

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 or 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 such persons to surrender all  
13          firearms and ammunition in their possession under  
14          specified circumstances; requiring a court to order  
15          the defendant to surrender to the local law  
16          enforcement agency all firearms and ammunition and any  
17          license to carry a concealed weapon or firearm;  
18          providing requirements for law enforcement officers  
19          carrying out the court order; authorizing a law  
20          enforcement officer to seek a search warrant under  
21          certain circumstances; requiring the law enforcement  
22          officer taking possession of the firearms, ammunition,  
23          and license to issue a receipt to the defendant;  
24          requiring a court to make a certain determination that  
25          the defendant did not comply with the required

26 | surrender of any firearms, ammunition, or license;  
 27 | requiring the court to issue a warrant if it finds  
 28 | that probable cause exists; providing for the return  
 29 | of firearms, ammunition, and licenses to a lawful  
 30 | owner under certain circumstances; requiring law  
 31 | enforcement agencies to develop certain policies and  
 32 | procedures; authorizing a defendant to elect to  
 33 | transfer all firearms and ammunition that he or she  
 34 | owns to another person under certain circumstances;  
 35 | providing criminal penalties; creating s. 790.234,  
 36 | F.S.; defining the term "domestic violence"; requiring  
 37 | a law enforcement officer to remove firearms from the  
 38 | scene of an alleged act of domestic violence under  
 39 | certain circumstances; providing requirements for the  
 40 | law enforcement officer removing such firearms;  
 41 | authorizing the owner of the firearms to retake  
 42 | possession within a specified timeframe; providing an  
 43 | exception; providing an effective date.

44 |

45 | Be It Enacted by the Legislature of the State of Florida:

46 |

47 | Section 1. Section 784.04875, Florida Statutes, is created  
 48 | to read:

49 | 784.04875 Domestic violence.-A person who commits any act  
 50 | constituting domestic violence, as defined in s. 741.28, or any

51 crime the underlying factual basis of which has been found by a  
52 court to include an act of domestic violence, knowing that the  
53 victim is in the class of persons covered by s. 741.28, or  
54 dating violence, as defined in s. 784.046(1)(d), knowing that  
55 the victim is in the class of persons covered s. 784.046(1)(d),  
56 commits a misdemeanor of the first degree punishable as provided  
57 in s. 775.082 or s. 775.083.

58 Section 2. Paragraph (a) of subsection (2) of section  
59 790.065, Florida Statutes, is amended to read:

60 790.065 Sale and delivery of firearms.—

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

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

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

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

71 3. Has had adjudication of guilt withheld or imposition of  
72 sentence suspended on any felony or misdemeanor crime of  
73 domestic violence~~7~~ unless 3 years have elapsed since probation  
74 or any other conditions set by the court have been fulfilled or  
75 expunction has occurred; or

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

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

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

92 (I) Involuntary commitment, commitment for mental  
93 defectiveness or mental illness, and commitment for substance  
94 abuse. The phrase includes involuntary inpatient placement under  
95 ~~as defined in~~ s. 394.467, involuntary outpatient placement under  
96 ~~as defined in~~ s. 394.4655, involuntary assessment and  
97 stabilization under s. 397.6818, and involuntary substance abuse  
98 treatment under s. 397.6957, but does not include a person in a  
99 mental institution for observation or discharged from a mental  
100 institution based upon the initial review by the physician or a

101 voluntary admission to a mental institution; or

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

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

109 (B) The examining physician certified that if the person  
110 did not agree to voluntary treatment, a petition for involuntary  
111 outpatient or inpatient treatment would have been filed under s.  
112 394.463(2)(g)4., or the examining physician certified that a  
113 petition was filed and the person subsequently agreed to  
114 voluntary treatment prior to a court hearing on the petition.

115 (C) Before agreeing to voluntary treatment, the person  
116 received written notice of that finding and certification, and  
117 written notice that as a result of such finding, he or she may  
118 be prohibited from purchasing a firearm, and may not be eligible  
119 to apply for or retain a concealed weapon or firearms license  
120 under s. 790.06 and the person acknowledged such notice in  
121 writing, in substantially the following form:

122 "I understand that the doctor who examined me believes I am  
123 a danger to myself or to others. I understand that if I do not  
124 agree to voluntary treatment, a petition will be filed in court  
125 to require me to receive involuntary treatment. I understand

126 that if that petition is filed, I have the right to contest it.  
127 In the event a petition has been filed, I understand that I can  
128 subsequently agree to voluntary treatment prior to a court  
129 hearing. I understand that by agreeing to voluntary treatment in  
130 either of these situations, I may be prohibited from buying  
131 firearms and from applying for or retaining a concealed weapons  
132 or firearms license until I apply for and receive relief from  
133 that restriction under Florida law."

