

By Senator Berman

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1 A bill to be entitled
2 An act relating to domestic violence; creating s.
3 784.04875, F.S.; prohibiting certain acts of domestic
4 violence and dating violence; providing criminal
5 penalties; amending s. 790.065, F.S.; revising a
6 prohibition on the sale or transfer of firearms to
7 persons convicted of misdemeanor domestic violence
8 offenses; amending s. 790.233, F.S.; defining the term
9 "misdemeanor offense of domestic violence";
10 prohibiting persons convicted of a misdemeanor offense
11 of domestic violence from possessing a firearm or
12 ammunition; requiring persons convicted of misdemeanor
13 offenses of domestic violence to surrender all
14 firearms and ammunition in their possession upon
15 conviction; requiring a court, upon convicting a
16 defendant of such offense, to order the defendant to
17 surrender to the local law enforcement agency having
18 jurisdiction all firearms and ammunition and any
19 license to carry a concealed weapon or firearm;
20 providing requirements for law enforcement officers
21 carrying out the court order; authorizing a law
22 enforcement officer to take possession of all firearms
23 and ammunition owned by the defendant and any license
24 to carry a concealed weapon or firearm; authorizing a
25 law enforcement officer to seek a search warrant under
26 certain circumstances; requiring the law enforcement
27 officer taking possession of the firearms, ammunition,
28 and license to issue a receipt to the defendant and to
29 file the original with the court and a copy with his

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30 or her law enforcement agency; requiring a court to
31 make a certain determination upon a sworn statement or
32 testimony that the defendant did not comply with the
33 required surrender of any firearms, ammunition, or
34 license; requiring the court to issue a warrant if it
35 finds that probable cause exists; providing for the
36 return of surrendered firearms, ammunition, and
37 licenses to their lawful owner under certain
38 circumstances; requiring all law enforcement agencies
39 to develop certain policies and procedures;
40 authorizing a defendant to elect to transfer all
41 firearms and ammunition that he or she owns to another
42 person if specified requirements are met; providing
43 criminal penalties; creating s. 790.234, F.S.;

44 defining the term "domestic violence"; requiring a law
45 enforcement officer to remove firearms from the scene
46 of an alleged act of domestic violence under certain
47 circumstances; providing requirements for the law
48 enforcement officer removing such firearms;
49 authorizing the owner of the firearms to retake
50 possession within a specified timeframe; providing an
51 exception; providing an effective date.

52
53 Be It Enacted by the Legislature of the State of Florida:

54
55 Section 1. Section 784.04875, Florida Statutes, is created
56 to read:

57 784.04875 Domestic violence.—A person who commits any act
58 constituting domestic violence, as defined in s. 741.28, or any

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59 crime the underlying factual basis of which has been found by a
60 court to include an act of domestic violence, knowing that the
61 victim is in the class of persons covered by that statute, or
62 dating violence, as defined in s. 784.046, knowing that the
63 victim is in the class of persons covered by that statute,
64 commits a misdemeanor of the first degree punishable as provided
65 in s. 775.082 or s. 775.083.

66 Section 2. Paragraph (a) of subsection (2) of section
67 790.065, Florida Statutes, is amended to read:

68 790.065 Sale and delivery of firearms.—

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

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

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

76 2. Has been convicted of a misdemeanor crime of domestic
77 violence~~7~~ and~~,~~ therefore~~,~~ is prohibited from purchasing a
78 firearm under 18 U.S.C. s. 922(d)(9) or s. 790.233;

79 3. Has had adjudication of guilt withheld or imposition of
80 sentence suspended on any felony or misdemeanor crime of
81 domestic violence~~,~~ unless 3 years have elapsed since probation
82 or any other conditions set by the court have been fulfilled or
83 expunction has occurred; or

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

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88 a. As used in this subparagraph, "adjudicated mentally
89 defective" means a determination by a court that a person, as a
90 result of marked subnormal intelligence, or mental illness,
91 incompetency, condition, or disease, is a danger to himself or
92 herself or to others or lacks the mental capacity to contract or
93 manage his or her own affairs. The phrase includes a judicial
94 finding of incapacity under s. 744.331(6)(a), an acquittal by
95 reason of insanity of a person charged with a criminal offense,
96 and a judicial finding that a criminal defendant is not
97 competent to stand trial.

