1 A bill to be entitled 2 An act relating to firearms; amending s. 394.463, 3 F.S.; deleting provisions authorizing the seizure of 4 firearms from persons in certain circumstances; 5 amending s. 394.4599, F.S.; conforming a cross-6 reference; repealing s. 790.064, F.S., relating to a 7 prohibition on firearms ownership or possession until 8 removal of the firearm possession and firearm 9 ownership disability; amending s. 790.065, F.S.; 10 conforming a cross-reference; deleting a prohibition 11 on persons younger than 21 years of age from 12 purchasing firearms; amending s. 790.0655, F.S.; deleting exemptions from a waiting period for firearms 13 14 purchases for the purchase of a rifle or shotgun upon successful completion of a hunter safety course and 15 16 purchase of a rifle or shotgun by a law enforcement or 17 correctional officer; repealing s. 790.222, F.S., relating to a ban on bump-fire stocks; repealing s. 18 19 790.401, F.S., relating to risk protection orders; providing an effective date. 20 21 22 Be It Enacted by the Legislature of the State of Florida: 23 24 Paragraphs (a), (d) and (h) of subsection (2) Section 1. 25 of section 394.463, Florida Statutes, are amended to read:

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394.463 Involuntary examination.-

(2) INVOLUNTARY EXAMINATION.-

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- (a) An involuntary examination may be initiated by any one of the following means:
- A circuit or county 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. The ex parte order for involuntary examination must be based on written or oral sworn testimony that includes specific facts that support the findings. 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, shall take the person into custody and deliver him or her to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The order of the court shall be made a part of the patient's clinical record. A fee may not be charged for the filing of an order under this subsection. A facility accepting the patient based on this order must send a copy of the order to the department within 5 working days. The order may be submitted electronically through existing data systems, if available. The order shall be valid only until the person is delivered to the facility or for the period specified in the order itself, whichever comes first. If no time limit is specified in the order, the order shall be valid for 7

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days after the date that the order was signed.

- 2. A law enforcement officer shall 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 within the designated receiving system pursuant to s. 394.462 for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, which must be made a part of the patient's clinical record. Any facility accepting the patient based on this report must send a copy of the report to the department within 5 working days.
- 3. 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 shall take into custody the person named in the certificate and deliver him or her to the appropriate, or nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was

taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any facility accepting the patient based on this certificate must send a copy of the certificate to the department within 5 working days. The document may be submitted electronically through existing data systems, if applicable.

When sending the order, report, or certificate to the department, a facility shall, at a minimum, provide information about which action was taken regarding the patient under paragraph (h) (g), which information shall also be made a part of the patient's clinical record.

(d)1. A law enforcement officer taking custody of a person under this subsection may seize and hold a firearm or any ammunition the person possesses at the time of taking him or her 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.

2. If the law enforcement officer takes custody of the person at the person's residence and the criteria in subparagraph 1. have been met, the law enforcement officer may seek the voluntary surrender of firearms or ammunition kept in the residence which have not already been seized under subparagraph 1. If such firearms or ammunition are not voluntarily surrendered, or if the person has other firearms or

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ammunition that were not seized or voluntarily surrendered when he or she was taken into custody, a law enforcement officer may petition the appropriate court under s. 790.401 for a risk protection order against the person.

- 3. Firearms or ammunition seized or voluntarily surrendered under this paragraph 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 any inpatient or involuntary outpatient treatment provided or ordered under paragraph (g), unless a risk protection order entered under s. 790.401 directs the law enforcement agency to hold the firearms or ammunition for a longer period or the person is subject to a firearm purchase disability under s. 790.065(2), or a firearm possession and firearm ownership disability under s. 790.064. The process for the actual return of firearms or ammunition seized or voluntarily surrendered under this paragraph may not take longer than 7 days.
- 4. Law enforcement agencies must develop policies and procedures relating to the seizure, storage, and return of firearms or ammunition held under this paragraph.
- (g) (h) A person for whom an involuntary examination has been initiated who is being evaluated or treated at a hospital for an emergency medical condition specified in s. 395.002 must be examined by a facility within the examination period

