

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 7026

INTRODUCER: Appropriations Committee and Rules Committee

SUBJECT: Public Safety

DATE: February 28, 2018

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
Androff, Bouck, Cellon	Phelps		<b>RC Submitted as Committee Bill</b>
McVaney	Hansen	AP	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 7026 provides law enforcement, the courts, and schools with the tools to enhance public safety by temporarily restricting firearm possession by a person who is undergoing a mental health crisis and when there is evidence of a threat of violence. The bill also promotes school safety and enhanced coordination between education and law enforcement entities at the state and local level. Specifically, the bill:

- Creates the Medical Reimbursement Program for Victims of Mass Shootings to reimburse trauma centers from the medical costs of treating victims for injuries associated with a mass shooting.
- Authorizes a law enforcement officer who is taking a person into custody for an involuntary examination under the Baker Act to seize and hold a firearm or ammunition the person possesses at the time of being taken into custody if the person poses a potential danger to himself or herself or others and has made a credible threat of violence against another person.
- Allows an officer who is taking a person into custody at his or her residence to seek the voluntary surrender of firearms or ammunition kept in the residence not already seized.
- Prohibits a person who has been adjudicated mentally defective or who has been committed to a mental institution from owning or possessing a firearm until a court orders otherwise.
- Requires a three-day waiting period for all firearms, not just handguns or until the background check is complete, whichever is later.
- Prohibits a person under 21 years of age from purchasing a firearm.
- Prohibits a licensed firearm dealer, importer, or manufacturer, from making or facilitating the sale or transfer of a firearm to a person under the age of 21. This prohibition does not apply

to the purchase of a rifle or shotgun by a law enforcement officer or a correctional officer or to a member of the military.

- Prohibits a bump-fire stock from being imported, transferred, distributed, transported, sold, keeping for sale, offering or exposing for sale, or given away within the state.
- Creates a process for a law enforcement officer or law enforcement agency to petition a court for a risk protection order to temporarily prevent persons who are at high risk of harming themselves or others from accessing firearms when a person poses a significant danger to himself or herself or others, including significant danger as a result of a mental health crisis or violent behavior.
- Provides a court can issue a risk protection order for up to 12 months.
- Allows a court to issue temporary ex parte risk protection order in certain circumstances.
- Requires the surrender of all firearms and ammunition if a risk protection order or ex parte risk protection order is issued.
- Provides a process for a risk protection order to be vacated or extended.
- Establishes the Marjory Stoneman Douglas High School Public Safety Commission within the Florida Department of Law Enforcement (FDLE) to investigate system failures in the Parkland school shooting and prior mass violence incidents, and develop recommendations for system improvements.
- Codifies the Office of Safe Schools (office) within the Florida Department of Education (DOE) and specifies the purpose of the office is to serve as the state education agency's primary coordinating division for promoting and supporting safe-learning environments.
- Creates the Florida Sheriff's Marshal Program within the DOE as a voluntary program to assist school districts and public schools in enhancing the safety and security of students, faculty, staff, and visitors to Florida's public schools and campuses.
- Codifies the Multiagency Service Network for Students with Severe Emotional Disturbance (SEDNET) as a function of the DOE in partnership with other state, regional, and local entities to facilitate collaboration and communication between the specified entities.
- Establishes the Public School Emergency Response Learning System Program to assist school personnel in preparing for and responding to active emergency situations and to implement local notification systems for all Florida public schools.
- Establishes the "FortifyFL" program and requires the FDLE to procure a mobile suspicious activity reporting tool that allows students and the community to report information anonymously about specified activities or the threat of such activities to appropriate public safety agencies and school officials.
- Requires each district school board and school district superintendent to cooperate with law enforcement agencies to assign one or more safe-school officers at each school facility, and:
  - Requires each district school board to designate a district school safety specialist to serve as the district's primary point of public contact for public school safety functions.
  - Requires each school district to designate a threat assessment team at each school, and requires the team to operate under the district school safety specialist's direction.
- Creates the mental health assistance allocation to provide supplemental funding to assist school districts and charter schools in establishing or expanding comprehensive mental health programs and to connect students and families with appropriate services.
- Clarifies the applicability of public records exemptions for security systems and plans.

Local law enforcement agencies may incur additional expense resulting from the law enforcement officer's participation in the newly-created risk protection order process and related administration of the firearms and ammunition seizure, storage and release. These costs are expected to be insignificant.

The school safety provisions contained in the bill may have a significant fiscal impact.

The bill appropriates \$200 million in nonrecurring and \$200 million in recurring funds from the General Revenue Fund to implement the bill provisions.

The bill takes effect upon becoming a law.

## II. Present Situation:

The present situation for the relevant portions of the bill is discussed in Section III. Effect of Proposed Changes of this bill analysis.

## III. Effect of Proposed Changes:

### Mass Shootings in Recent History

On February 14, 2018, a mass shooting occurred at Marjory Stoneman Douglas High School in Parkland, Florida, which left 17 people dead.<sup>1</sup> It was the deadliest school shooting since the December 2012 Sandy Hook Elementary School shooting in Connecticut that resulted in the death of 28 people.

The Parkland shooter was 19 years of age and used an AR-15 semi-automatic rifle during the shooting spree, the same type of firearm used during the Sandy Hook shooting and the Pulse Nightclub shooting in Orlando that left 49 dead and 53 injured on June 12, 2016.<sup>2</sup>

Broward County Sheriff Scott Israel has said that the sheriff's office received about 20 calls for service over the past few years regarding the Parkland shooter and his younger brother.<sup>3</sup> Apparently, the Federal Bureau of Investigation (FBI) had received information in 2017 about a YouTube comment ("I'm going to be a professional school shooter.") that some had attributed to the Parkland shooter. However, the identity of the person who posted the comment could not be

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<sup>1</sup> Time, *Sheriff's Office Had Received About 20 Calls Regarding Suspect: The Latest on the Florida School Shooting*, Lisa Marie Segarra, Katie Reilly, Eli Meixler, and Jennifer Calfas, Updated February 18, 2018, available at <http://time.com/5158678/what-to-know-about-the-active-shooter-situation/> (last visited February 22, 2018).

<sup>2</sup> *Id.*; National Public Radio, *3 Hours in Orlando: Piecing Together an Attack and Its Aftermath*, Ariel Zambelich and Alyson Hurt, June 26, 2016, available at <https://www.npr.org/2016/06/16/482322488/orlando-shooting-what-happened-update> (last visited February 22, 2018).

<sup>3</sup> Time, *Sheriff's Office Had Received About 20 Calls Regarding Suspect: The Latest on the Florida School Shooting*, Lisa Marie Segarra, Katie Reilly, Eli Meixler, and Jennifer Calfas, Updated February 18, 2018, available at <http://time.com/5158678/what-to-know-about-the-active-shooter-situation/> (last visited February 22, 2018).

ascertained by the FBI.<sup>4</sup> It has also been reported that the FBI failed to investigate a tip it received in January 2018 concerning the Parkland shooter.<sup>5</sup>

It has been reported that the Parkland shooter had been expelled from Marjory Stoneman Douglas High School for disciplinary reasons and that he may have had what could be described as a hard time fitting in at school.<sup>6</sup> It has also been reported that the Parkland shooter began legally buying firearms, including the one used during the Valentine's Day shooting, on or around his eighteenth birthday in September 2016, and that he had collected at least seven rifles during that time.<sup>7</sup>

### Effect of Proposed Changes

The Legislature finds there is a need to comprehensively address the crisis of gun violence, including but not limited to, gun violence on school campuses. The Legislature intends to address this crisis by providing law enforcement and the courts with the tools to enhance public safety by temporarily restricting firearm possession by a person who is undergoing a mental health crisis and when there is evidence of a threat of violence, and by promoting school safety and enhanced coordination between education and law enforcement entities at the state and local level.

### **Trauma Centers**

The regulation of trauma centers in Florida is established under part II of ch. 395, F.S. Trauma centers treat individuals who have incurred single or multiple injuries because of blunt or penetrating means or burns, and who require immediate medical intervention or treatment. Currently, there are 36 verified and provisional trauma centers in the state.<sup>8</sup> A hospital may operate as a provisional trauma center based on approval of the Department of Health pending verification of full compliance with trauma center standards for the applicable category of trauma center.<sup>9</sup>

Trauma centers in Florida are divided into three categories including Level I, Level II, and Pediatric trauma centers.

- A Level I trauma center has formal research and education programs for the enhancement of trauma care; serves as a resource facility to Level II trauma centers, pediatric trauma centers, and general hospitals; and meets the Level I trauma center standards for adult and pediatric patients.<sup>10</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> CBS News, FBI's deputy director admits there was "a mistake made" regarding tip on Florida shooter, Paula Reid, Rebecca Shabad, and Emily Tillet, February 22, 2018, available at <https://www.cbsnews.com/news/fbis-deputy-director-admits-there-was-a-mistake-made-regarding-tip-on-florida-shooter/> (last visited February 23, 2018).

<sup>6</sup> *Id.*

<sup>7</sup> Miami Herald, *Before the school killings, the shooter bought an arsenal of rifles, authorities say*, Jay Weaver and Daniel Chang, February 20, 2018, available at <http://www.miamiherald.com/news/local/article201236649.html> (last visited February 22, 2018).

<sup>8</sup> Department of Health, *Senate Bill 1876 Analysis* (January 17, 2018) (on file with the Senate Committee on Criminal Justice).

<sup>9</sup> Section 395.4025(5) and (6), F.S.

<sup>10</sup> Section 395.4001(6), F.S.

- A Level II trauma center serves as a resource to general hospitals and meets the trauma center standards for a Level II trauma center for adult patients.<sup>11</sup>
- A Pediatric trauma center meets the pediatric trauma center standards.<sup>12, 13</sup>

### Effect of Proposed Changes

The bill creates the Medical Reimbursement Program for Victims of Mass Shootings to reimburse trauma centers verified or designated pursuant to s. 395.4025, F.S., for the medical costs of treating victims for injuries associated with a mass shooting. The bill defines a “mass shooting” to mean an incident in which four or more people are killed or injured by firearms in one or more locations in close proximity.

The Medical Reimbursement Program for Victims of Mass Shootings requires the Department of Legal Affairs to reimburse such trauma centers based on a department-approved fee schedule for the documented medical costs of treating victims for injuries associated with a mass shooting. A trauma center that requests a reimbursement through the program must accept the reimbursement as payment in full and may not bill the victim of a mass shooting or his or her family.

### **Second Amendment**

The Second Amendment to the United States Constitution states, “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”<sup>14</sup> Courts have consistently held that the Second Amendment is fully applicable to the states through the due process clause of the Fourteenth Amendment.<sup>15</sup>

State laws restricting gun possession and ownership have consistently been challenged on constitutional grounds. In *District of Columbia v. Heller*, a landmark case on interpreting the Second Amendment, a special police officer brought action to enjoin the District of Columbia from enforcing gun-control statutes.<sup>16</sup> In *Heller*, the Court found that while the Second Amendment confers an individual right to keep and bear arms, that right is not unlimited.<sup>17</sup> The Court held that the Second Amendment does not protect the right of citizens to carry arms for any sort of confrontation, but rather that it guarantees the individual right to possess and carry weapons in case of confrontation.<sup>18</sup> The Court struck down the District of Columbia’s ban on handgun possession in the home and the requirement that any lawful firearm in the home be disassembled or bound by a trigger lock because both provisions made it impossible for citizens to use arms for the core lawful purpose of self-defense, making such provisions unconstitutional.<sup>19</sup>

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<sup>11</sup> Section 395.4001(7), F.S.

<sup>12</sup> Section 395.4001(9), F.S.

<sup>13</sup> For Level I, Level II, and pediatric trauma center standards see <http://www.floridahealth.gov/licensing-and-regulation/trauma-system/documents/traumacntrstandpamphlet150-9-2009rev1-14-10.pdf> (last visited on February 26, 2018).

<sup>14</sup> U.S. CONST. amend II.

<sup>15</sup> *McDonald v. Chicago*, 561 U.S. 742, 778 (2010).

<sup>16</sup> 554 U.S. 570 (2008).

<sup>17</sup> *Id.* at 595.

<sup>18</sup> *Id.* at 592 and 595.

<sup>19</sup> *Id.* at 570.