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

100 (I) Involuntary commitment, commitment for mental
101 defectiveness or mental illness, and commitment for substance
102 abuse. The phrase includes involuntary inpatient placement under
103 ~~as defined in~~ s. 394.467, involuntary outpatient placement under
104 ~~as defined in~~ s. 394.4655, involuntary assessment and
105 stabilization under s. 397.6818, and involuntary substance abuse
106 treatment under s. 397.6957, but does not include a person in a
107 mental institution for observation or discharged from a mental
108 institution based upon the initial review by the physician or a
109 voluntary admission to a mental institution; or

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

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

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117 (B) The examining physician certified that if the person
118 did not agree to voluntary treatment, a petition for involuntary
119 outpatient or inpatient treatment would have been filed under s.
120 394.463(2)(g)4., or the examining physician certified that a
121 petition was filed and the person subsequently agreed to
122 voluntary treatment prior to a court hearing on the petition.

123 (C) Before agreeing to voluntary treatment, the person
124 received written notice of that finding and certification, and
125 written notice that as a result of such finding, he or she may
126 be prohibited from purchasing a firearm, and may not be eligible
127 to apply for or retain a concealed weapon or firearms license
128 under s. 790.06 and the person acknowledged such notice in
129 writing, in substantially the following form:

130 "I understand that the doctor who examined me believes I am
131 a danger to myself or to others. I understand that if I do not
132 agree to voluntary treatment, a petition will be filed in court
133 to require me to receive involuntary treatment. I understand
134 that if that petition is filed, I have the right to contest it.
135 In the event a petition has been filed, I understand that I can
136 subsequently agree to voluntary treatment prior to a court
137 hearing. I understand that by agreeing to voluntary treatment in
138 either of these situations, I may be prohibited from buying
139 firearms and from applying for or retaining a concealed weapons
140 or firearms license until I apply for and receive relief from
141 that restriction under Florida law."

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

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146 others, and ordered that such record be submitted to the
147 department.

148 c. In order to check for these conditions, the department
149 shall compile and maintain an automated database of persons who
150 are prohibited from purchasing a firearm based on court records
151 of adjudications of mental defectiveness or commitments to
152 mental institutions.

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

159 (II) For persons committed to a mental institution pursuant
160 to sub-sub-subparagraph b.(II), within 24 hours after the
161 person's agreement to voluntary admission, a record of the
162 finding, certification, notice, and written acknowledgment must
163 be filed by the administrator of the receiving or treatment
164 facility, as defined in s. 394.455, with the clerk of the court
165 for the county in which the involuntary examination under s.
166 394.463 occurred. No fee shall be charged for the filing under
167 this sub-sub-subparagraph. The clerk must present the records to
168 a judge or magistrate within 24 hours after receipt of the
169 records. A judge or magistrate is required and has the lawful
170 authority to review the records ex parte and, if the judge or
171 magistrate determines that the record supports the classifying
172 of the person as an imminent danger to himself or herself or
173 others, to order that the record be submitted to the department.
174 If a judge or magistrate orders the submittal of the record to

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175 the department, the record must be submitted to the department
176 within 24 hours.

177 d. A person who has been adjudicated mentally defective or
178 committed to a mental institution, as those terms are defined in
179 this paragraph, may petition the court that made the
180 adjudication or commitment, or the court that ordered that the
181 record be submitted to the department pursuant to sub-sub-
182 subparagraph c.(II), for relief from the firearm disabilities
183 imposed by such adjudication or commitment. A copy of the
184 petition shall be served on the state attorney for the county in
185 which the person was adjudicated or committed. The state
186 attorney may object to and present evidence relevant to the
187 relief sought by the petition. The hearing on the petition may
188 be open or closed as the petitioner may choose. The petitioner
189 may present evidence and subpoena witnesses to appear at the
190 hearing on the petition. The petitioner may confront and cross-
191 examine witnesses called by the state attorney. A record of the
192 hearing shall be made by a certified court reporter or by court-
193 approved electronic means. The court shall make written findings
194 of fact and conclusions of law on the issues before it and issue
195 a final order. The court shall grant the relief requested in the
196 petition if the court finds, based on the evidence presented
197 with respect to the petitioner's reputation, the petitioner's
198 mental health record and, if applicable, criminal history
199 record, the circumstances surrounding the firearm disability,
200 and any other evidence in the record, that the petitioner will
201 not be likely to act in a manner that is dangerous to public
202 safety and that granting the relief would not be contrary to the
203 public interest. If the final order denies relief, the

