

By Senator Berman

31-00055-22

2022372__

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, upon conviction, to
14 surrender all firearms and ammunition in their
15 possession; 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; requiring 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

31-00055-22

2022372__

30 or her law enforcement agency; requiring the 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

31-00055-22

2022372__

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
65 provided 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, ~~and,~~ 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.

31-00055-22

2022372__

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.

31-00055-22

2022372__

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

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

143

144 (D) A judge or a magistrate has, pursuant to sub-sub-
145 subparagraph c.(II), reviewed the record of the finding,

31-00055-22

2022372__

146 certification, notice, and written acknowledgment classifying
147 the person as an imminent danger to himself or herself or
148 others, and ordered that such record be submitted to the
149 department.

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

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

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

31-00055-22

2022372__

175 others, to order that the record be submitted to the department.
176 If a judge or magistrate orders the submittal of the record to
177 the department, the record must be submitted to the department
178 within 24 hours.

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

31-00055-22

2022372__

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

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

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

31-00055-22

2022372__

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

243 Section 3. Section 790.233, Florida Statutes, is amended to
244 read:

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

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

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

256 (a) Has been issued a final injunction that is currently in
257 force and effect, ~~restraining that person from committing acts~~
258 of domestic violence, as issued under s. 741.30, or from
259 committing acts of stalking or cyberstalking, as issued under s.
260 784.0485; or

261 (b) Has been convicted of a misdemeanor offense of domestic

31-00055-22

2022372__

262 violence.

263 (4) A person convicted of a misdemeanor offense of domestic
264 violence must, upon conviction, surrender all firearms and
265 ammunition in his or her possession as provided in subsection
266 (5).

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

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

31-00055-22

2022372__

291 believe that the defendant has not surrendered all firearms or
292 ammunition owned by the defendant which are in his or her
293 custody, control, or possession, the law enforcement officer may
294 seek a search warrant from a court of competent jurisdiction to
295 conduct a search for such firearms or ammunition.

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

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

319 (e) If a person other than the defendant claims title to

31-00055-22

2022372__

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

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

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

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

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

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

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

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

348 (7)-(2) A person who violates this section ~~subsection (1)~~

31-00055-22

2022372__

349 commits a misdemeanor of the first degree, punishable as
350 provided in s. 775.082 or s. 775.083.

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

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

361 790.234 Domestic violence; temporary custody of firearms.-

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

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

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

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

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

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

31-00055-22

2022372__

378 (b) Provide for the safe storage of the firearm during the
379 pendency of any proceeding related to the alleged act of
380 domestic violence.

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

385 Section 5. This act shall take effect October 1, 2022.