The Court in *Heller* determined that the Second Amendment protects only “the sorts of weapons” that are “in common use” and “typically possessed by law-abiding citizens for lawful purposes.”<sup>20</sup> From *Heller*, courts have derived a two-prong approach to Second Amendment challenges. First, the court considers whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment’s guarantee.<sup>21</sup> If it does not, the inquiry is complete.<sup>22</sup> If it does, the court must evaluate the law under some form of means-end scrutiny. If the law passes muster under that standard, it is constitutional. If it fails, it is invalid.<sup>23</sup> In Second Amendment challenges, courts have consistently invoked intermediate scrutiny, which provides that a challenged law must further an important government interest and must do so by means that are substantially related to that interest in order to be upheld.<sup>24</sup> If the law passes muster under this standard, then it survives intermediate scrutiny and is constitutional.<sup>25</sup>

Since *Heller*, overbroad prohibitions on gun possession have been struck down, but more narrowly tailored restrictions on possession and control of guns have been upheld. The court in *Kachalsky v. County of Westchester* applied intermediate scrutiny to a state law that restricted individuals’ ability to carry firearms in public.<sup>26</sup> The *Kachalsky* court held that the state’s ability to regulate firearms is qualitatively different in public from in the home.<sup>27</sup>

Subsequently, in *New York State Rifle and Pistol Association, Inc. v. Cuomo*, the court was faced with two appeals challenging gun-control legislation enacted by the New York and Connecticut legislatures.<sup>28</sup> The court held that laws prohibiting possession of certain semiautomatic assault rifles and large-capacity magazines did not violate the Second Amendment.<sup>29</sup> The court also found that while semiautomatic assault weapons and large-capacity magazines are commonly owned by many law-abiding Americans, such weapons are not nearly as popularly owned and used for self-defense as the handgun.<sup>30</sup> Thus, the court applied intermediate scrutiny and found that prohibitions on semiautomatic assault weapons and large-capacity magazines were substantially related to the achievement of a compelling governmental interest in public safety and crime prevention.<sup>31</sup>

### **Firearm Purchase Process**

Firearms are available for purchase from primarily two groups of people: private citizens and federally-licensed gun dealers. A private citizen does not necessarily engage in a business selling firearms but is able to sell firearms at a gun show or elsewhere. A federal firearms licensee (FFL) is licensed by the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to sell or

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<sup>20</sup> *Heller*, 554 U.S. at 625, 627.

<sup>21</sup> *Hope v. State*, 163 Conn. App. 36, 42 (Conn. App. Ct. 2016).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *State v. DeCiccio*, 315 Conn. 79, 144 (Conn. 2014).

<sup>25</sup> *Id.*

<sup>26</sup> 701 F.3d 81 (2d. Cir. 2012).

<sup>27</sup> *Id.* at 94.

<sup>28</sup> 804 F.3d 242, at 247 (2d. Cir. 2015).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 258.

<sup>31</sup> *Id.* at 261.

transfer a firearm. An individual must be licensed with the ATF to engage in the business of firearms.<sup>32</sup> A private citizen does not necessarily have to follow the processes required of FFLs.

### ***Private Firearm Sale “Loophole”***

The widely-used term “gun show loophole” refers to the difference between the way private sales or transfers of firearms occur as compared to the requirements that must be met by FFLs. A FFL must have FDLE conduct a background check for all firearm purchases and deliveries and wait 3 days between the purchase and delivery of all handgun sales; a person conducting a private transaction is not subject these requirements.

### ***Background Checks***

FFL’s must facilitate a background check on a person making a firearm purchase from the dealer. The National Instant Criminal Background Check System (NICS) was established for dealers to contact by telephone, or other electronic means, for information to be supplied immediately on whether the transfer of a firearm would be in violation of 18 U.S.C. s. 922(g) or (n), or state law.<sup>33</sup>

In Florida, the Florida Department of Law Enforcement (FDLE) acts as the contact for a FFL initiating a background check.<sup>34</sup> The background check for firearm purchases queries five FDLE and FBI Criminal Justice Information Systems.<sup>35</sup> Of the 990,314 inquiries the FDLE received in 2017, over 96 percent received an initial decision approving the firearm transfer at the time the transaction was processed.<sup>36</sup>

All FFLs who sell firearms in Florida to persons must:

- Obtain a completed form which provides the purchaser’s identification information and verify identification by inspecting a photo ID;
- Collect a fee from the purchaser for processing the criminal history check of the purchaser;
- Contact the FDLE by means of a toll-free telephone number to conduct a criminal history check; and
- Receive an approval number from the FDLE and record the number on the consent form.<sup>37</sup>

### ***Firearm Purchase Disqualifiers***

Under 18 U.S.C. s. 922(g), a person is disqualified from purchasing a firearm if the person:

- Is convicted of a crime punishable by imprisonment exceeding one year;
- Is a fugitive from justice;
- Is a unlawful user or addicted to any controlled substance as defined in 21 U.S.C s. 802;
- Has been adjudicated as a mental defective or has been committed to any mental institution;

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<sup>32</sup> Bureau of Alcohol, Tobacco, Firearms, and Explosives, *Types of Federal Firearms Licenses*, available at <https://www.atf.gov/resource-center/types-federal-firearms-licenses-ffls> (last visited February 21, 2018).

<sup>33</sup> FBI, *About NICS*, available at <https://www.fbi.gov/services/cjis/nics/about-nics> (last visited February 21, 2018).

<sup>34</sup> Thirteen states have agencies that act as full “Points of Contact.” *Id.*

<sup>35</sup> FDLE, *Criminal Justice Information Services PowerPoint*, October 2017, (on file with Senate Committee on Criminal Justice).

<sup>36</sup> Email from the FDLE staff to Senate Committee on Criminal Justice staff on February 21, 2018 (on file with Senate Committee on Criminal Justice).

<sup>37</sup> Section 790.065(1), F.S. Other FFLs are exempt from this provision.

- Is an illegal alien;
- Has been discharged from the Armed Forces under dishonorable conditions;
- Has renounced his or her U.S. citizenship;
- Is subject to a court order restraining the person from harassing, stalking or threatening an intimate partner or child of the intimate partner; or
- Has been convicted of a misdemeanor crime of domestic violence.

In Florida, s. 790.065(2)(a), F.S., disqualifies a person from purchasing a firearm if the person:

- Has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23, F.S.<sup>38</sup>
- Has been convicted of a misdemeanor crime of domestic violence,<sup>39</sup> and therefore is prohibited from purchasing a firearm.
- Has had an withhold of adjudication or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other court set conditions have been fulfilled or an expunction has occurred.
- Has been adjudicated mentally defective, or has been committed to a mental institution by a court or by voluntary admission to a mental institution after having been involuntarily examined where additional criteria are met.<sup>40</sup>

The FDLE must also determine if a person has any of the following in his or her background check that disqualifies him or her from purchasing a firearm:

- Has been indicted or had an information filed against her or him for a felony offense.
- Has had an injunction for protection against domestic violence under s. 741.30, F.S., entered against him or her.
- Has had an injunction for protection against repeat violence under s. 784.046, F.S., entered against him or her.
- Has been arrested for a dangerous crime as specified in s. 907.041(4)(a), F.S.<sup>41</sup>
- Has been arrested for any of the offenses enumerated in s. 790.065, F.S.<sup>42</sup>

<sup>38</sup> Section 790.23(1), F.S., provides that anyone who has been convicted of a felony in Florida, another state or a crime against the U.S. that would be a felony, or has committed a delinquent act in Florida or another state that would be a felony if committed by an adult and the person is under 24 years old is prohibited from possessing a firearm.

<sup>39</sup> Section 741.28, F.S., defines domestic violence as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

<sup>40</sup> Section 790.065(2)(a)4., F.S.

<sup>41</sup> Section 907.041(4)(a), F.S., specifies the following as a dangerous crime: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of ch. 893, F.S.; attempting or conspiring to commit any such crime; and human trafficking.

<sup>42</sup> Section 790.065(2)(c), F.S., lists the following offenses: criminal anarchy under ss. 876.01 and 876.02, F.S.; Extortion under s. 836.05, F.S.; explosives violations under s. 552.22(1) and (2), F.S.; controlled substances violations under ch. 893 F.S.; resisting an officer with violence under s. 843.01, F.S.; weapons and firearms violations under ch. 790, F.S.; treason under s. 876.32, F.S.; assisting self-murder under s. 782.08, F.S.; sabotage under s. 876.38, F.S.; stalking or aggravated stalking under s. 784.048, F.S.



The FDLE has 24 working hours to make such determinations as to whether the potential buyer is prohibited from receiving or possessing a firearm.<sup>43</sup> Section 790.065(2)(c)2., F.S., defines working hours to mean from the hours from 8 a.m. to 5 p.m. Monday through Friday excluding legal holidays.

The FDLE reports the following numbers and reasons for not approving a firearm sale during 2017:

- 4,170 for a felony conviction;
- 717 for being under indictment;
- 556 for being a fugitive from justice;
- 920 for being user or addicted to any controlled substance;
- 871 for having been adjudicated as a mental defective or having been committed to any mental institution;
- 449 for being an illegal alien;
- 11 for having been dishonorably discharged from the Armed Forces;
- 3 for renouncing his or her U.S. citizenship;
- 1,185 for being subject to a protection order;
- 1,174 for a misdemeanor crime of domestic violence; and
- 2,587 for a state disqualifier.<sup>44</sup>

### ***Firearm Purchase Disability***

A person who has been adjudicated mentally defective or has been committed to a mental institution cannot purchase a firearm in Florida until the firearm disability is removed by the court.<sup>45</sup>

The term “adjudicated mentally defective” means a determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs. The phrase includes a judicial finding of incapacity,<sup>46</sup> an acquittal by reason of insanity of a person charged with a criminal offense, and a judicial finding that a criminal defendant is not competent to stand trial.<sup>47</sup>

“Committed to a mental institution” means involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes

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<sup>43</sup> Section 790.065(2)(c)2., F.S.

<sup>44</sup> The numbers reflect non-approvals as of February 21, 2018. E-mail from the FDLE staff to the Senate Committee on Criminal Justice, February 21, 2018 (on file with Senate Committee on Criminal Justice).

<sup>45</sup> Section 790.065(2)(a)4., F.S.

<sup>46</sup> Section 744.331(6)(a), F.S., provides that a court should consider the person’s unique needs and abilities and may only remove those rights that the court finds the person does not have the capacity to exercise.

<sup>47</sup> Section 790.065(2)(a)4.b., F.S.

involuntary inpatient placement,<sup>48</sup> involuntary outpatient placement,<sup>49</sup> involuntary<sup>50</sup> assessment and stabilization,<sup>51</sup> and involuntary substance abuse treatment,<sup>52</sup> but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution.<sup>53</sup> The term also includes when a person has been involuntary examined under the Baker Act statute but then consents to voluntary inpatient or outpatient treatment if certain conditions are met.<sup>54</sup>

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<sup>48</sup> Section 394.4655, F.S., provides a person may be ordered for involuntary inpatient placement if he or she has a mental illness and because of his or her mental illness: has refused voluntary inpatient placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of inpatient placement for treatment; or is unable to determine for himself or herself whether inpatient placement is necessary; and is incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, is likely to suffer from neglect or refuse to care for himself or herself, and such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; or there is substantial likelihood that in the near future he or she will inflict serious bodily harm on self or others, as evidenced by recent behavior causing, attempting, or threatening such harm; and all available less restrictive treatment alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate.

<sup>49</sup> Section 397.6818, F.S., provides a person may be ordered to involuntary outpatient services if the person is 18 years of age or older; has a mental illness; is unlikely to survive safely in the community without supervision, based on a clinical determination; has a history of lack of compliance with treatment for mental illness; the person has: at least twice within the immediately preceding 36 months been involuntarily admitted to a receiving or treatment facility as defined in s. 394.455, F.S., or has received mental health services in a forensic or correctional facility; or engaged in one or more acts of serious violent behavior toward self or others, or attempts at serious bodily harm to himself or herself or others, within the preceding 36 months; as a result of his or her mental illness, unlikely to voluntarily participate in the recommended treatment plan and has refused voluntary services for treatment after sufficient and conscientious explanation and disclosure of why the services are necessary or is unable to determine for himself or herself whether services are necessary; in view of the person's treatment history and current behavior, is in need of involuntary outpatient services in order to prevent a relapse or deterioration that would be likely to result in serious bodily harm to himself or herself or others, or a substantial harm to his or her well-being as set forth in s. 394.463(1), F.S., it is likely that the person will benefit from involuntary outpatient services; and all available, less restrictive alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate or unavailable.

<sup>50</sup> A person meets the criteria for involuntary admission if there is good faith reason to believe that the person is substance abuse impaired or has a co-occurring mental health disorder and, because of such impairment or disorder: has lost the power of self-control with respect to substance abuse; and is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that he or she is incapable of appreciating his or her need for such services and of making a rational decision in that regard, although mere refusal to receive such services does not constitute evidence of lack of judgment with respect to his or her need for such services; or without care or treatment, is likely to suffer from neglect or refuse to care for himself or herself; that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services, or there is substantial likelihood that the person has inflicted, or threatened to or attempted to inflict, or, unless admitted, is likely to inflict, physical harm on himself, herself, or another. Section 397.675, F.S.

<sup>51</sup> A person who meets the criteria for involuntary admission may be admitted for a period of 5 days to a hospital or licensed detoxification facility or addictions receiving facility, for involuntary assessment and stabilization. Sections 397.6811(1), and 397.6818, F.S.

<sup>52</sup> A person who meets the criteria for involuntary admission may be the subject of petition of a for involuntary treatment if the person has been placed under a protective custody within the previous 10 days; has been subject to an emergency admission within the previous 10 days; has been assessed by a qualified professional within 5 days; has been subject to involuntary assessment and stabilization within the previous 12 days; or has been subject to alternative involuntary admission within the previous 12 days. Sections 397.693 and 397.6957, F.S.

<sup>53</sup> Section 790.065(2)(a)4., F.S.