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204 petitioner may not petition again for relief from firearm
205 disabilities until 1 year after the date of the final order. The
206 petitioner may seek judicial review of a final order denying
207 relief in the district court of appeal having jurisdiction over
208 the court that issued the order. The review shall be conducted
209 de novo. Relief from a firearm disability granted under this
210 sub-subparagraph has no effect on the loss of civil rights,
211 including firearm rights, for any reason other than the
212 particular adjudication of mental defectiveness or commitment to
213 a mental institution from which relief is granted.

214 e. Upon receipt of proper notice of relief from firearm
215 disabilities granted under sub-subparagraph d., the department
216 shall delete any mental health record of the person granted
217 relief from the automated database of persons who are prohibited
218 from purchasing a firearm based on court records of
219 adjudications of mental defectiveness or commitments to mental
220 institutions.

221 f. The department is authorized to disclose data collected
222 pursuant to this subparagraph to agencies of the Federal
223 Government and other states for use exclusively in determining
224 the lawfulness of a firearm sale or transfer. The department is
225 also authorized to disclose this data to the Department of
226 Agriculture and Consumer Services for purposes of determining
227 eligibility for issuance of a concealed weapons or concealed
228 firearms license and for determining whether a basis exists for
229 revoking or suspending a previously issued license pursuant to
230 s. 790.06(10). When a potential buyer or transferee appeals a
231 nonapproval based on these records, the clerks of court and
232 mental institutions shall, upon request by the department,

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233 provide information to help determine whether the potential
234 buyer or transferee is the same person as the subject of the
235 record. Photographs and any other data that could confirm or
236 negate identity must be made available to the department for
237 such purposes, notwithstanding any other provision of state law
238 to the contrary. Any such information that is made confidential
239 or exempt from disclosure by law shall retain such confidential
240 or exempt status when transferred to the department.

241 Section 3. Section 790.233, Florida Statutes, is amended to
242 read:

243 790.233 Possession of firearm or ammunition prohibited when
244 person is subject to an injunction against committing acts of
245 domestic violence, stalking, or cyberstalking; misdemeanor
246 domestic violence offenses; surrender of firearms and
247 ammunition; penalties.-

248 (2) As used in this section, the term "misdemeanor offense
249 of domestic violence" means a misdemeanor conviction for a
250 violation of s. 784.04875.

251 (3)~~(1)~~ A person may not have in his or her care, custody,
252 possession, or control a ~~any~~ firearm or any ammunition if the
253 person:

254 (a) Has been issued a final injunction that is currently in
255 force and effect, ~~7~~ restraining that person from committing acts
256 of domestic violence, as issued under s. 741.30, or from
257 committing acts of stalking or cyberstalking, as issued under s.
258 784.0485; or

259 (b) Has been convicted of a misdemeanor offense of domestic
260 violence.

261 (4) A person convicted of a misdemeanor offense of domestic

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262 violence must, upon conviction, be required to surrender all
263 firearms and ammunition in his or her possession as provided for
264 in subsection (5).

265 (5) (a) Upon convicting a defendant of a misdemeanor offense
266 of domestic violence under s. 784.04875, the court shall order
267 the defendant to surrender to the local law enforcement agency
268 having jurisdiction over the defendant all firearms and
269 ammunition owned by the defendant which are in the defendant's
270 custody, control, or possession, except as provided in
271 subsection (6), and to surrender any license to carry a
272 concealed weapon or firearm issued to the defendant under s.
273 790.06.

274 (b) The law enforcement officer carrying out the court
275 order shall request that the defendant immediately surrender all
276 firearms and ammunition owned by the defendant which are in his
277 or her custody, control, or possession and any license to carry
278 a concealed weapon or firearm issued under s. 790.06. The law
279 enforcement officer shall take possession of all such
280 surrendered firearms and ammunition and any such license.
281 Alternatively, if personal service by a law enforcement officer
282 is not possible or is not required because the defendant was
283 present at the court hearing when the judge entered the order,
284 the defendant must surrender in a safe manner any such firearms
285 and ammunition and any such license to the control of the local
286 law enforcement agency immediately after being served with the
287 order by service or immediately after the hearing at which the
288 defendant was present, as applicable. Notwithstanding ss. 933.02
289 and 933.18, if a law enforcement officer has probable cause to
290 believe that the defendant has not surrendered all firearms or

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291 ammunition owned by the defendant which are in his or her
292 custody, control, or possession, the law enforcement officer may
293 seek a search warrant from a court of competent jurisdiction to
294 conduct a search for such firearms or ammunition.

