

1 A bill to be entitled
 2 An act relating to firearm restrictions pursuant to
 3 court findings or risk protection orders; amending s.
 4 790.065, F.S.; requiring that certain orders affecting
 5 a person's ability to purchase a firearm also be
 6 entered into a specified database within a specified
 7 period; amending s. 790.401, F.S.; prohibiting
 8 attempted violations of the provisions of a firearms
 9 risk protection order; providing criminal penalties;
 10 providing an effective date.

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 12 Be It Enacted by the Legislature of the State of Florida:

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 14 Section 1. Paragraph (a) of subsection (2) of section
 15 790.065, Florida Statutes, is amended to read:

16 790.065 Sale and delivery of firearms.—

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

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

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

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

26 3. Has had adjudication of guilt withheld or imposition of
27 sentence suspended on any felony or misdemeanor crime of
28 domestic violence unless 3 years have elapsed since probation or
29 any other conditions set by the court have been fulfilled or
30 expunction has occurred; or

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

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

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

47 (I) Involuntary commitment, commitment for mental
48 defectiveness or mental illness, and commitment for substance
49 abuse. The phrase includes involuntary inpatient placement as
50 defined in s. 394.467, involuntary outpatient placement as

51 defined in s. 394.4655, involuntary assessment and stabilization
52 under s. 397.6818, and involuntary substance abuse treatment
53 under s. 397.6957, but does not include a person in a mental
54 institution for observation or discharged from a mental
55 institution based upon the initial review by the physician or a
56 voluntary admission to a mental institution; or

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

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

64 (B) The examining physician certified that if the person
65 did not agree to voluntary treatment, a petition for involuntary
66 outpatient or inpatient treatment would have been filed under s.
67 394.463(2)(g)4., or the examining physician certified that a
68 petition was filed and the person subsequently agreed to
69 voluntary treatment prior to a court hearing on the petition.

70 (C) Before agreeing to voluntary treatment, the person
71 received written notice of that finding and certification, and
72 written notice that as a result of such finding, he or she may
73 be prohibited from purchasing a firearm, and may not be eligible
74 to apply for or retain a concealed weapon or firearms license
75 under s. 790.06 and the person acknowledged such notice in

76 | writing, in substantially the following form:

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

89 | (D) A judge or a magistrate has, pursuant to sub-sub-
90 | subparagraph c. (II), reviewed the record of the finding,
91 | certification, notice, and written acknowledgment classifying
92 | the person as an imminent danger to himself or herself or
93 | others, and ordered that such record be submitted to the
94 | department.

95 | c. In order to check for these conditions, the department
96 | shall compile and maintain an automated database of persons who
97 | are prohibited from purchasing a firearm based on court records
98 | of adjudications of mental defectiveness or commitments to
99 | mental institutions.

100 | (I) Except as provided in sub-sub-subparagraph (II),

101 clerks of court shall submit these records to the department
102 within 1 month after the rendition of the adjudication or
103 commitment. Reports shall be submitted in an automated format.
104 The reports must, at a minimum, include the name, along with any
105 known alias or former name, the sex, and the date of birth of
106 the subject.

107 (II) For persons committed to a mental institution
108 pursuant to sub-sub-subparagraph b.(II), within 24 hours after
109 the person's agreement to voluntary admission, a record of the
110 finding, certification, notice, and written acknowledgment must
111 be filed by the administrator of the receiving or treatment
112 facility, as defined in s. 394.455, with the clerk of the court
113 for the county in which the involuntary examination under s.
114 394.463 occurred. No fee shall be charged for the filing under
115 this sub-sub-subparagraph. The clerk must present the records to
116 a judge or magistrate within 24 hours after receipt of the
117 records. A judge or magistrate is required and has the lawful
118 authority to review the records ex parte and, if the judge or
119 magistrate determines that the record supports the classifying
120 of the person as an imminent danger to himself or herself or
121 others, to order that the record be submitted to the department.
122 The department must enter the record into the National Crime
123 Information Center (NCIC) database of persons who are prohibited
124 from purchasing a firearm. If a judge or magistrate orders the
125 submittal of the record to the department, the record must be

126 submitted to the department and entered into the NCIC within 24
127 hours.