<sup>54</sup> Section 790.065(2)(a)4.b.(II), F.S.

A person with a firearm disability may petition the court that adjudicated or committed him or her to have the firearm disability removed. The petition must be served on the state attorney of the county in which the person was adjudicated or committed. The petitioner can choose whether the hearing is open or closed. The petitioner and the state attorney present evidence. The court must make written findings. For the firearm disability to be removed, the court must find that the petitioner will not be likely to act in a manner that is dangerous to public safety and that removing the firearm disability would not be contrary to the public interest. If the court denies the petition, the person must wait one year from the date of the final order denying the removal of the firearm disability to petition the court again for such relief.<sup>55</sup>

#### Effect of Proposed Changes

The bill provides that a person who has been adjudicated mentally defective or who has been committed to a mental institution as those terms are defined in s. 790.065(2)(a)4., F.S., may not own a firearm or possess a firearm until relief from the firearm possession and firearm ownership disability is obtained.

The bill provides a process for the person who has the firearm disability related to possession and ownership of a firearm to petition a court to have the disability removed. This mirrors the process provided in s. 790.065(2), F.S., as it relates to the firearm purchase disability.

#### ***Three-Day Waiting Period***

Article I, section 8(b) of the Florida Constitution requires a three-day waiting period between the purchase and delivery at retail of handguns. Specifically, the Florida Constitution provides:

There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, 'purchase' means the transfer of money or other valuable consideration to the retailer, and 'handgun' means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph.<sup>56</sup>

Section 790.0655, F.S., implements article I, section 8(b), of the Florida Constitution.<sup>57</sup> The three-day waiting period only applies to handgun sales transacted by retailers, not private sales. A retailer includes every person engaged in the business of making sales at retail or for distribution, use, or consumption, or storage to be used or consumed in this state.<sup>58</sup>

The Florida Constitution and s. 790.0655, F.S., exempt the following circumstances from the three-day handgun waiting period:

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<sup>55</sup> Section 790.065(2)(a)4.d., F.S.

<sup>56</sup> FLA. CONST. art. I, s. 8(b).

<sup>57</sup> There is a mandatory 3-day waiting period, which is 3 days, excluding weekends and legal holidays, between the purchase and the delivery at retail of any handgun. "Purchase" means the transfer of money or other valuable consideration to the retailer. "Handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Section 790.0655, F.S.

<sup>58</sup> Section 790.0655, F.S.

- A holder of a concealed weapons permit as defined in s. 790.06; F.S., and
- To a trade-in of another handgun.

It is a third degree felony for any retailer, or any employee or agent of a retailer, to deliver a handgun before the expiration of the three-day waiting period.<sup>59</sup>

#### Effect of Proposed Changes

The three-day waiting period between the purchase of and the delivery of a handgun as provided in s. 790.0655, F.S., is amended by the bill to create a three-day waiting period for all firearms, not just handguns.

Additionally, the bill extends the waiting period beyond three days if more time is necessary to complete the firearm purchase background check.

The bill adds a new exception to the waiting period requirement for a person who completes minimum of a 16-hour hunter education or hunter safety course approved by the Fish and Wildlife Conservation Commission or similar agency of another state, if that person is not purchasing a handgun.

#### **Age Restrictions on Purchase and Use of Firearms**

Federal law prohibits FFLs from selling a handgun to a person less than 21 years of age.<sup>60</sup>

Florida law prohibits the sale or transfer of a firearm to a minor by *any* person although ownership of the firearm may be transferred to the minor with a parent or guardian's permission. A person who violates this prohibition commits a third degree felony.<sup>61</sup>

In Florida, it is unlawful for any firearm dealer to sell or transfer to a minor any firearm, pistol, Springfield rifle or other repeating rifle, bowie knife or dirk knife, brass knuckles, or electric weapon or device. A firearm dealer who violates this provision commits a second degree felony.<sup>62</sup>

A minor under 18 years of age may not possess a firearm in Florida, other than an unloaded firearm at his or her home. There are exceptions to the general rule for these circumstances:

- The minor is engaged in a lawful hunting activity and is:
  - At least 16 years of age; or
  - Under 16 years of age and supervised by an adult.

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<sup>59</sup> Subject to the exceptions noted above and provided in s. 790.0655(2), F.S. A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

<sup>60</sup> 18 U.S.C. s. 922(8)(b)1, specifically provides that it shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age.

<sup>61</sup> Section 790.17, F.S.

<sup>62</sup> Section 790.18, F.S. A second degree felony is punishable by up to 15 years imprisonment and up to a \$10,000 fine. Sections 775.082 and 775.083, F.S.

- The minor is engaged in a lawful marksmanship competition or practice or other lawful recreational shooting activity and is:
  - At least 16 years of age or
  - Under 16 years of age and supervised by an adult who is acting with the consent of the minor's parent or guardian.
- The firearm is unloaded and is being transported by the minor directly to or from an event authorized above.<sup>63</sup>

### Effect of the Proposed Changes

The bill amends s. 790.065, F.S., to raise the age from 18 to 21 years of age for all firearm purchases. The bill also prohibits the sale or transfer of a firearm to a person under the age of 21 from being made or facilitated by a licensed firearm dealers, importer, or manufacturer. A person who violates this prohibition commits a third degree felony.

The prohibition on the purchase of a firearm by a person younger than 21 years of age or the sale or transfer by a licensed importer, licensed manufacturer, or licensed dealer to a person younger than 21 years of age does not apply to a member of the military or naval forces of this state or of the United States or to a law enforcement or correctional officer as defined in s. 943.10, F.S.

### **Bump-Fire Stocks**

A bump stock (or bump-fire stock) is a piece of plastic or metal molded that attaches to the lower end of a rifle. The device allows a semi-automatic rifle to mimic a fully automatic rifle firing rate. This can allow a person to fire dozens of rounds in seconds by harnessing the gun's natural recoil without much concern for accuracy, as the recoil from simulated automatic fire would make it difficult to hit specific targets at a long range. A rifle with this type of mechanism works best with a high-capacity magazine that can hold between 60 and 100 rounds and a hand grip that allows a shooter to push the rifle away from the body to bounce, or bump, the weapon into the trigger finger.<sup>64</sup> Experts have stated that semi-automatic rifles with bump stocks could fire hundreds of rounds per minute.<sup>65</sup>

The shooter at the October 2017 Las Vegas music festival had 12 rifles with bump stocks, which allowed him to kill 59 people and injure more than 500 others.<sup>66</sup>

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<sup>63</sup> Section 790.22(3), F.S.

<sup>64</sup> The Washington Post, *Trump recommended outlawing bump stocks. Here's what they are.* Julie Vitkovskaya and Alex Horton, February 20, 2018, available at [https://www.washingtonpost.com/news/checkpoint/wp/2017/10/05/what-are-bump-stocks/?utm\\_term=.c0d30fa732a8](https://www.washingtonpost.com/news/checkpoint/wp/2017/10/05/what-are-bump-stocks/?utm_term=.c0d30fa732a8) (last visited February 22, 2018) and Fox News, *What are bump stocks? How they work and why Trump wants them banned.* Jennifer Earl, February 21, 2018, available at <http://www.foxnews.com/us/2018/02/20/what-are-bump-stocks-how-work-and-why-trump-wants-them-banned.html> (last visited February 23, 2018).

<sup>65</sup> Fox News, *What are bump stocks? How they work and why Trump wants them banned.* Jennifer Earl, February 21, 2018, available at <http://www.foxnews.com/us/2018/02/20/what-are-bump-stocks-how-work-and-why-trump-wants-them-banned.html> (last visited February 23, 2018).

<sup>66</sup> *Id.*; See also The Washington Post, *At least 59 killed in Las Vegas shooting rampage, more than 500 others injured.* Matt Zapotosky, Devlin Barrett and Mark Berman, October 3, 2017, available at <https://www.msn.com/en-us/news/breakingnews/at-least-59-killed-in-las-vegas-shooting-rampage-more-than-500-others-injured/ar-AA5M6kd> (last visited February 22, 2018).

While machine guns are regulated under the National Firearms Act, the ATF concluded that bump stocks did not convert a semi-automatic firearm into one that is fully automatic, which would make it equivalent to machine guns. Currently, bump stocks are legal and not regulated by the ATF.<sup>67</sup>

### ***Other States, Congress, Presidential Memorandum***

Following the Las Vegas shooting and the recent shooting at Marjory Stoneman Douglas High School in Parkland, Florida, much public attention has been focused on bump stock-type devices.

Congress has not passed any legislation to restrict bump stocks, but there is a bill filed that would require persons who possess bump-fire stocks to register them with the Secretary of the Treasury.<sup>68</sup>

At least four states have banned the possession and sale of bump-fire stocks, although the definitions and descriptions of the devices vary.<sup>69</sup> At least 15 states are considering legislation that would ban bump stocks.<sup>70</sup>

Additionally, President Trump issued a Memorandum on February 20, 2018, directing the Department of Justice to propose a rule banning “all devices that turn legal weapons into machine guns.”<sup>71</sup>

### **Effect of Proposed Changes**

The bill defines “bump-fire stock” as a gun conversion kit, a tool, an accessory, or a device used to alter the rate of fire of a firearm to mimic automatic weapon fire or increase the rate of fire of a semiautomatic firearm to a faster rate than is possible for a person to fire such semiautomatic firearm unassisted by a kit, a tool, an accessory, or a device.

The bill prohibits the importation, transfer, distribution, transport, sale, keeping for sale, offering or exposing for sale, or giving away of a bump-fire stock. A violation of the prohibition is a felony of the third degree.

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<sup>67</sup> Federal Register: The Daily Journal of the United States Government, *Application of the Definition of Machinegun to “Bump Fire” Stocks and Other Similar Devices*, available at <https://www.federalregister.gov/documents/2017/12/26/2017-27898/application-of-the-definition-of-machinegun-to-bump-fire-stocks-and-other-similar-devices> (last visited February 22, 2018). *Id.*

<sup>68</sup> House Bill 4168, filed October 31, 2017. H.R.4168 – Closing the Bump-Stock Loophole Act, available at <https://www.congress.gov/bill/115th-congress/house-bill/4168> (last visited February 23, 2018).

<sup>69</sup> These states are: California (Sections 32900, 32990, and 16930, California Penal Code.); Michigan (Section 750.224e., Michigan Penal Code); Minnesota (Section 690.67, Minnesota Statutes); and New Jersey Senate Bill 3477 (SCS), signed by the Governor January 16, 2018, P.L. 2017, c. 323.

<sup>70</sup> The Washington Post, *Facing congressional inaction, states move to ban bump stocks*, January 18, 2018, available at [https://www.washingtonpost.com/national/2018/01/18/facing-congressional-inaction-states-move-to-ban-bump-stocks/?utm\\_term=.bbcb450f232f](https://www.washingtonpost.com/national/2018/01/18/facing-congressional-inaction-states-move-to-ban-bump-stocks/?utm_term=.bbcb450f232f) (last visited February 22, 2018).

<sup>71</sup> Presidential Memorandum on the Application of the Definition of Machinegun to “Bump Fire” Stocks and Other Similar Devices, Issued February 20, 2018, available at <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-application-definition-machinegun-bump-fire-stocks-similar-devices/> (last visited February 22, 2018).

## **Baker Act**

In 1971, the Legislature adopted the Florida Mental Health Act, otherwise known as the Baker Act.<sup>72</sup> The Baker Act authorizes treatment programs for mental, emotional, and behavioral disorders. The Baker Act requires programs to include comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment to facilitate recovery. Additionally, the Baker Act provides protections and rights to individuals examined or treated for mental illness. Legal procedures are addressed for mental health examination and treatment, including voluntary admission, involuntary admission, involuntary inpatient treatment, and involuntary outpatient treatment.

### ***Receiving Facility***

Individuals in acute mental or behavioral health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a voluntary or involuntary basis.<sup>73</sup> Involuntary patients must be taken to a receiving facility, which is a public or private facility or hospital designated by the Department of Children and Families (DCF) to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health evaluation and to provide treatment or transportation to the appropriate service provider. A county jail is not a receiving facility.<sup>74</sup>

### ***Criteria for Taking a Person to a Receiving Facility for Involuntary Examination***

An involuntary examination includes an examination performed under s. 394.463, F.S.<sup>75</sup> The purpose of the examination is to determine whether a person qualifies for involuntary services.<sup>76</sup> Involuntary services include court-ordered outpatient services or inpatient placement for mental health treatment.<sup>77</sup> Section 394.463, F.S., provides that a person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness<sup>78</sup> and because of his or her mental illness:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; **or**
- The person is unable to determine for himself or herself whether examination is necessary; **and**
- Either of the following applies:
  - Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial

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<sup>72</sup> Section 394.451, F.S. The act was created by ch. 71-131, L.O.F., and is codified in Part I of ch. 394, F.S. (ss. 394.451-394.47892, F.S.).

<sup>73</sup> Sections 394.4625 and 394.463, F.S.

<sup>74</sup> Section 394.455(39), F.S.

<sup>75</sup> Section 394.455(22), F.S.

<sup>76</sup> *Id.*

<sup>77</sup> Section 394.455(23), F.S.

