompetency, condition, or disease, is a danger to himself or
31 herself or to others or lacks the mental capacity to contract or
32 manage his or her own affairs. The phrase includes a judicial
33 finding of incapacity under s. 744.331(6)(a), an acquittal by
34 reason of insanity of a person charged with a criminal offense,
35 and a judicial finding that a criminal defendant is not
36 competent to stand trial.

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

39 (I) Involuntary commitment, commitment for mental
40 defectiveness or mental illness, and commitment for substance
41 abuse. The phrase includes involuntary inpatient placement as
42 defined in s. 394.467, involuntary outpatient placement as
43 defined in s. 394.4655, involuntary assessment and stabilization

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44 under s. 397.6818, and involuntary substance abuse treatment
45 under s. 397.6957, but does not include a person in a mental
46 institution for observation or discharged from a mental
47 institution based upon the initial review by the physician or a
48 voluntary admission to a mental institution; or

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

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

56 (B) The examining physician certified that if the person
57 did not agree to voluntary treatment, a petition for involuntary
58 outpatient or inpatient treatment would have been filed under s.
59 394.463(2)(i)4., or the examining physician certified that a
60 petition was filed and the person subsequently agreed to
61 voluntary treatment prior to a court hearing on the petition.

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

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

81 (D) A judge or a magistrate has, pursuant to sub-sub-
82 subparagraph c.(II), reviewed the record of the finding,
83 certification, notice, and written acknowledgment classifying
84 the person as an imminent danger to himself or herself or
85 others, and ordered that such record be submitted to the
86 department.

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

92 (I) Except as provided in sub-sub-subparagraph (II),
93 clerks of court shall submit these records to the department
94 within 1 month after the rendition of the adjudication or

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95 commitment. Reports shall be submitted in an automated format.
96 The reports must, at a minimum, include the name, along with any
97 known alias or former name, the sex, and the date of birth of
98 the subject.

99 (II) For persons committed to a mental institution
100 pursuant to sub-sub-subparagraph b.(II), within 24 hours after
101 the person's agreement to voluntary admission, a record of the
102 finding, certification, notice, and written acknowledgment must
103 be filed by the administrator of the receiving or treatment
104 facility, as defined in s. 394.455, with the clerk of the court
105 for the county in which the involuntary examination under s.
106 394.463 occurred. No fee shall be charged for the filing under
107 this sub-sub-subparagraph. The clerk must present the records to
108 a judge or magistrate within 24 hours after receipt of the
109 records. A judge or magistrate is required and has the lawful
110 authority to review the records ex parte and, if the judge or
111 magistrate determines that the record supports the classifying
112 of the person as an imminent danger to himself or herself or
113 others, to order that the record be submitted to the department.
114 If a judge or magistrate orders the submittal of the record to
115 the department, the record must be submitted to the department
116 within 24 hours.

117 d. A person who has been adjudicated mentally defective or
118 committed to a mental institution, as those terms are defined in
119 this paragraph, may petition the ~~circuit~~ court that made the
120 adjudication or commitment, or the court that ordered that the

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121 record be submitted to the department pursuant to sub-sub-
122 subparagraph c.(II), for relief from the firearm disabilities
123 imposed by such adjudication or commitment. A copy of the
124 petition shall be served on the state attorney for the county in
125 which the person was adjudicated or committed. The state
126 attorney may object to and present evidence relevant to the
127 relief sought by the petition. The hearing on the petition may
128 be open or closed as the petitioner may choose. The petitioner
129 may present evidence and subpoena witnesses to appear at the
130 hearing on the petition. The petitioner may confront and cross-
131 examine witnesses called by the state attorney. A record of the
132 hearing shall be made by a certified court reporter or by court-
133 approved electronic means. The court shall make written findings
134 of fact and conclusions of law on the issues before it and issue
135 a final order. The court shall grant the relief requested in the
136 petition if the court finds, based on the evidence presented
137 with respect to the petitioner's reputation, the petitioner's
138 mental health record and, if applicable, criminal history
139 record, the circumstances surrounding the firearm disability,
140 and any other evidence in the record, that the petitioner will
141 not be likely to act in a manner that is dangerous to public
142 safety and that granting the relief would not be contrary to the
143 public interest. If the final order denies relief, the
144 petitioner may not petition again for relief from firearm
145 disabilities until 1 year after the date of the final order. The
146 petitioner may seek judicial review of a final order denying

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147 relief in the district court of appeal having jurisdiction over
148 the court that issued the order. The review shall be conducted
149 de novo. Relief from a firearm disability granted under this
150 sub-subparagraph has no effect on the loss of civil rights,
151 including firearm rights, for any reason other than the
152 particular adjudication of mental defectiveness or commitment to
153 a mental institution from which relief is granted.

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

161 f. The department is authorized to disclose data collected
162 pursuant to this subparagraph to agencies of the Federal
163 Government and other states for use exclusively in determining
164 the lawfulness of a firearm sale or transfer. The department is
165 also authorized to disclose this data to the Department of
166 Agriculture and Consumer Services for purposes of determining
167 eligibility for issuance of a concealed weapons or concealed
168 firearms license and for determining whether a basis exists for
169 revoking or suspending a previously issued license pursuant to
170 s. 790.06(10). When a potential buyer or transferee appeals a
171 nonapproval based on these records, the clerks of court and
172 mental institutions shall, upon request by the department,

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173 provide information to help determine whether the potential
174 buyer or transferee is the same person as the subject of the
175 record. Photographs and any other data that could confirm or
176 negate identity must be made available to the department for
177 such purposes, notwithstanding any other provision of state law
178 to the contrary. Any such information that is made confidential
179 or exempt from disclosure by law shall retain such confidential
180 or exempt status when transferred to the department.

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

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Remove line 15 and insert:

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F.S.; amending s. 790.065, F.S.; conforming a provision to

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changes made by this act; amending s. 910.035, F.S; revising the