128 d. A person who has been adjudicated mentally defective or
129 committed to a mental institution, as those terms are defined in
130 this paragraph, may petition the court that made the
131 adjudication or commitment, or the court that ordered that the
132 record be submitted to the department pursuant to sub-sub-
133 subparagraph c. (II), for relief from the firearm disabilities
134 imposed by such adjudication or commitment. A copy of the
135 petition shall be served on the state attorney for the county in
136 which the person was adjudicated or committed. The state
137 attorney may object to and present evidence relevant to the
138 relief sought by the petition. The hearing on the petition may
139 be open or closed as the petitioner may choose. The petitioner
140 may present evidence and subpoena witnesses to appear at the
141 hearing on the petition. The petitioner may confront and cross-
142 examine witnesses called by the state attorney. A record of the
143 hearing shall be made by a certified court reporter or by court-
144 approved electronic means. The court shall make written findings
145 of fact and conclusions of law on the issues before it and issue
146 a final order. The court shall grant the relief requested in the
147 petition if the court finds, based on the evidence presented
148 with respect to the petitioner's reputation, the petitioner's
149 mental health record and, if applicable, criminal history
150 record, the circumstances surrounding the firearm disability,

151 and any other evidence in the record, that the petitioner will
152 not be likely to act in a manner that is dangerous to public
153 safety and that granting the relief would not be contrary to the
154 public interest. If the final order denies relief, the
155 petitioner may not petition again for relief from firearm
156 disabilities until 1 year after the date of the final order. The
157 petitioner may seek judicial review of a final order denying
158 relief in the district court of appeal having jurisdiction over
159 the court that issued the order. The review shall be conducted
160 de novo. Relief from a firearm disability granted under this
161 sub-subparagraph has no effect on the loss of civil rights,
162 including firearm rights, for any reason other than the
163 particular adjudication of mental defectiveness or commitment to
164 a mental institution from which relief is granted.

165 e. Upon receipt of proper notice of relief from firearm
166 disabilities granted under sub-subparagraph d., the department
167 shall delete any mental health record of the person granted
168 relief from the automated database of persons who are prohibited
169 from purchasing a firearm based on court records of
170 adjudications of mental defectiveness or commitments to mental
171 institutions.

172 f. The department is authorized to disclose data collected
173 pursuant to this subparagraph to agencies of the Federal
174 Government and other states for use exclusively in determining
175 the lawfulness of a firearm sale or transfer. The department is

176 also authorized to disclose this data to the Department of
177 Agriculture and Consumer Services for purposes of determining
178 eligibility for issuance of a concealed weapons or concealed
179 firearms license and for determining whether a basis exists for
180 revoking or suspending a previously issued license pursuant to
181 s. 790.06(10). When a potential buyer or transferee appeals a
182 nonapproval based on these records, the clerks of court and
183 mental institutions shall, upon request by the department,
184 provide information to help determine whether the potential
185 buyer or transferee is the same person as the subject of the
186 record. Photographs and any other data that could confirm or
187 negate identity must be made available to the department for
188 such purposes, notwithstanding any other provision of state law
189 to the contrary. Any such information that is made confidential
190 or exempt from disclosure by law shall retain such confidential
191 or exempt status when transferred to the department.

192 Section 2. Paragraph (b) of subsection (11) of section
193 790.401, Florida Statutes, is amended to read:

194 790.401 Risk protection orders.—

195 (11) PENALTIES.—

196 (b)1. A person who has in his or her custody or control a
197 firearm or any ammunition or who purchases, possesses, or
198 receives a firearm or any ammunition with knowledge that he or
199 she is prohibited from doing so by an order issued under this
200 section commits a felony of the third degree, punishable as

HB 19

2022

201 provided in s. 775.082, s. 775.083, or s. 775.084.

202 2. A person who attempts to commit a violation of
203 subparagraph 1. commits a misdemeanor of the first degree,
204 punishable as provided in s. 775.082 or s. 775.083.

205 Section 3. This act shall take effect October 1, 2022.