<sup>78</sup> “Mental illness” means an impairment of the mental or emotional processes that exercise conscious control of one’s actions or of the ability to perceive or understand reality, which impairment substantially interferes with the person’s ability to meet the ordinary demands of living. For purposes of Part I of ch. 394, F.S., the term does not include a developmental disability as defined in ch. 393, F.S., intoxication, or conditions manifested only by antisocial behavior or substance abuse. Section 394.455(28), F.S.

- harm to his or her well-being, and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services.
- There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself, herself, or others in the near future, as evidenced by recent behavior.<sup>79</sup>

### ***Initiation of Involuntary Examination***

There are three means of initiating an involuntary examination. First, a court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer or other designated agent of the court takes the person into custody and delivers him or her to an appropriate, or the nearest, facility within the designated receiving system for examination.<sup>80</sup>

Second, a law enforcement officer must take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility for examination. The officer executes a written report detailing the circumstances under which the person was taken into custody, which is made a part of the patient's clinical record.<sup>81</sup>

Third, a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, a law enforcement officer takes the person named in the certificate into custody and delivers him or her to the appropriate, or nearest, facility for examination. The law enforcement officer executes a written report detailing the circumstances under which the person was taken into custody. The certificate and the law enforcement officer's report are made a part of the patient's clinical record.<sup>82</sup>

### ***Transportation to a Receiving Facility***

The Baker Act requires each county to designate a single law enforcement agency within the county to transfer the person in need of services to a receiving facility for involuntary examination.<sup>83</sup> If the person is in custody based on noncriminal or minor criminal behavior that meets the statutory guidelines for involuntary examination under s. 394.463, F.S., the law enforcement officer must transport the person to the appropriate facility within the designated receiving system pursuant to a transportation plan or an exception granted by the DCF Secretary or to the nearest receiving facility if neither apply<sup>84</sup>

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<sup>79</sup> Section 394.463(1), F.S.

<sup>80</sup> Section 394.463(2)(a)1., F.S.

<sup>81</sup> Section 394.463(2)(a)2., F.S.

<sup>82</sup> Section 394.463(2)(a)3., F.S.

<sup>83</sup> Section 394.462(1)(a), F.S.

<sup>84</sup> Section 394.462(1)(g), F.S.



If the person is arrested for a felony and it appears the person meets the statutory guidelines for involuntary examination or placement under Part I of ch. 394, F.S., the person must first be processed in the same manner as any other criminal suspect. Thereafter, the law enforcement officer must immediately notify the appropriate facility within the designated receiving system pursuant to a transportation plan or an exception granted by the DCF Secretary or to the nearest receiving facility if neither apply. The receiving facility is responsible for promptly arranging for the examination and treatment of the person, but is not required to admit a person charged with a crime for whom the facility determines and documents that it is unable to provide adequate security.<sup>85</sup>

If the law enforcement officer believes the person has an emergency medical condition, the person may be transported first to a hospital for emergency medical treatment, regardless of whether the hospital is a designated receiving facility.<sup>86</sup>

A designated law enforcement agency may decline to transport a person to a receiving facility only if:

- The jurisdiction designated by the county has contracted on an annual basis with an emergency medical transport service or private transport company for transportation of persons to receiving facilities pursuant to this section at the sole cost of the county; and
- The law enforcement agency and the emergency medical transport service or private transport company agree that the continued presence of law enforcement personnel is not necessary for the safety of the person or others.<sup>87</sup>

The appropriate facility within the designated receiving system pursuant to a transportation plan or an exception granted by the DCF Secretary, or the nearest receiving facility if neither apply, must accept a person brought by a law enforcement officer, or an emergency medical transport service or private transport company authorized by the county, for involuntary examination pursuant to s. 394.463, F.S.<sup>88</sup>

### ***Time Limitations for Conducting an Involuntary Examination***

Specified time periods apply to holding a person in a receiving facility for involuntary examination. Generally, the examination period must be for up to 72 hours.<sup>89</sup> However, for a minor, the examination must be initiated within 12 hours after the minor arrives at the facility.<sup>90</sup> Within the examination period or, if the examination period ends on a weekend or holiday, no later than the next working day thereafter, one of the following actions must be taken, based on the individual needs of the patient:

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will resume custody;
- The patient must be released into voluntary outpatient treatment;

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<sup>85</sup> Section 394.462(1)(h), F.S. If the facility is unable to provide adequate security, examination or treatment of the person is provided where he or she is held. *Id.*

<sup>86</sup> Section 394.462(1)(i), F.S.

<sup>87</sup> Section 394.462(1)(b)1., F.S.

<sup>88</sup> Section 394.462(1)(k), F.S.

<sup>89</sup> Section 394.463(2)(g), F.S.

<sup>90</sup> *Id.*

- The patient must be asked to give consent to be placed as a voluntary patient if placement is recommended; or
- A petition for involuntary placement must be filed in circuit court for outpatient or inpatient treatment.<sup>91</sup>

### Effect of Proposed Changes

The bill amends s. 394.463, F.S., to authorize a law enforcement officer who is taking a person into custody for an involuntary examination under a court's ex parte order under the Baker Act to seize and hold a firearm or ammunition the person possesses if the person:

- Poses a potential danger to himself or herself or others; and
- Has made a credible threat of violence against another person.

If the law enforcement officer takes custody of the person at his or her residence and he or she meets the above stated criteria, the officer may seek a voluntary surrender of firearms or ammunition kept in the residence not already seized. If such firearms or ammunition are not voluntarily surrendered, or if the person has other firearms or ammunition that were not voluntarily surrendered the law enforcement officer may petition a court for a risk protection order pursuant to a newly-created procedure in the bill.

Any seized or voluntarily surrendered firearm or ammunition must be made available for return no later than 24 hours after the person taken into custody can document that he or she is no longer subject to involuntary examination and has been released or discharged from an inpatient treatment provided or ordered under s. 394.463(1)(g), F.S. However, the firearms or ammunition will not be released if a risk protection order has been entered directing the law enforcement agency to hold the firearms or ammunition for a longer period. The agency must develop policies and procedures relative to the seizure, storage, and return of the firearms or ammunition provided for in the bill.

### **Gun Violence Protective Orders**

Gun violence protective order laws, also known as gun violence restraining orders and extreme risk protection orders, operate as a temporary restraint on a person's possession of his or her guns. Specifically, gun violence protective order laws enable law enforcement, and in some states, family and household members, to petition a court to remove a person's access to guns if

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<sup>91</sup> *Id.* A person for whom an involuntary examination has been initiated who is being evaluated or treated at a hospital for an emergency medical condition must be examined by a facility within the examination period specified in s. 394.463(2)(g), F.S. The examination period begins when the patient arrives at the hospital and ceases when the attending physician documents that the patient has an emergency medical condition. If the patient is examined at a hospital providing emergency medical services by a professional qualified to perform an involuntary examination and is found as a result of that examination not to meet the criteria for involuntary outpatient services or involuntary inpatient placement, the patient may be offered voluntary services or placement, if appropriate, or released directly from the hospital providing emergency medical services. Section 394.463(2)(h), F.S. One of the following must occur within 12 hours after the patient's attending physician documents that the patient's medical condition has stabilized or that an emergency medical condition does not exist: the patient must be examined by a facility and released; or the patient must be transferred to a designated facility in which appropriate medical treatment is available. However, the facility must be notified of the transfer within two hours after the patient's condition has been stabilized or after determination that an emergency medical condition does not exist. Section 394.463(2)(i), F.S.

he or she poses an imminent danger to self or others.<sup>92</sup> With a court-ordered gun violence protective order, a person's access to firearms is blocked temporarily until they can demonstrate that there is no longer a risk.<sup>93</sup>

Under federal law, as discussed above, a person who has committed a violent act towards others is not prohibited from possessing guns unless he or she is the subject of a domestic violence restraining order, has been convicted of a felony, or has been convicted of a domestic violence misdemeanor.<sup>94</sup> Additionally, federal law provides that a person suffering from mental illness is not prohibited from purchasing and possessing a gun unless he or she has been formally, and involuntarily, committed to a mental institution, or undergone some other formalized court proceeding regarding his or her mental illness.<sup>95</sup>

Individual states have begun to implement laws that restrict a person's access to possession and control of firearms. Connecticut became the first state to pass a law providing for a gun violence protective order in 1999.<sup>96</sup> The state's risk-warrant law grants law enforcement or a state attorney the authority to remove temporarily firearms from individuals when there is probable cause to believe they pose a significant risk of harm to themselves or to others.<sup>97</sup> Indiana, California, Oregon, and Washington have also implemented a gun violence protective order-type law.<sup>98</sup> Gun violence protective orders or "red flag" laws are currently pending in 18 states.<sup>99</sup>

A nationwide study of mass shootings from 2009 to 2016 indicated that in at least 42 percent of those incidents, the attacker exhibited dangerous warning signs prior to the shooting.<sup>100</sup> A recent analysis of Connecticut's risk-warrant law demonstrates that risk-based firearm removal laws provide effective tools to save lives. Specifically, research estimates that for every 10-20 risk-warrants issued, one life is saved.<sup>101</sup> Research also indicates that 29 percent of gun owners who had a risk-warrant ordered against them went on to receive mental health and substance abuse services in the state system.<sup>102</sup> Additionally, a study of Connecticut's risk-warrant laws found

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<sup>92</sup> Giffords Law Center to Prevent Gun Violence, *Gun Violence Protective Orders*, available at <http://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/gun-violence-protective-orders/> (last visited February 22, 2018).

<sup>93</sup> ABC News, *How a Temporary Restraining Order for Guns Could Help Stop Mass Shootings*, Andy Fies, February 16, 2018, available at <http://abcnews.go.com/US/temporary-restraining-order-guns-stop-mass-shootings/story?id=51042163> (last visited February 21, 2018).

<sup>94</sup> 18 U.S.C. s. 922(d)(9).

<sup>95</sup> 18 U.S.C. s. 922(d)(4).

<sup>96</sup> Section 29-38C, Conn. Gen. Stat.

<sup>97</sup> The Educational Fund to Stop Gun Violence, *Data Behind Extreme Risk Protective Order Policies*, September 2017, available at <http://efsgv.org/wp-content/uploads/2017/09/CT-Risk-Warrant-Data-One-pager-ERPO-9-15-17-FINAL.pdf> (last visited February 21, 2018).

<sup>98</sup> Section 35-47-14, Ind. Code Ann.; Section 18100 Cal. Penal Code; SB 719, 2017 Regular Session (Oregon 2017); Section 7.94.010, Wash. Rev. Code Ann.

<sup>99</sup> Everytown for Gun Safety, *Red Flag Laws: Helping Prevent Mass Shootings*, February 15, 2018, available at <https://everytownresearch.org/red-flag-laws-helping-prevent-mass-shooting/> (last visited February 21, 2018).

<sup>100</sup> Everytown for Gun Safety, *Analysis of Recent Mass Shootings*, available at [https://everytownresearch.org/wp-content/uploads/2017/04/Analysis\\_of\\_Mass\\_Shooting\\_062117.pdf](https://everytownresearch.org/wp-content/uploads/2017/04/Analysis_of_Mass_Shooting_062117.pdf) (last visited February 21, 2018).

<sup>101</sup> The Educational Fund to Stop Gun Violence, *Data Behind Extreme Risk Protective Order Policies*, available at <http://efsgv.org/wp-content/uploads/2017/09/CT-Risk-Warrant-Data-One-pager-ERPO-9-15-17-FINAL.pdf> (last visited February 21, 2018).

<sup>102</sup> *Id.*

that, 99 percent of warrants issued from 1999 to 2013, which led to the confiscation of at least one gun, resulted in the gun owner receiving psychiatric treatment.<sup>103</sup>

States with a gun violence protective order-type law have a process outlined in statute for obtaining a court order. Typically, before a gun violence protective order may be issued, the person is entitled to a full legal proceeding. However, an emergency order may be issued when a person poses an immediate danger. Standard protocol for obtaining a gun violence protective order or similar type of restraining order requires a family or household member or a law enforcement officer or agency to submit a petition that alleges that the gun owner poses a significant danger to themselves or to others by virtue of his or her custody or control of a firearm.<sup>104</sup>

Notice must be issued to the gun owner, or respondent, to make them aware of the impending court hearing, with certain exceptions provided if such notice would put others at risk of imminent danger or harm. At the hearing, the petitioner must establish that the respondent poses a significant danger of causing personal injury to themselves or to others. In the event that the petitioner meets the burden of proof, the court must issue a protection order. Though gun violence protective order-type laws vary between each state, they are uniform in the duration of such issued order – one year.<sup>105</sup>

Upon entering an order to restrain temporarily a gun owner from his or her firearms, the respondent must surrender his or her firearms. Additionally, the order must detail that the respondent has a right to request one hearing to terminate the order every 12-month period that such order is in effect.<sup>106</sup>

The question of constitutionality of such protective orders has been raised with respect to the Second Amendment to the United States Constitution. In *Heller*, the United States Supreme Court recognized that the Second Amendment protects “the right of law-abiding, responsible citizens to use arms in defense of hearth and home.”<sup>107</sup> However, in the same case, the Supreme Court also recognized that the Second Amendment does not confer the “right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose,” and that legislatures may use a variety of regulatory measures to prevent violence associated with firearms.<sup>108</sup>

The Supreme Court stated that lawful regulatory measures implemented by the legislatures include “longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.”<sup>109</sup> In

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<sup>103</sup> The New York Times, *In Wake of Florida Massacre, Gun Control Advocates Look to Connecticut*, Lisa W. Foderaro and Kristin Hussey, February 17, 2018, available at <https://www.nytimes.com/2018/02/17/nyregion/florida-shooting-parkland-gun-control-connecticut.html> (last visited February 21, 2018).