134 (D) A judge or a magistrate has, pursuant to sub-sub-  
135 subparagraph c.(II), reviewed the record of the finding,  
136 certification, notice, and written acknowledgment classifying  
137 the person as an imminent danger to himself or herself or  
138 others, and ordered that such record be submitted to the  
139 department.

140 c. In order to check for these conditions, the department  
141 shall compile and maintain an automated database of persons who  
142 are prohibited from purchasing a firearm based on court records  
143 of adjudications of mental defectiveness or commitments to  
144 mental institutions.

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

151 the subject.

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

170 d. A person who has been adjudicated mentally defective or  
171 committed to a mental institution, as those terms are defined in  
172 this paragraph, may petition the court that made the  
173 adjudication or commitment, or the court that ordered that the  
174 record be submitted to the department pursuant to sub-sub-  
175 subparagraph c.(II), for relief from the firearm disabilities

176 imposed by such adjudication or commitment. A copy of the  
177 petition shall be served on the state attorney for the county in  
178 which the person was adjudicated or committed. The state  
179 attorney may object to and present evidence relevant to the  
180 relief sought by the petition. The hearing on the petition may  
181 be open or closed as the petitioner may choose. The petitioner  
182 may present evidence and subpoena witnesses to appear at the  
183 hearing on the petition. The petitioner may confront and cross-  
184 examine witnesses called by the state attorney. A record of the  
185 hearing shall be made by a certified court reporter or by court-  
186 approved electronic means. The court shall make written findings  
187 of fact and conclusions of law on the issues before it and issue  
188 a final order. The court shall grant the relief requested in the  
189 petition if the court finds, based on the evidence presented  
190 with respect to the petitioner's reputation, the petitioner's  
191 mental health record and, if applicable, criminal history  
192 record, the circumstances surrounding the firearm disability,  
193 and any other evidence in the record, that the petitioner will  
194 not be likely to act in a manner that is dangerous to public  
195 safety and that granting the relief would not be contrary to the  
196 public interest. If the final order denies relief, the  
197 petitioner may not petition again for relief from firearm  
198 disabilities until 1 year after the date of the final order. The  
199 petitioner may seek judicial review of a final order denying  
200 relief in the district court of appeal having jurisdiction over



201 the court that issued the order. The review shall be conducted  
202 de novo. Relief from a firearm disability granted under this  
203 sub-subparagraph has no effect on the loss of civil rights,  
204 including firearm rights, for any reason other than the  
205 particular adjudication of mental defectiveness or commitment to  
206 a mental institution from which relief is granted.

207 e. Upon receipt of proper notice of relief from firearm  
208 disabilities granted under sub-subparagraph d., the department  
209 shall delete any mental health record of the person granted  
210 relief from the automated database of persons who are prohibited  
211 from purchasing a firearm based on court records of  
212 adjudications of mental defectiveness or commitments to mental  
213 institutions.

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

226 provide information to help determine whether the potential  
227 buyer or transferee is the same person as the subject of the  
228 record. Photographs and any other data that could confirm or  
229 negate identity must be made available to the department for  
230 such purposes, notwithstanding any other provision of state law  
231 to the contrary. Any such information that is made confidential  
232 or exempt from disclosure by law shall retain such confidential  
233 or exempt status when transferred to the department.

234 Section 3. Section 790.233, Florida Statutes, is amended  
235 to read:

236 790.233 Possession of firearm or ammunition prohibited  
237 when person is subject to an injunction against committing acts  
238 of domestic violence, stalking, or cyberstalking; misdemeanor  
239 domestic violence offenses; surrender of firearms and  
240 ammunition; penalties.-

241 (1) ~~(3)~~ It is the intent of the Legislature that the  
242 disabilities regarding possession of firearms and ammunition are  
243 consistent with federal law. Accordingly, this section does not  
244 apply to a state or local officer as defined in s. 943.10(14),  
245 holding an active certification, who receives or possesses a  
246 firearm or ammunition for use in performing official duties on  
247 behalf of the officer's employing agency, unless otherwise  
248 prohibited by the employing agency.

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

251 violation of s. 784.04875.