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specified in paragraph (f) $\frac{(g)}{(g)}$. 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 pursuant to s. 394.4655(2) or involuntary inpatient placement pursuant to s. 394.467(1), the patient may be offered voluntary services or placement, if appropriate, or released directly from the hospital providing emergency medical services. The finding by the professional that the patient has been examined and does not meet the criteria for involuntary inpatient services or involuntary outpatient placement must be entered into the patient's clinical record. This paragraph is not intended to prevent a hospital providing emergency medical services from appropriately transferring a patient to another hospital before stabilization if the requirements of s. 395.1041(3)(c) have been met. Section 2. Paragraph (c) of subsection (2) of section 394.4599, Florida Statutes, is amended to read: 394.4599 Notice.-INVOLUNTARY ADMISSION.-(c)1. A receiving facility shall give notice of the whereabouts of a minor who is being involuntarily held for

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examination pursuant to s. 394.463 to the minor's parent, guardian, caregiver, or guardian advocate, in person or by telephone or other form of electronic communication, immediately after the minor's arrival at the facility. The facility may delay notification for no more than 24 hours after the minor's arrival if the facility has submitted a report to the central abuse hotline, pursuant to s. 39.201, based upon knowledge or suspicion of abuse, abandonment, or neglect and if the facility deems a delay in notification to be in the minor's best interest.

2. The receiving facility shall attempt to notify the minor's parent, quardian, caregiver, or quardian advocate until the receiving facility receives confirmation from the parent, quardian, caregiver, or quardian advocate, verbally, by telephone or other form of electronic communication, or by recorded message, that notification has been received. Attempts to notify the parent, guardian, caregiver, or guardian advocate must be repeated at least once every hour during the first 12 hours after the minor's arrival and once every 24 hours thereafter and must continue until such confirmation is received, unless the minor is released at the end of the 72-hour examination period, or until a petition for involuntary services is filed with the court pursuant to s. 394.463(2)(f) s. 394.463(2)(q). The receiving facility may seek assistance from a law enforcement agency to notify the minor's parent, quardian,

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caregiver, or guardian advocate if the facility has not received within the first 24 hours after the minor's arrival a confirmation by the parent, guardian, caregiver, or guardian advocate that notification has been received. The receiving facility must document notification attempts in the minor's clinical record.

- Section 3. <u>Section 790.064</u>, Florida Statutes, is repealed.
- Section 4. Paragraph (a) of subsection (2) and subsection
 - (13) of section 790.065, Florida Statutes, are amended to read:
 - 790.065 Sale and delivery of firearms.—

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- (2) Upon receipt of a request for a criminal history record check, the Department of Law Enforcement shall, during the licensee's call or by return call, forthwith:
- (a) Review any records available to determine if the potential buyer or transferee:
- 1. Has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23;
- 2. Has been convicted of a misdemeanor crime of domestic violence, and therefore is prohibited from purchasing a firearm;
- 3. Has had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or expunction has occurred; or
 - 4. Has been adjudicated mentally defective or has been

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committed to a mental institution by a court or as provided in sub-sub-subparagraph b.(II), and as a result is prohibited by state or federal law from purchasing a firearm.

- a. As used in this subparagraph, "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 under s. 744.331(6)(a), 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.
- b. As used in this subparagraph, "committed to a mental institution" means:
- defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as defined in s. 394.467, involuntary outpatient placement as defined in s. 394.4655, involuntary assessment and stabilization under s. 397.6818, and involuntary substance abuse treatment under s. 397.6957, 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; or

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

- (A) An examining physician found that the person is an imminent danger to himself or herself or others.
- (B) The examining physician certified that if the person did not agree to voluntary treatment, a petition for involuntary outpatient or inpatient treatment would have been filed under \underline{s} . $\underline{394.463(2)(f)4}$. \underline{s} . $\underline{394.463(2)(g)4}$., or the examining physician certified that a petition was filed and the person subsequently agreed to voluntary treatment prior to a court hearing on the petition.
- (C) Before agreeing to voluntary treatment, the person received written notice of that finding and certification, and written notice that as a result of such finding, he or she may be prohibited from purchasing a firearm, and may not be eligible to apply for or retain a concealed weapon or firearms license under s. 790.06 and the person acknowledged such notice in writing, in substantially the following form:

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

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

- (D) A judge or a magistrate has, pursuant to sub-sub-subparagraph c.(II), reviewed the record of the finding, certification, notice, and written acknowledgment classifying the person as an imminent danger to himself or herself or others, and ordered that such record be submitted to the department.
- c. In order to check for these conditions, the department shall compile and maintain an automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions.
- (I) Except as provided in sub-sub-subparagraph (II), clerks of court shall submit these records to the department within 1 month after the rendition of the adjudication or commitment. Reports shall be submitted in an automated format. The reports must, at a minimum, include the name, along with any known alias or former name, the sex, and the date of birth of

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- For persons committed to a mental institution pursuant to sub-sub-subparagraph b.(II), within 24 hours after the person's agreement to voluntary admission, a record of the finding, certification, notice, and written acknowledgment must be filed by the administrator of the receiving or treatment facility, as defined in s. 394.455, with the clerk of the court for the county in which the involuntary examination under s. 394.463 occurred. No fee shall be charged for the filing under this sub-sub-subparagraph. The clerk must present the records to a judge or magistrate within 24 hours after receipt of the records. A judge or magistrate is required and has the lawful authority to review the records ex parte and, if the judge or magistrate determines that the record supports the classifying of the person as an imminent danger to himself or herself or others, to order that the record be submitted to the department. If a judge or magistrate orders the submittal of the record to the department, the record must be submitted to the department within 24 hours.
- d. A person who has been adjudicated mentally defective or committed to a mental institution, as those terms are defined in this paragraph, may petition the court that made the adjudication or commitment, or the court that ordered that the record be submitted to the department pursuant to sub-sub-subparagraph c.(II), for relief from the firearm disabilities

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

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

- e. Upon receipt of proper notice of relief from firearm disabilities granted under sub-subparagraph d., the department shall delete any mental health record of the person granted relief from the automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions.
- f. The department is authorized to disclose data collected pursuant to this subparagraph to agencies of the Federal Government and other states for use exclusively in determining the lawfulness of a firearm sale or transfer. The department is also authorized to disclose this data to the Department of Agriculture and Consumer Services for purposes of determining eligibility for issuance of a concealed weapons or concealed firearms license and for determining whether a basis exists for revoking or suspending a previously issued license pursuant to s. 790.06(10). When a potential buyer or transferee appeals a nonapproval based on these records, the clerks of court and mental institutions shall, upon request by the department,

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

(13) A person younger than 21 years of age may not purchase a firearm. The sale or transfer of a firearm to a person younger than 21 years of age may not be made or facilitated by a licensed importer, licensed manufacturer, or licensed dealer. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The prohibitions of this subsection do not apply to the purchase of a rifle or shotgun by a law enforcement officer or correctional officer, as those terms are defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), or a servicemember as defined in s. 250.01.

Section 5. Paragraphs (c) and (d) of subsection (2) of section 790.0655, Florida Statutes, are amended to read:

790.0655 Purchase and delivery of firearms; mandatory

790.0655 Purchase and delivery of firearms; mandatory waiting period; exceptions; penalties.—

(2) The waiting period does not apply in the following circumstances:

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| (c) To the purchase of a rifle or shotgun, upon a person's |
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| successfully completing a minimum of a 16-hour hunter safety |
| course and possessing a hunter safety certification card issued |
| under s. 379.3581. A person who is exempt from the hunter safety |
| course requirements under s. 379.3581 and holds a valid Florida |
| hunting license is exempt from the mandatory waiting period |
| under this section for the purchase of a rifle or shotgun. |
| (d) When a rifle or shotgun is being purchased by a law |
| enforcement officer or correctional officer, as those terms are |
| defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), or a |
| servicemember as defined in s. 250.01. |
| Section 6. Section 790.222, Florida Statutes, is repealed. |
| Section 7. Section 790.401, Florida Statutes, is repealed. |
| Section 8 This act shall take effect upon becoming a law |