<sup>104</sup> See Section 35-47-14, Ind. Code Ann.; Section 18100 Cal. Penal Code; SB 719, 2017 Regular Session (Oregon 2017); Section 7.94.010, Wash. Rev. Code Ann.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> 554 U.S. 570, 635 (2008).

<sup>108</sup> *Id.* at 626, 636 (2008).

<sup>109</sup> *Id.* at 626-27.

*Hope v. State*, the court held that the Connecticut risk-warrant law did not implicate the Second Amendment because it does not restrict the right of law-abiding, responsible citizens to use arms in defense of their homes.<sup>110</sup> The court in *Hope* echoed the Supreme Court's sentiments in *Heller*, reasoning that Connecticut's risk-warrant statute was an example of the longstanding "presumptively lawful regulatory measures" that can be adopted by legislatures.<sup>111</sup>

Additionally, similar measures have been upheld in California. In *City of San Diego v. Boggess*, the court held that the protections of the Second Amendment do not extend to persons whose firearms are seized because they were found to be a danger to themselves by reason of their mental health.<sup>112</sup> Furthermore, the court reasoned that the government is not prohibited from regulating the possession of guns by persons proven to be dangerous due to mental illness and further held that such regulations do not appear to be in direct conflict with the Second Amendment.<sup>113</sup> The court held that California case law has affirmed that the state may ensure that firearms are not in the hands of someone who may use them dangerously.<sup>114</sup>

### Effect of Proposed Changes

The bill creates a process for a law enforcement officer to petition a court for a temporary ex parte risk protection order and a final risk protection order in s. 790.401, F.S. The intent of the process and court intervention is to temporarily prevent persons from accessing firearms when there is demonstrated evidence that a person poses a significant danger to himself or herself or others, including significant danger as a result of a mental health crisis or violent behavior. The process strikes a balance between the rights of the person (respondent) including due process of law, and reducing death or injury as a result of his or her use of firearms during a mental health crisis.

The court must find by clear and convincing evidence based on the following considerations that the respondent poses a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm to issue a risk protection order:

- A recent act or threat of violence by the respondent against himself or herself or others, whether or not such violence or threat of violence involves a firearm;
- An act or threat of violence by the respondent within the past 12 months, including, but not limited to, acts or threats of violence by the respondent against himself or herself or others;
- Evidence of the respondent being seriously mentally ill or having recurring mental health issues;
- A violation by the respondent of a protection order or a no contact order issued under ss. 741.30, 784.046, or 784.0485, F.S.;
- A previous or existing risk protection order issued against the respondent;
- A violation of a previous or existing risk protection order issued against the respondent;

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<sup>110</sup> 163 Conn.App. 36, 43 (Conn. App. Ct. 2016).

<sup>111</sup> *Id.*

<sup>112</sup> 216 Cal.App.4th 1494, at 1505-06 (Cal. Ct. App. 2013).

<sup>113</sup> *Id.* at 1506.

<sup>114</sup> *Id.*

- Whether the respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime that constitutes domestic violence as defined in s. 741.28, F.S.;
- The respondent's ownership of, access to, or intent to possess firearms;
- The unlawful or reckless use, display, or brandishing of a firearm by the respondent;
- The recurring use of, or threat to use, physical force by the respondent against another person, or the respondent stalking another person;
- Whether the respondent, in this state or any other state, has been arrested, convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence;
- Corroborated evidence of the abuse of controlled substances or alcohol by the respondent;
- Evidence of recent acquisition of firearms by the respondent; and
- Any relevant information from family and household members concerning the respondent.

If the court issues a risk protection order it may do so for a period that it deems appropriate, up to and including but not exceeding 12 months.

The bill allows a petitioner to request a temporary ex parte risk protection order be issued before the hearing for a risk protection order has occurred. The court must find that the respondent poses a significant danger of causing personal injury to himself or herself or to others in the near future by having in his or her custody or control or by purchasing, possessing or receiving a firearm or ammunition to issue an ex parte temporary risk protection order.

Upon issuance of a risk protection order, including a temporary ex parte risk protection order, the court must order the respondent to surrender to the local law enforcement agency all firearms and ammunition in the respondent's custody, control, or possession, and any license to carry a concealed weapon or firearm issued under s. 790.06, F.S.

The law enforcement officer serving a risk protection order, including a temporary ex parte risk protection order, must request that the respondent immediately surrender all firearms and ammunition in his or her custody, control, or possession and any license to carry a concealed weapon or firearm. The law enforcement officer must take possession of all firearms and ammunition belonging to the respondent that are surrendered.

Alternatively, if personal service by a law enforcement officer is not possible or is not required because the respondent was present at the risk protection order hearing, the respondent must surrender the firearms and ammunition in a safe manner to the control of the local law enforcement agency immediately after being served with the order by service or immediately after the hearing at which the respondent was present.

Notwithstanding ss. 933.02 and 933.018, F.S., a law enforcement officer may seek a search warrant from a court to conduct a search for firearms or ammunition if the officer has probable cause to believe that there are firearms or ammunition in the respondent's custody, control, or possession that have not been surrendered.

At the time of surrender, a law enforcement officer taking possession of a firearm, any ammunition, or a license to carry a concealed weapon or firearm must issue a receipt identifying all firearms and the quantity and type of ammunition that have been surrendered and must provide a copy of the receipt to the respondent. Within 72 hours after service of the order, the law enforcement officer serving the order shall file the original receipt with the court and ensure that his or her law enforcement agency retains a copy of the receipt. All law enforcement agencies must develop policies and procedures by January 1, 2019, regarding the acceptance, storage, and return of firearms or ammunition required to be surrendered.

Upon the sworn statement or testimony of any person alleging that the respondent has failed to comply with the surrender of firearms or ammunition as required by a risk protection order or temporary ex parte risk protection order, the court must determine whether probable cause exists to believe that the respondent has failed to surrender all firearms or ammunition in his or her custody, control, or possession. If the court finds that probable cause exists, the court must issue a warrant authorizing a search of the locations where the firearms or ammunition are reasonably believed to be found and the seizure of any firearms or ammunition discovered pursuant to such search.

The respondent may submit one written request for a hearing to vacate a risk protection order starting after the date of the issuance of the order, and may request another hearing after every extension of the order, if any. The respondent shall have the burden of proving by clear and convincing evidence that the he or she does not pose a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, purchasing, possessing, or receiving a firearm or ammunition. If the court finds after the hearing that the respondent has met his or her burden of proof, the court must vacate the order.

The petitioner may request, by motion, an extension of a risk protection order at any time within 30 calendar days before the end of the order. If the court finds by clear and convincing evidence that the requirements for issuance of a risk protection order continue to be met, the court must extend the order. However, if, after notice, the motion for extension is uncontested and no modification of the order is sought, the order may be extended. The court may extend a risk protection order for a period that it deems appropriate, up to and including but not exceeding 12 months, subject to an order to vacate or to another extension order by the court.

If a risk protection order is vacated or ends without extension, a law enforcement agency holding a firearm or any ammunition that has been surrendered or seized must return such surrendered firearm or ammunition requested by a respondent only after confirming through a background check that the respondent is currently eligible to own or possess firearms and ammunition under federal and state law and after confirming with the court that the risk protection order has been vacated or has ended without extension.

If a risk protection order is vacated or ends without extension, the Department of Agriculture and Consumer Services, if it has suspended a license to carry a concealed weapon or firearm pursuant to this section, must reinstate such license only after confirming that the respondent is currently eligible to have a license to carry a concealed weapon or firearm pursuant to s. 790.06, F.S.

A law enforcement agency must provide notice to any family or household members of the respondent before the return of any surrendered firearm and ammunition.

A respondent may elect to transfer all firearms and ammunition that have been surrendered to or seized by a local law enforcement agency to another person who is willing to receive the respondent's firearms and ammunition. The law enforcement agency may allow such a transfer only if it is determined that the chosen recipient:

- Currently is eligible to own or possess a firearm and ammunition under federal and state law after confirmation through a background check;
- Attests to storing the firearms and ammunition in a manner such that the respondent does not have access to or control of the firearms and ammunition until the risk protection order against the respondent is vacated or ends without extension; and
- Attests not to transfer the firearms or ammunition back to the respondent until the risk protection order against the respondent is vacated or ends without extension.

Within 24 hours after issuance, the clerk of the court shall enter any risk protection order or temporary ex parte risk protection order issued under this section into the uniform case reporting system.

Also within 24 hours after issuance, the clerk of the court shall forward a copy of an order issued under this section to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order into the National Instant Criminal Background Check System, any other federal or state computer-based systems used by law enforcement agencies or others to identify prohibited purchasers of firearms or ammunition, and into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order must remain in each system for the period stated in the order, and the law enforcement agency shall only remove orders from the systems that have ended or been vacated. Entry into the Florida Crime Information Center and National Crime Information Center constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in this state.

The issuing court shall forward, within three business days after issuance of a risk protection order or temporary ex parte risk protection order, all available identifying information concerning the respondent, along with the date of order issuance, to the Department of Agriculture and Consumer Services. Upon receipt of the information, the department shall determine if the respondent has a license to carry a concealed weapon or firearm. If the respondent does have a license to carry a concealed weapon or firearm, the department must immediately suspend the license.

If a risk protection order is vacated before its end date, the clerk of the court shall, on the day of the order to vacate, forward a copy of the order to the Department of Agriculture and Consumer Services and the appropriate law enforcement agency specified in the order to vacate. Upon receipt of the order, the law enforcement agency shall promptly remove the order from any computer-based system in which it was entered.



A person who files a petition knowing the information in such petition is materially false, or files with the intent to harass the respondent, commits a first degree misdemeanor.<sup>115</sup>

A person who has in his or her custody or control a firearm or any ammunition or who purchases, possesses, or receives a firearm or any ammunition with knowledge that he or she is prohibited from doing so by a risk protection order commits a felony of the third degree.

The Office of the State Courts Administrator shall develop and prepare instructions and informational brochures, standard petitions and risk protection order forms, and a court staff handbook on the risk protection order process. The standard petition and order forms must be used after January 1, 2019.

## **School Safety**

### Present Situation

#### *Office of Safe Schools*

The Office of Safe Schools within the Florida Department of Education (DOE) serves to promote and support safe learning environments by addressing issues of student safety and academic success on state, district, and school levels.<sup>116</sup>

#### *District School Board Responsibilities*

A district school board must provide for the proper accounting for all students, for the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students.<sup>117</sup> Among other duties, the district school board is required to:<sup>118</sup>

- Formulate and prescribe policies and procedures for emergency drills and for actual emergencies, including, but not limited to, fires, natural disasters, and bomb threats, for all the public schools of the district that comprise grades K-12. District school board policies must include commonly used alarm system responses for specific types of emergencies and verification by each school that drills have been provided as required by law and fire protection codes. The emergency response agency that is responsible for notifying the school district for each type of emergency must be listed in the district's emergency response policy.
- Establish model emergency management and emergency preparedness procedures, including emergency notification procedures for the following life-threatening emergencies:
  - Weapon-use and hostage situations.
  - Hazardous materials or toxic chemical spills.
  - Weather emergencies, including hurricanes, tornadoes, and severe storms.
  - Exposure as a result of a manmade emergency.

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<sup>115</sup> A first degree misdemeanor is punishable by up to one year in jail and up to a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>116</sup> Florida Department of Education, *Office of Safe Schools*, <http://www.fldoe.org/schools/safe-healthy-schools/safe-schools/index.stml> (last visited Feb. 23, 2018).

<sup>117</sup> Section 1006.07, F.S.

<sup>118</sup> *Id.* at (4).

### ***Superintendent Responsibilities***

The district superintendent must recommend plans to the district school board for the proper attention to health, safety, and other matters that will best promote the welfare of students.<sup>119</sup>

### ***Florida Safe Schools Assessment Tool***

Each district school board is required to use the Safety and Security Best Practices developed by the Office of Program Policy Analysis and Government Accountability to conduct a self-assessment of the school districts' current safety and security practices.<sup>120</sup> Based on these self-assessment findings, the district school superintendent must provide to the district school board recommendations that identify strategies and activities that the district school board should implement in order to improve school safety and security.<sup>121</sup>

Annually each district school board must receive the self-assessment results at a publicly noticed district school board meeting to provide the public an opportunity to hear the district school board members discuss and take action on the report findings.<sup>122</sup> Each district school superintendent must report the self-assessment results and school board action to the commissioner within 30 days after the district school board meeting.<sup>123</sup>

The 2013 General Appropriations Act<sup>124</sup> required the DOE to contract with a security consulting firm that specializes in development of risk assessment software solutions with experience in conducting security assessments of public facilities firm to provide a risk assessment tool for conducting security assessments for use by school officials at each public school site in the state. The tool was intended to help school officials to identify threats, vulnerabilities and appropriate safety controls for the schools that they supervise. The assessment was required to address, at a minimum, the following issues:<sup>125</sup>

- School emergency and crisis preparedness planning;
- Security, crime and violence prevention policies and procedures;
- Physical security measures;
- Professional development training needs;
- An examination of support service roles in school safety, security, and emergency planning;
- School security and school police staffing, operational practices, and related services;
- School-community collaboration on school safety;
- Return on investment analysis of the recommended physical security controls.