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

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

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

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

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

273 (b) The law enforcement officer carrying out the court  
274 order shall request that the defendant immediately surrender all  
275 firearms and ammunition owned by the defendant in his or her

276 custody, control, or possession and any license to carry a  
277 concealed weapon or firearm issued under s. 790.06. The law  
278 enforcement officer shall take possession of all surrendered  
279 firearms and ammunition owned by the defendant and any license  
280 to carry a concealed weapon or firearm issued under s. 790.06.  
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 firearms and  
285 ammunition he or she owns and any license to carry a concealed  
286 weapon or firearm issued under s. 790.06 to the control of the  
287 local law enforcement agency immediately after being served with  
288 the order by service or immediately after the hearing at which  
289 the defendant was present. Notwithstanding ss. 933.02 and  
290 933.18, a law enforcement officer may seek a search warrant from  
291 a court of competent jurisdiction to conduct a search for  
292 firearms or ammunition owned by the defendant if the officer has  
293 probable cause to believe that there are firearms or ammunition  
294 owned by the defendant in the defendant's custody, control, or  
295 possession which have not been surrendered.

296 (c) At the time of surrender, a law enforcement officer  
297 taking possession of any firearm or ammunition owned by the  
298 defendant, or a license to carry a concealed weapon or firearm  
299 issued under s. 790.06, shall issue a receipt identifying all  
300 firearms surrendered, the quantity and type of ammunition

301 surrendered, and any license surrendered and shall provide a  
302 copy of the receipt to the defendant. Within 72 hours after  
303 service of the order, the law enforcement officer serving the  
304 order shall file the original receipt with the court and shall  
305 ensure that his or her law enforcement agency retains a copy of  
306 the receipt.

307 (d) Notwithstanding ss. 933.02 and 933.18, upon the sworn  
308 statement or testimony of any person alleging that the defendant  
309 has failed to comply with the surrender of firearms or  
310 ammunition owned by the defendant or of a license to carry a  
311 concealed weapon or firearm under s. 790.06, as required by an  
312 order issued under this subsection, the court shall determine  
313 whether probable cause exists to believe that the defendant has  
314 failed to surrender all firearms or ammunition owned by the  
315 defendant, or a license to carry a concealed weapon or firearm  
316 under s. 790.06, which are in the defendant's custody, control,  
317 or possession. If the court finds that probable cause exists,  
318 the court shall issue a warrant describing the firearms,  
319 ammunition, or license owned by the defendant and authorizing a  
320 search of the locations where the firearms, ammunition, or  
321 license owned by the defendant are reasonably believed to be  
322 found and requiring the seizure of any firearms, ammunition, or  
323 license owned by the defendant discovered pursuant to such  
324 search.

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

326 any firearms or ammunition surrendered pursuant to this section  
327 and he or she is determined by the law enforcement agency to be  
328 the lawful owner of the firearms or ammunition, the firearms or  
329 ammunition must be returned to him or her if:

330 1. The lawful owner agrees to store the firearms or  
331 ammunition in a manner such that the defendant does not have  
332 access to or control of the firearms or ammunition; and

333 2. The firearms or ammunition are not otherwise unlawfully  
334 possessed by the owner.

335 (f) All law enforcement agencies must develop policies and  
336 procedures regarding the acceptance, the storage, and the return  
337 of firearms, ammunition, or licenses required to be surrendered  
338 under this section.

339 (6) A defendant may elect to transfer all firearms and  
340 ammunition he or she owns which have been surrendered to or  
341 seized by a local law enforcement agency pursuant to subsection  
342 (5) to another person who is willing to receive the defendant's  
343 firearms and ammunition. The law enforcement agency must allow  
344 such a transfer only if it is determined that the chosen  
345 recipient:

346 (a) Is eligible to own or possess a firearm and ammunition  
347 under federal and state law after confirmation through a  
348 background check;

349 (b) Agrees to store the firearms and ammunition in a  
350 manner such that the defendant does not have access to or

351 control of the firearms and ammunition; and

352 (c) Agrees not to transfer the firearms or ammunition back  
 353 to the defendant.

354 (7)-(2) A person who violates this section ~~subsection (1)~~  
 355 commits a misdemeanor of the first degree, punishable as  
 356 provided in s. 775.082 or s. 775.083.

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

359 790.234 Domestic violence; temporary custody of firearms.-

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

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

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

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

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

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

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

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

383 Section 5. This act shall take effect October 1, 2021.