295 (c) At the time of surrender, a law enforcement officer
296 taking possession of any such firearm or ammunition or license
297 shall issue a receipt identifying all firearms surrendered, the
298 quantity and type of any ammunition surrendered, and any license
299 surrendered and shall provide a copy of the receipt to the
300 defendant. Within 72 hours after service of the order, the law
301 enforcement officer serving the order shall file the original
302 receipt with the court and a copy of the receipt with his or her
303 law enforcement agency.

304 (d) Notwithstanding ss. 933.02 and 933.18, upon the sworn
305 statement or testimony of any person alleging that the defendant
306 has failed to surrender any such firearms, ammunition, or
307 license as required by an order issued under this subsection,
308 the court shall determine whether probable cause exists to
309 support the allegation of failure to surrender. If the court
310 finds that probable cause exists that the defendant has failed
311 to comply with the order, the court must issue a warrant
312 describing the firearms, ammunition, or license that the
313 defendant failed to surrender, authorizing a search of the
314 locations where such firearms, ammunition, or license are
315 reasonably believed to be located, and requiring the seizure of
316 any such firearms, ammunition, or license discovered pursuant to
317 the search.

318 (e) If a person other than the defendant claims title to
319 any firearms or ammunition surrendered pursuant to this section

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320 and that person is determined by the law enforcement agency to
321 be the lawful owner of the firearms or ammunition, the firearms
322 or ammunition must be returned to that person if:

323 1. The lawful owner agrees to store the firearms or
324 ammunition in a manner that prevents the defendant from having
325 access to or control of the firearms or ammunition; and

326 2. The firearms or ammunition are not otherwise unlawfully
327 possessed by the owner.

328 (f) All law enforcement agencies shall develop policies and
329 procedures regarding the acceptance, storage, and return of
330 firearms, ammunition, and licenses required to be surrendered
331 under this section.

332 (6) A defendant may elect to transfer all firearms and
333 ammunition that he or she owns that have been surrendered to or
334 seized by a local law enforcement agency pursuant to subsection
335 (5) to another person who is willing to receive the defendant's
336 firearms and ammunition. The law enforcement agency must allow
337 such a transfer only if it is determined that the designated
338 recipient:

339 (a) Is eligible to own or possess a firearm and ammunition
340 under federal and state law, after confirmation through a
341 background check;

342 (b) Agrees to store the firearms and ammunition in a manner
343 that prevents the defendant from having access to or control of
344 the firearms and ammunition; and

345 (c) Agrees not to transfer the firearms or ammunition back
346 to the defendant.

347 (7)-(2) A person who violates this section ~~subsection (1)~~
348 commits a misdemeanor of the first degree, punishable as

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349 provided in s. 775.082 or s. 775.083.

350 ~~(1)(3)~~ It is the intent of the Legislature that the
351 disabilities regarding possession of firearms and ammunition are
352 consistent with federal law. Accordingly, this section does not
353 apply to a state or local officer as defined in s. 943.10(14),
354 holding an active certification, who receives or possesses a
355 firearm or ammunition for use in performing official duties on
356 behalf of the officer's employing agency, unless otherwise
357 prohibited by the employing agency.

358 Section 4. Section 790.234, Florida Statutes, is created to
359 read:

360 790.234 Domestic violence; temporary custody of firearms.-

361 (1) As used in this section, the term "domestic violence"
362 means an act constituting domestic violence, as defined in s.
363 741.28, and includes acts of domestic violence between dating
364 partners as provided in s. 784.046(1)(d).

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

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

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

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

374 (a) Provide to the owner a receipt identifying all firearms
375 seized and information concerning the process for retaking
376 possession of the firearm; and

377 (b) Provide for the safe storage of the firearm during the

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378 pendency of any proceeding related to the alleged act of
379 domestic violence.

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

384 Section 5. This act shall take effect October 1, 2020.