The system was also required to generate written automated reports on assessment findings for review by the DOE and school and district officials.<sup>126</sup> A final report on implementation was

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<sup>119</sup> Section 1006.08(1), F.S.

<sup>120</sup> Section 1006.07(6), F.S.

<sup>121</sup> Section 1006.07(6), F.S.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> Specific Appropriation 102A, ch. 2013-40, L.O.F.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

required to identify the positive school safety measures in place at the time of the assessment, as well as the areas for continued school safety planning and improvement.<sup>127</sup>

### ***Safe Schools Allocation***

Safe Schools funds are to be used by school districts to help them comply with the sections of Florida law dedicated to school discipline and school safety (sections 1006.07 through 1006.148, F.S.), with priority given to establishing a school resources officer program pursuant to section 1006.12, F.S.<sup>128</sup>

For the 2017-18 fiscal year, \$64,456,019 is appropriated for Safe Schools activities with each school district receiving a guaranteed minimum of \$62,660.<sup>129</sup> From the remaining appropriation, two-thirds must be allocated to school districts based on the latest official Florida Crime Index provided by the Florida Department of Law Enforcement and one-third must be allocated based on each district's share of the state's total unweighted student enrollment.<sup>130</sup>

### **Effect of Proposed Changes**

#### ***Legislative Intent***

The bill provides legislative intent that the provisions of the Florida education code be liberally constructed by the State Board of Education (SBE), the Commissioner of Education, district school boards, district school superintendents, and law enforcement agencies to the end that student discipline and school safety policy objectives may be effective.

Additionally, the bill provides legislative intent that school district and law enforcement personnel be authorized to take necessary actions to ensure the fundamental protection and safety of public school students, personnel, and visitors, notwithstanding any other provision of the Florida education code.

#### ***Marjory Stoneman Douglas High School Public Safety Commission***

The bill creates the Marjory Stoneman Douglas High School Public Safety Commission (commission) within the Florida Department of Law Enforcement.<sup>131</sup> The bill requires the commission to convene before June 1, 2018.

#### ***Membership, Chair, and Staff***

The bill specifies that the commission must be composed of fifteen members: five appointed by the President of the Senate, five appointed by the Speaker of the House of Representatives, and five appointed by the Governor. The bill specifies that appointments must be made before April 30, 2018. Additionally, the bill requires the Secretary of Children and Families, the Secretary of

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<sup>127</sup> *Id.*

<sup>128</sup> Section 1011.62,(15), F.S.

<sup>129</sup> Chapter 2017-234, Laws of Florida. Section 6 (11)

<sup>130</sup> Section 1011.62,(15), F.S.

<sup>131</sup> The bill specifies that the commission is defined as a body created by specific statutory enactment within a department and exercising limited quasi-legislative or quasi-judicial powers, or both, independently of the head of the department. Section 20.03, F.S.

Juvenile Justice, the Secretary of Health Care Administration, the Commissioner of Education and the executive director must serve as ex officio, nonvoting members of the commission.

The bill specifies that members serve at the pleasure of the officer who appointed the member. The bill provides that a vacancy on the task force must be filled in the same manner as the original appointment.

The bill provides that the Commissioner of the Florida Department of Law Enforcement (FDLE) must chair the commission, the FDLE General Counsel must serve as the commission's general counsel, and FDLE staff, as assigned by the chair, must assist the commission in performing its duties.

### *Meetings*

The bill specifies that the commission must meet as necessary to conduct the commission's work at the call of the chair and at a time designated by him or her at locations throughout the state. The bill authorizes the commission to conduct its meetings through teleconferences or other similar means.

The bill provides that members of the task force are entitled to receive reimbursement for per diem and travel expenses as provided in law.

### *Responsibilities*

The bill specifies that the commission must investigate system failures in the Marjory Stoneman Douglas High School shooting and prior mass violence incidents and develop recommendations for system improvements. The bill provides that, at a minimum, the commission must analyze evidence from the Marjory Stoneman Douglas High School shooting and other mass violence incidents in this state and other states, and:

- Develop a timeline of the incident, incident response, and all relevant events preceding the incident, with particular attention to all perpetrator contacts with local, state and national government agencies and any contract providers of such agencies and entities.
- Investigate any failures in incident responses by local law enforcement agencies and school resource officers. As a part of this investigation, the commission must:
  - Identify existing policies and procedures for active assailant incidents on school premises and evaluate the compliance with such policies and procedures in the execution of incident responses.
  - Evaluate existing policies and procedures for active assailant incidents on school premises in comparison with national best practices.
  - Evaluate the extent to which any failures in policy, procedure, or execution contributed to an inability to prevent deaths and injuries.
  - Make specific recommendations for improving law enforcement and school resource officer incident response in the future.
- Investigate any failures in interactions with perpetrators preceding mass violence incidents. As a part of this investigation, the commission must:
  - Identify the history of interactions between perpetrators and government entities such as schools, law enforcement agencies, courts and social service agencies, and identify any

- failures to adequately communicate or coordinate regarding indicators of risk or possible threats.
- Evaluate the extent to which any such failures contributed to an inability to prevent deaths and injuries.
  - Make specific recommendations for improving communication and coordination among entities with knowledge of indicators of risk or possible threats of mass violence in the future.
  - Identify available state and local tools and resources for enhancing communication and coordination regarding indicators of risk or possible threats, including but not limited to the Florida Department of Law Enforcement Fusion Center or the Judicial Inquiry System, and make specific recommendations for using such tools and resources more effectively in the future.

### *Powers*

The bill provides that:

- The commission has the power to investigate and specifies that the commission may delegate the authority to administer oaths and affirmations to its investigators.
- The commission has standing to petition the court for a subpoena to compel the attendance of witnesses to testify before the commission. Additionally, the bill grants the commission standing to petition the court to compel the production of any books, papers, records, documentary evidence, and other items, including confidential information, relevant to the performance of the duties of the commission or to the exercise of its power. The bill states that the commission must specify in the petition to the court for a subpoena, the relevancy of such information to the performance of the commission's duties or to the exercise of the commission's powers.
- The chair and any other member of the commission may administer all oaths and affirmations in the manner prescribed by law to witnesses who appear before the commission for the purpose of testifying in any matter that concerning which the commission desires evidence. The bill specifies that in the case of a refusal to obey a subpoena issued by the court to any person, the commission may make application to any Florida circuit court which must have jurisdiction to order the witness to appear before the commission and to produce evidence, if so ordered, or to give testimony touching on the matter in question. The bill specifies that the failure to obey such order may be punished by the court as contempt.

Additionally, the bill authorizes the commission to call upon appropriate agencies of state government for such professional assistance as may be needed in the discharge of the commission's duties and requires such agencies to provide such assistance in a timely manner.

The bill provides that, notwithstanding any other law, the commission is authorized to request and to be provided with access to any information or records, including confidential and exempt information or records, that pertain to the Marjory Stoneman Douglas High School shooting and prior mass violence incidents in Florida being reviewed by the commission and that are necessary for the commission to carry out its duties. The bill specifies that information or records obtained by the commission that are otherwise confidential and exempt must retain such confidential and exempt status and prohibits the commission from disclosing any such information or records.

*Report*

The bill requires the commission to submit an initial report on the commission's findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2019, and authorizes the commission to issue reports annually thereafter. The bill provides that on July 1, 2023, the commission sunsets and the statute authorizing the commission is repealed.

*Office of Safe Schools*

The bill codifies the Office of Safe Schools (office), within the DOE. The bill provides that the office is fully accountable to the Commissioner of Education but must cooperate and coordinate with the Board of Governors of the State University System, public and nonpublic postsecondary institutions, school districts, public and nonpublic schools, state and local agencies, community organizations, and other organizations and persons, as directed by the commissioner.

*Purpose*

The bill specifies that the purpose of the office is to serve as the state education agency's primary coordinating division assigned to promote and support safe-learning environments by addressing issues of student safety and academic success at the state, district, and school levels. The bill states that the office must, at a minimum:

- Function as the state's primary contact for the coordination of activities, information, and reporting related to the implementation of the student discipline and school safety requirements in law related to education support for learning and student services, as well as other requirements of law pertaining to school safety partnerships and responsibilities, as assigned by the commissioner.
- Function as the state contact and state education agency coordination office for school district safety specialist and primary emergency operations contact staff assigned by Florida College System institutions, state universities, and other entities identified by the commissioner.
- Coordinate with state and local agencies, school district personnel, and safety and security experts to establish safe school and security standards, review school safety and security plans, establish guidelines regarding school district appointments to and functions of public school threat assessment teams and district school safety specialists, and update risk assessment procedures, as appropriate.
- Develop and implement a training program for district school safety specialties designated or appointed by a district school board. Such training program elements must include, but are not limited to:
  - School safety specialist participation in active shooter situation training;
  - Campus safety tours performed pursuant to s. 1006.07(7), F.S.;
  - Program activities of the Public School Emergency Response Learning System Program; and
  - Training associated with the Florida Safe Schools Assessment Tool.

## ***District School Board Responsibilities***

### ***Emergency Drills***

The bill requires a school district to formulate and prescribe policies and procedures for emergency drills for hostage and active shooter situations and establish model emergency management and emergency preparedness procedures for active shooter situations. The bill specifies that active shooter situation training must be conducted by the law enforcement agency or agencies that are designated as the first responders to the school's campus.

### ***Security Assessment***

The bill also requires each school district to conduct security risk assessments at each public school, conduct a self-assessment of the school districts' current safety and security practices using a format prescribed by the DOE, and develop a plan that includes having a secure, single point of entry onto school grounds, using a format prescribed by the DOE.

### ***Safety in Construction Planning***

Additionally, the bill requires a district school board or governing board to allow the law enforcement agency or agencies that are designated as first responders to the school's or districts' campus tour such campuses once every 3 years and to document any recommended changes to school safety and emergency issues by the law enforcement agency based on a campus tour.

### ***District School Safety Specialist***

The bill requires a district school board to designate or appoint a district school safety specialist to serve at the direction of the superintendent as the district's primary point of public contact regarding the district's coordination, communication, and implementation of policies, procedures, responsibilities, and reporting related to district and public school safety functions. The bill specifies that the school safety specialist must:

- Coordinate with the Office of Safe Schools.
- Facilitate the collection and dissemination of information among and between the school district, school personnel, students and their families, state and local law enforcement agencies, community health entities, and other state and community partners.
- Maintain records and reports and facilitate the implementation of policies regarding the respective duties and responsibilities of the school districts, superintendents, and principals and reporting regarding student discipline and school safety requirements.
- Oversee and coordinate threat assessment teams and provide a coordinated approach to evaluating and responding to students who pose, or appear to pose, a credible potential threat of violence or harm to themselves or others.
- Perform other responsibilities assigned by the superintendent and requested by the Office of Safe Schools to facilitate and coordinate the effective implementation of student discipline and school safety requirements.

*Threat Assessment Team*

The bill requires each school district to designate a threat assessment team, in accordance with guidelines established by the Office of Safe Schools, at each school in the district. The threat assessment team must operate under the direction of the district school safety specialist.

*Florida Sheriff's Marshal Program*

The bill establishes the Florida Sheriff's Marshal Program (Marshal Program) within the DOE's Office of Safe Schools as a voluntary program to assist school districts and public schools in enhancing the safety and security of students, faculty, staff, and visitors to Florida's public schools and campuses.

The bill specifies that the purpose of the Marshal Program is to provide comprehensive firearm safety and proficiency training for selected faculty and staff to provide security on campus during an active assailant incident.<sup>132</sup> Additionally, the bill provides that public school faculty and staff who voluntarily participate in and complete the Marshal Program, as recommended by the school district, are designated as special deputy sheriffs with all rights, responsibilities, and obligations<sup>133</sup> in carrying concealed firearms on campus.

The bill establishes program eligibility and participation requirements, which must, at a minimum, include that:

- A school district may sponsor and recommend to the sheriff public school faculty and staff members as candidates for voluntary participation in the program. The sheriff must establish timelines and requirements for participation through a partnership agreement with the sponsoring school district superintendent. To be eligible for consideration and recommendation for the Marshal Program, a candidate must be licensed to carry a concealed weapon or firearm in accordance with law.<sup>134</sup>
- The sheriff may approve a candidate to participate in the program as a sheriff's marshal after screening, which includes performing criminal background checks, drug testing, and a psychological evaluation.
- Upon successful completion of the program, a sheriff's marshal may be appointed by the sheriff as a special deputy sheriff<sup>135</sup> for the limited purpose of responding to an active assailant incident on a campus<sup>136</sup> of his or her school district during an active assailant incident.

The bill requires that a partnership agreement<sup>137</sup> must provide that a special deputy sheriff:

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<sup>132</sup> The bill defines an "active assailant incident" as a situation in which an armed assailant is posing an immediate deadly threat to persons on the premises or campus of a public school.

<sup>133</sup> Qualifications of sheriff deputies and special deputies are established in s. 30.09, F.S.

<sup>134</sup> Section 790.06, F.S.

<sup>135</sup> The bill specifies that a "special deputy sheriff" means a program participant who has successfully completed the program and who is appointed as a law enforcement officer in the same manner as a deputy sheriff as provided in s. 30.072(2), F.S. and certified under ch. 943, F.S.

<sup>136</sup> The bill defines a campus as a school, as defined in s. 1003.01(2), F.S., and facilities and school plants operated and controlled by a public school district in accordance with s. 1003.02, F.S..

<sup>137</sup> The bill specifies that a "Partnership agreement" means a jointly-approved contract between the sheriff operating the program and the superintendent of a participating school district sponsor.



- Must participate in and complete the program's professional training requirements as a precondition to meeting the legal requirements of chapter 30 of the Florida Statutes to be eligible to carry a concealed firearm on a campus of his or her sponsoring school district.
- May not act in any law enforcement capacity outside of an active assailant incident on a school district campus and does not have any authority in a law enforcement capacity off campus in any way, except as otherwise expressly authorized by law.
- May carry concealed, approved firearms on campus. The firearms must be specifically purchased and issued for the sole purpose of the program. Only concealed carry safety holsters and firearms approved by the sheriff may be used under the program.
- Must successfully complete training with the sheriff's office before his or her appointment as a special deputy sheriff, including meeting the requirements of this section.

However, the bill specifies that the appointment of a person as a special deputy sheriff does not entitle the person to the special risk category that applies to law enforcement officers established under law.<sup>138</sup>

The bill requires that all training must be conducted by Criminal Justice Standards Training Commission (CJSTC)-certified instructors, with ongoing and annual proficiency retraining conducted by the sheriff, as specified in the agreement.

The required instruction must include 132 total hours of comprehensive firearm safety and proficiency training in the following topics:

- Firearms: An 80-hour block of instruction based on the CJSTC Law Enforcement Academy training model and be enhanced to include 10 percent to 20 percent more rounds fired by each program participant beyond the minimum average of approximately 1,000 training rounds associated with academy training. Program participants must achieve an 85 percent pass rate on the firearms training.
- Firearms precision pistol: A 16-hour block of instruction.
- Firearms discretionary shooting: A 4-hour block of instruction using state-of-the-art simulator exercises.
- Active shooter or assailant: An 8-hour block of instruction.
- Defensive tactics: A 4-hour block of instruction.
- Legal or high liability: A 20-hour block of instruction.
- An optional 16-hour precision pistol course as additional training.

The bill specifies that the sheriff or the district superintendent may deny or terminate a sheriff's marshal or special deputy sheriff's participation in the program for any reason, including, but not limited to, any of the following circumstances:

- An arrest or filing of criminal charges against a program participant by a law enforcement agency.
- The service of process on the program participant as the respondent of an injunction for protection.
- The involuntarily placement of the program participant in a treatment facility for a mental health examination under The Baker Act.

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<sup>138</sup> Special risk membership is established for the purposes of the Florida Retirement System. Section 121.0515, F.S.

- A violation of sheriff office policies, orders, or requirements by the program participant.
- A violation of the school district's code of conduct or employee handbook or policy by the program participant.

To implement the Marshal program, the bill requires that:

- The sheriff must maintain documentation of weapon and equipment inspections, as well as the training, certification, inspection, and qualification records of each program participant.
- Each program participant must be distinctly and visually identifiable to responding law enforcement officers, faculty, staff, and students, in the case of any active assailant incident on a sponsoring school district's campus.
- Each sheriff's marshal must execute a volunteer agreement with the sheriff's office outlining duties and responsibilities.
- A sponsoring school district must conduct awareness training about the program for all school district faculty and staff members.
- Specific implementation requirements, responsibilities, and other aspects of implementation must be specified in a partnership agreement.

The bill specifies that costs of participation in the Marshal program must be established in the partnership agreement. Funding may be provided by the Legislature to support school district and sheriff office administration, sponsorship, participation, and implementation of the marshal program.

### ***Florida Safe Schools Assessment Tool***

The bill requires the DOE to contract with a security consulting firm that specializes in the development of risk assessment software solutions and has experience in conducting security assessments of public facilities to develop, update, and implement a risk assessment tool, which will be established as the Florida Safe Schools Assessment Tool (FSSAT). The FSSAT must help school officials identify threats, vulnerabilities, and appropriate safety controls for the schools that they supervise, pursuant to the security risk assessment required in law.<sup>139</sup>

The bill requires school officials at each school district and public school site in the state to use the FSSAT to conduct security assessments for use by school officials at each school district and public school site in the state.

The bill requires the FSSAT to address, at a minimum, all of the following components:

- School emergency and crisis preparedness planning;
- Security, crime, and violence prevention policies and procedures;
- Physical security measures;
- Professional development training needs;
- An examination of support service roles in school safety, security, and emergency planning;
- School security and school police staffing, operational practices, and related services;
- School and community collaboration on school safety; and
- A return on investment analysis of the recommended physical security controls.

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<sup>139</sup> Section 1006.07(6), F.S.

The bill specifies that the DOE must require by contract that the security consulting firm:

- Generate written automated reports on assessment findings for review by the department and school and district officials;
- Provide training to the department and school officials in the use of the FSSAT and other areas of importance identified by the department; and
- Advise in the development and implementation of templates, formats, guidance, and other resources necessary to facilitate the implementation of this section at state, district, school, and local levels.

The bill requires that, by December 1, 2018, and annually by that date, the DOE must report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of implementation across school districts and schools. The bill specifies that the report must include a summary the positive school safety measures in place at the time of the assessment and any recommendations for policy changes or funding needed to facilitate continued school safety planning, improvement, and response at the state, district, or school levels.

Additionally, the bill requires that data and information related to security risk assessments and the security information contained in the required annual report are confidential and exempt from public records requirements.

### ***Safe Schools Allocation***

The bill modifies the safe schools allocation to expand the school district's authorized uses of the funds to incorporate newly created programs, including the Public School Emergency Response Learning System Program, Florida Sheriff's Marshal Program, and the Florida Safe Schools Assessment Tool, in addition to other school safety requirements in law, with priority given to satisfying the requirement of establishing or assigning at least one safe-school officer at each school facility within the district.

## **Coordination and System Improvements**

### **Present Situation**

#### ***Educational Multiagency Services for Student with Severe Emotional Disturbance***

Florida law provides that an intensive integrated educational program; a continuum of mental health treatment services; and, when needed, residential services are necessary to enable students with severe emotional disturbance to develop appropriate behaviors and demonstrate academic and career education skills.<sup>140</sup> District school boards should provide educational programs, and state departments and agencies administering children's mental health funds should provide mental health treatment and residential services when needed, forming a multiagency network to provide support for students with severe emotional disturbance.<sup>141</sup>

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<sup>140</sup> Section 1006.04(1)(a), F.S.

<sup>141</sup> *Id.*

### *School Resource Officers and School Safety Officers*

District school boards may establish school resource officer programs, through a cooperative agreement with law enforcement agencies or in accordance with law, by which personnel are employed by either the school district or a law enforcement agency.<sup>142</sup>

School resource officers are certified law enforcement officers<sup>143</sup> who are employed by a law enforcement agency.<sup>144</sup> School resource officers must abide by district school board policies and must consult with and coordinate activities through the school principal, but are responsible to the law enforcement agency in all matters relating to employment, subject to agreements between a district school board and a law enforcement agency.<sup>145</sup>

School safety officers are certified law enforcement officers and employed either by a law enforcement agency or by the district school board.<sup>146</sup> If the district school board employs the officer, the district school board is the employing agency and must comply with the statutory provisions regarding law enforcement.<sup>147</sup> A district school board may commission one or more school safety officers for the protection and safety of school personnel, property, and students within the school district.<sup>148</sup> Additionally, a school safety officer has the power to make arrests for violations of law on district school board property and to arrest persons, whether on or off such property, who violate any law on such property under the same conditions that deputy sheriffs are authorized to make arrests.<sup>149</sup> A school safety officer has the authority to carry weapons when performing his or her official duties.<sup>150</sup>

Florida law authorizes a district school board to enter into mutual aid agreements with one or more law enforcement agencies.<sup>151</sup> The district school board and the law enforcement agency, as mutually agreed to, may pay a school safety officer's salary jointly.<sup>152</sup>

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<sup>142</sup> Section 1006.12(1), F.S.

<sup>143</sup> "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. Section 943.10(1), F.S.

<sup>144</sup> In this section, a "law enforcement agency" means any agency or unit of government or any municipality or the state or any political subdivision thereof, or any agent thereof, which has constitutional or statutory authority to employ or appoint persons as officers. *Id.* at (4).

<sup>145</sup> Section 1006.12(1)(b), F.S.

<sup>146</sup> *Id.* at (2)(a), F.S.

<sup>147</sup> *Id.* Chapter 943 governs the Florida Department of Law Enforcement.

<sup>148</sup> Section 1006.12(2)(b).

<sup>149</sup> *Id.* at (2)(c), F.S.

<sup>150</sup> *Id.*

<sup>151</sup> Section 1006.12(2)(d), F.S.

<sup>152</sup> *Id.*

### ***Student Crime Watch Program***

A district school board, must by resolution of the board, implement a student crime watch program to promote responsibility among students and to assist in the control of criminal behavior within the schools.<sup>153</sup>

### **Effect of Proposed Changes**

#### ***Multiagency Services Network for Students with Severe Emotional Disturbances***

The bill codifies the Multiagency Services Network for Students with Severe Emotional Disturbances (SEDNET) as a function of the DOE in partnership with other state, regional, and local partners as a statewide network of regional projects comprised of major child-serving agencies, community-based service providers, and students and their families. The bill provides that the fundamental goal of SEDNET and its partners is to facilitate the process of cross system collaboration and inclusion of families as full partners. The bill requires, at a minimum, that SEDNET must:

- Focus on developing interagency collaboration and sustaining partnerships among professionals and families in the education, mental health, substance abuse, child welfare, and juvenile justice systems serving children and youth with, and at risk of, emotional and behavioral disabilities.
- Provide technical assistance and support in building service capacity within regional areas and collaborate in related state level activities affecting systems of care.
- Serve as a collaborative resource for school districts, agencies, and families working to promote positive educational and community-based outcomes for children.

The bill specifies that the Legislature may provide funding for the DOE to award grants to district school boards for statewide planning and development of SEDNET. The bill also authorizes state departments and agencies to use appropriate funds for SEDNET.

#### ***Safe-School Officer***

For the protection and safety of school personnel, property, students, and visitors, the bill requires each district school board and school district superintendent to cooperate with law enforcement to establish or assign one or more safe-school officers at each school facility within the district. The bill provides that the school district may implement a school resource officer, school safety officer, the Florida Sheriff's Marshal Program, or a combination of these options to fulfill this obligation.

The bill modifies the requirements for school resource or safety officers to require such officers to undergo criminal background checks, drug testing, and a psychological evaluation.

#### ***School Safety Awareness Program***

The bill names the school safety awareness program as "FortifyFL," as recommended by students of Marjory Stoneman Douglas High School. The bill requires the Florida Department of Law Enforcement (FDLE), in collaboration with the Department of Legal Affairs in the Office of the Attorney General, to competitively procure a mobile suspicious activity reporting tool

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<sup>153</sup> Section 1006.07(3), F.S.

(reporting tool) that allows students and the community to relay information anonymously concerning unsafe, potentially harmful, dangerous, violent, or criminal activities or the threat of such activities to appropriate public safety agencies and school officials. The bill requires that, at a minimum, the FDLE must receive reports electronically through the reporting tool that is available on both Android and Apple devices.

The bill requires that the reporting tool must notify the reporting party of the following information:

- That the reporting party may provide his or her report anonymously.
- That if the reporting party chooses to disclose his or her identity, such information shall be shared with the appropriate law enforcement agency and school officials; however, the law enforcement agency and school officials shall be required to maintain such information as confidential.

The bill specifies that information received by the tool must be promptly forwarded to the appropriate law enforcement agency or school official.

The bill requires that law enforcement dispatch centers, school districts, schools, and other entities identified by the FDLE shall be made aware of the mobile suspicious activity reporting tool. Additionally, the bill requires the FDLE, in collaboration with the Division of Victims Services within the Office of the Attorney General and the Office of Safe Schools within the Florida Department of Education (DOE), to develop and provide a comprehensive training and awareness program on the use of the reporting tool.

### ***Public School Emergency Response Learning System Program***

The bill establishes the Public School Emergency Response Learning System Program (program) within the DOE's Office of Safe Schools to assist school personnel in preparing for and responding to active emergency situations and to implement local notification systems for all Florida public schools. The program requires local law enforcement agencies to partner with participating public preschools, public child care providers, or public school districts and schools.

The bill requires that training, notifications, and resources be available for school personnel and students and families, which must, at a minimum, include:

- Activities and direct training to mitigate risk and save lives in emergency situations, such as lockdown, bomb threat, active shooter, and other emergency situations.
- Vital local notification systems implemented to alert schools of imminent danger.
- Other resources provided in conjunction with the training including, but not limited to, an emergency plan flip chart, communication cards, instructional resources, activity books for children and teachers, and certificates of training and completion.

The bill requires that a school district must include in its emergency notification procedures established in law<sup>154</sup> any program participant who notifies the district of his or her desire to participate.

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<sup>154</sup> Section 1006.07, F.S.

Additionally, the bill requires each program participant to develop a preemptive plan of action that includes multiple options for addressing various situations based on the form of danger present and the unique needs and circumstances of each school and its faculty, staff, students, and visitors.

The bill may provide for enhanced collaboration and communication between public schools and local law enforcement entities to appropriately address emergency situations.

The bill authorizes the Legislature to provide funding to implement the Public School Emergency Alert Response Learning System Program.

## **Mental Health**

### Present Situation

#### *Mental Health Services in Schools*

The Department of Education (DOE), through the Bureau of Exceptional Education and Student Services and the Office of Safe Schools, promotes a system of support, policies, and practices that focus on prevention and early intervention to improve student mental health and school safety. Florida law requires instructional staff members of the public schools to teach comprehensive health education that addresses concepts of mental and emotional health as well as substance use and abuse.<sup>155</sup> Student services personnel, which includes school psychologists, school social workers, and school counselors, are classified as instructional personnel responsible for advising students with regard to their personal and social adjustments, and provide direct and indirect services at the district and school level.<sup>156</sup>

### Effect of Proposed Changes

#### *The Mental Health Services Allocation*

The purpose of the mental health assistance allocation is to provide supplemental funding to assist school districts and charter schools in establishing or expanding comprehensive school-based mental health programs that:

- Increase awareness of mental health issues among children and school-age youth;
- Train educators and other school staff in detecting and responding to mental health issues; and
- Connect children, youth, and families who may experience behavioral or mental health issues with appropriate services.

The mental health assistance allocation must be allocated in the annual general appropriations act (GAA) to each eligible school district and developmental research school based on each entity's proportionate share of FEFP base funding. The district funding allocation must include a minimum amount as specified in the GAA. Charter schools are eligible for a proportionate share of district funding for this program upon the submission and approval of a plan that includes

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<sup>155</sup> Section 1003.42(2)(n), F.S.

<sup>156</sup> Section 1012.01(2)(b), F.S.

specified elements. The mental health assistance funds may not supplant funds that are provided for this purpose from other operating funds and may not be used to increase salaries or provide bonuses, except for personnel hired to implement the required mental health assistance allocation plans.

Prior to the distribution of the allocation, a school district is required to annually develop and submit a detailed plan outlining the local program and planned expenditures to the district school board for approval. Similarly, a charter school must annually develop and submit a detailed plan outlining the local program and planned expenditures of the funds in the plan to its governing body for approval in order to receive the allocation. After the charter school's governing board approves the plan, it must be provided to the school district for submission to the Commissioner of Education. School districts must submit approved plans to the commissioner by August 1 of each fiscal year.

The required mental health assistance allocation plan must include, at a minimum, each of the following elements:

- A contract or memorandum of understanding with at least one local nationally accredited community behavioral health provider or a provider of Community Action Team services to provide a behavioral health presence and services at district schools. Services may include, but are not limited to:
  - Mental health screenings and assessments;
  - Individual, family, and group counseling;
  - Psychiatric or psychological services;
  - Trauma-informed care;
  - Mobile crisis services; and
  - Behavior modification.
- Training opportunities in Mental Health First Aid or other similar nationally recognized evidence-based training for all school personnel who have contact with students. Training topics should include depression and mood disorders, anxiety disorders, trauma, psychosis, substance use disorders, and suicide prevention. The training must cover:
  - Risk factors and warning signs for mental health and addiction concerns;
  - Strategies for providing assistance to individuals in both crisis and non-crisis situations; and
  - The use of referral mechanisms that effectively link individuals to appropriate treatment and intervention services in the school and in the community.
- A mental health crisis intervention strategy that provides for prompt resolution of identified, immediate threats within district schools, including Baker Act referrals and notification of law enforcement personnel, as appropriate.

School districts and charter schools are *strongly encouraged* to include in the required mental health assistance allocation plan each of the following elements:

- Programs to assist students in dealing with anxiety, depression, bullying, trauma, and violence;
- Strategies or programs to reduce the likelihood of at-risk students developing social, emotional, or behavioral health problems; suicidal tendencies; or substance use disorders; and



- Strategies to improve the early identification of social, emotional, or behavioral problems or substance use disorders and to improve the provision of early intervention services.

Beginning September 30, 2019, and annually thereafter, each entity that receives a mental health assistance allocation must submit a final report to the commissioner, in a format prescribed by the Florida Department of Education (DOE), on its program outcomes and expenditures for each element of the program. At a minimum, the report must include the number of each of the following:

- Students who receive screenings or assessments.
- Students who are referred for services or assistance.
- Students who receive services or assistance.
- Parents or guardians notified.
- School personnel who are trained to engage in the services, techniques, strategies, or programs identified in the required mental health assistance allocation plan.

The establishment of the mental health assistance allocation program may assist school districts in providing comprehensive school-based mental health programs that increase awareness of mental health issues among children and school-age youth. This may improve student mental health and school safety.

## **Public Records Exemptions**

### Present Situation

Florida law provides that education records of students, as defined in the federal Family Educational Rights and Privacy Act (FERPA), and the federal regulations issued pursuant thereto, are confidential and exempt from state public records laws.<sup>157</sup>

### Effect of Proposed Changes

The bill clarifies that Florida law does not limit the application of exemptions from public records requirements for security system plans and public security systems, including security footage, or other information that would relate to or reveal the location or capabilities of such systems.

The bill takes effect upon becoming a law.

## **IV. Constitutional Issues:**

### A. Municipality/County Mandates Restrictions:

None.

### B. Public Records/Open Meetings Issues:

None.

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<sup>157</sup> Sections 1002.221 and 1002.225, F.S.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 7026 appropriates \$200,000,000 in recurring funds from the General Revenue Fund for the 2018-2019 fiscal year to be allocated as follows:

- \$100 million to the Department of Education (DOE) in the Aid to Local Government Grants and Aids -- Florida Education Finance Program to fund the mental health assistance allocation.
- \$500,000 to the DOE to implement the Florida Sheriff's Marshal Program.
- Three full-time equivalent positions, with an associated salary rate of 150,000, are authorized and the sum of \$344,393 in recurring funds is appropriated to the DOE to fund the Office of Safe Schools.
- \$75 million to the DOE in the Aid to Local Government Grants and Aids -- Florida Education Finance Program for the safe schools allocation in addition to the safe schools allocations funds appropriated in the General Appropriations Act.
  - \$13,675,820 of such funds must be added equally to each school district and developmental research school to provide a district minimum amount of \$250,000.
  - Notwithstanding s. 1011.62(15), F.S., the balance of such funds must be allocated to school districts based on each district's proportionate share of the state's total unweighted full-time equivalent student enrollment. Each school district must use these funds exclusively for hiring or contracting for safe-school officers.
- \$100,000 to the DOE to competitively procure the active shooter training component of the school safety specialist training program.
- \$100,000 to the Florida Department of Law Enforcement to competitively procure proposals for the development or acquisition of the mobile suspicious activity reporting tool. The tool must be implemented by January 31, 2019.
- Five full-time equivalent positions, with an associated salary rate of \$345,000, are authorized and the recurring sum of \$600,000 is appropriated to the Department of Law Enforcement to fund the operations of the Marjory Stoneman Douglas High School Public Safety Commission.
- \$7,159,895 to DCF to competitively procure proposals for additional mobile crisis teams to ensure reasonable access among all counties. DCF must consider the

geographic location of existing mobile crisis teams and select providers to serve the areas of greatest need.

- \$18,321 to the DOE to provide for the benefits awarded pursuant to s. 112.1915, F.S. to the eligible recipients of the three Marjory Stoneman Douglas High School staff members who lost their lives on February 14, 2018.
- 67 full-time equivalent positions, with an associated salary rate of 3,685,000, are authorized and \$6,177,391 in recurring funds are appropriated from the General Revenue fund to DCF to hire case managers who will be assigned to each Sheriff's Office in the state.
- \$10 million to the Department of Legal Affairs to reimburse trauma centers for documented medical costs of treating victims of mass shootings through the Medical Reimbursement Program for Victims of Mass Shootings. The bill also directs 10 percent of the annual fees collected for new and renewal concealed weapons or firearm licenses to be transferred from the Licensing Trust Fund to the Department of Legal Affairs to fund the Medical Reimbursement Program for Victims of Mass Shootings.

The bill appropriates \$200 million in nonrecurring funds from the General Revenue Fund for the 2018-2019 fiscal year to be allocated as follows:

- \$500,000 to the DOE for the design and construction of a memorial honoring the victims who lost their lives at Marjory Stoneman Douglas High School on February 14, 2018.
- \$15 million to the DOE, combined with an equal amount of local matching funds, for the purpose of replacing Building 12 at Marjory Stoneman Douglas High School, as listed in the Florida Inventory of School Houses.
- \$67 million to the DOE to implement the Florida Sheriff's Marshal Program.
- \$90,688,152 to the DOE to implement a grant program that will provide awards to schools to fund, in whole or in part, the fixed capital outlay costs associated with improving the physical security of school buildings as identified by a security risk assessment completed by August 1, 2018, by a school district or charter school. The DOE must submit the grant guidelines by August 31, 2018, which must include an application submission deadline by December 1, 2018, and the specific evaluation criteria, to all school districts and charter schools. The DOE must award grants by January 15, 2019.
- \$300,000 to the Department of Law Enforcement to competitively procure proposals for the development or acquisition of the mobile suspicious activity reporting tool. The tool must be implemented by January 31, 2019.
- \$50,000 is appropriated to the Department of Law Enforcement to fund the operations of the Marjory Stoneman Douglas High School Public Safety Commission.
- \$9.8 million to the Department of Children and Families (DCF) to competitively procure for additional community action teams to ensure reasonable access among all counties. DCF must consider the geographic location of existing community action teams and select providers to serve the areas of greatest need.
- \$11,140,105 to DCF to competitively procure proposals for additional mobile crisis teams to ensure reasonable access among all counties. DCF must consider the

geographic location of existing mobile crisis teams and select providers to serve the areas of greatest need.

- \$296,743 in nonrecurring funds is appropriated from the General Revenue fund to DCF to hire case managers who will be assigned to each Sheriff's Office in the state.
- \$225,000 to the DOE to provide for the benefits awarded pursuant to s. 112.1915, F.S. to the eligible recipients of the three Marjory Stoneman Douglas High School staff members who lost their lives on February 14, 2018.
- \$5 million to the DOE to competitively procure for the development or acquisition of the Threat Monitoring System. The DOE must collaborate with the school districts to identify the requirements and functionality of the Threat Monitoring System and must make such resources available to the school districts by December 1, 2018.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

#### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 20.15, 394.463, 790.065, 790.0655, 1002.221, 1002.225, 1006.04, 1006.07, 1006.12, and 1011.62.

This bill creates the following sections of the Florida Statutes: 16.63, 397.6760, 790.064, 790.335, 790.34, 790.401, 943.082, 943.687, 1000.051, 1001.217, 1006.05, 1006.149, 1006.1491, and 1006.1493.

This bill reenacts the following sections of the Florida Statutes: 397.6760 and 790.335.

This bill creates twenty undesignated sections of Florida Law.

#### **IX. Additional Information:**

##### **A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

##### **CS by Appropriations on February 27, 2018:**

The committee substitute:

- Authorizes law enforcement to seek voluntary surrender of firearms and ammunition being kept in the person's residence at the time he or she is taken into custody for the Baker Act.
- Provides that firearms and ammunition being held under the bill must be available for return no more than 24 hours after the person can document that he or she is no longer subject to involuntary examination and has been released or discharged from any inpatient treatment provided or ordered as a result of the involuntary exam, unless

a court has issued a risk protection order requiring that the firearms and ammunition must be held for a longer period.

- Specifies that a law enforcement officer may seek a search warrant from a court to conduct a search for firearms or ammunition if the officer has probable cause to believe there are firearms or ammunition in the respondent's custody, control or possession that have not been surrendered.
- Establishes the "Fortify FL" program and requires the Florida Department of Law Enforcement to collaborate with the Office of the Attorney General to procure a mobile suspicious activity reporting tool and to develop training and awareness programs for the reporting tool.
- Clarifies that information or records that the Marjory Stoneman Douglas High School Public Safety Commission (commission) may request, and must be provided, to carry out the commission's duties, includes both confidential and exempt information.
- Appropriates \$200 million in recurring and \$200 million in nonrecurring funds from the General Revenue Fund to implement the bill provisions.

B. Amendments:

None.