

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

26 | or testimony that the defendant did not comply with  
 27 | the required surrender of any firearms, ammunition, or  
 28 | license; authorizing the court to issue a warrant if  
 29 | it finds that probable cause exists; providing for the  
 30 | return of firearms and ammunition to a lawful owner  
 31 | under certain circumstances; requiring all law  
 32 | enforcement agencies to develop certain policies and  
 33 | procedures; authorizing a defendant to elect to  
 34 | transfer all firearms and ammunitions that he or she  
 35 | owns to another person under certain circumstances;  
 36 | providing criminal penalties; creating s. 790.234,  
 37 | F.S.; requiring a law enforcement officer to remove  
 38 | firearms from the scene of an alleged act of domestic  
 39 | violence under certain circumstances; providing  
 40 | requirements for the law enforcement officer removing  
 41 | such firearms; authorizing the owner of the firearms  
 42 | to retake possession within a specified timeframe;  
 43 | providing an exception; providing an effective date.

44 |  
 45 | Be It Enacted by the Legislature of the State of Florida:  
 46 |

47 | Section 1. Paragraph (a) of subsection (2) of section  
 48 | 790.065, Florida Statutes, is amended to read:

49 | 790.065 Sale and delivery of firearms.—  
 50 | (2) Upon receipt of a request for a criminal history

51 record check, the Department of Law Enforcement shall, during  
 52 the licensee's call or by return call, forthwith:

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

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

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

60 3. Has had adjudication of guilt withheld or imposition of  
 61 sentence suspended on any felony or misdemeanor crime of  
 62 domestic violence~~7~~, unless 3 years have elapsed since probation  
 63 or any other conditions set by the court have been fulfilled or  
 64 expunction has occurred; or

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

69 a. As used in this subparagraph, "adjudicated mentally  
 70 defective" means a determination by a court that a person, as a  
 71 result of marked subnormal intelligence, or mental illness,  
 72 incompetency, condition, or disease, is a danger to himself or  
 73 herself or to others or lacks the mental capacity to contract or  
 74 manage his or her own affairs. The phrase includes a judicial  
 75 finding of incapacity under s. 744.331(6)(a), an acquittal by

76 | reason of insanity of a person charged with a criminal offense,  
77 | and a judicial finding that a criminal defendant is not  
78 | competent to stand trial.

79 |       b. As used in this subparagraph, "committed to a mental  
80 | institution" means:

81 |       (I) Involuntary commitment, commitment for mental  
82 | defectiveness or mental illness, and commitment for substance  
83 | abuse. The phrase includes involuntary inpatient placement under  
84 | ~~as defined in~~ s. 394.467, involuntary outpatient placement under  
85 | ~~as defined in~~ s. 394.4655, involuntary assessment and  
86 | stabilization under s. 397.6818, and involuntary substance abuse  
87 | treatment under s. 397.6957, but does not include a person in a  
88 | mental institution for observation or discharged from a mental  
89 | institution based upon the initial review by the physician or a  
90 | voluntary admission to a mental institution; or

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

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

98 |       (B) The examining physician certified that if the person  
99 | did not agree to voluntary treatment, a petition for involuntary  
100 | outpatient or inpatient treatment would have been filed under s.

HB 941

2019

101 394.463(2)(g)4., or the examining physician certified that a  
102 petition was filed and the person subsequently agreed to  
103 voluntary treatment prior to a court hearing on the petition.

104 (C) Before agreeing to voluntary treatment, the person  
105 received written notice of that finding and certification, and  
106 written notice that as a result of such finding, he or she may  
107 be prohibited from purchasing a firearm, and may not be eligible  
108 to apply for or retain a concealed weapon or firearms license  
109 under s. 790.06 and the person acknowledged such notice in  
110 writing, in substantially the following form:

111 "I understand that the doctor who examined me believes I am  
112 a danger to myself or to others. I understand that if I do not  
113 agree to voluntary treatment, a petition will be filed in court  
114 to require me to receive involuntary treatment. I understand  
115 that if that petition is filed, I have the right to contest it.  
116 In the event a petition has been filed, I understand that I can  
117 subsequently agree to voluntary treatment prior to a court  
118 hearing. I understand that by agreeing to voluntary treatment in  
119 either of these situations, I may be prohibited from buying  
120 firearms and from applying for or retaining a concealed weapons  
121 or firearms license until I apply for and receive relief from  
122 that restriction under Florida law."

123 (D) A judge or a magistrate has, pursuant to sub-sub-  
124 subparagraph c.(II), reviewed the record of the finding,  
125 certification, notice, and written acknowledgment classifying

126 | the person as an imminent danger to himself or herself or  
127 | others, and ordered that such record be submitted to the  
128 | department.

129 |       c. In order to check for these conditions, the department  
130 | shall compile and maintain an automated database of persons who  
131 | are prohibited from purchasing a firearm based on court records  
132 | of adjudications of mental defectiveness or commitments to  
133 | mental institutions.

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

141 |       (II) For persons committed to a mental institution  
142 | pursuant to sub-sub-subparagraph b.(II), within 24 hours after  
143 | the person's agreement to voluntary admission, a record of the  
144 | finding, certification, notice, and written acknowledgment must  
145 | be filed by the administrator of the receiving or treatment  
146 | facility, as defined in s. 394.455, with the clerk of the court  
147 | for the county in which the involuntary examination under s.  
148 | 394.463 occurred. No fee shall be charged for the filing under  
149 | this sub-sub-subparagraph. The clerk must present the records to  
150 | a judge or magistrate within 24 hours after receipt of the

151 records. A judge or magistrate is required and has the lawful  
152 authority to review the records ex parte and, if the judge or  
153 magistrate determines that the record supports the classifying  
154 of the person as an imminent danger to himself or herself or  
155 others, to order that the record be submitted to the department.  
156 If a judge or magistrate orders the submittal of the record to  
157 the department, the record must be submitted to the department  
158 within 24 hours.

159 d. A person who has been adjudicated mentally defective or  
160 committed to a mental institution, as those terms are defined in  
161 this paragraph, may petition the court that made the  
162 adjudication or commitment, or the court that ordered that the  
163 record be submitted to the department pursuant to sub-sub-  
164 subparagraph c.(II), for relief from the firearm disabilities  
165 imposed by such adjudication or commitment. A copy of the  
166 petition shall be served on the state attorney for the county in  
167 which the person was adjudicated or committed. The state  
168 attorney may object to and present evidence relevant to the  
169 relief sought by the petition. The hearing on the petition may  
170 be open or closed as the petitioner may choose. The petitioner  
171 may present evidence and subpoena witnesses to appear at the  
172 hearing on the petition. The petitioner may confront and cross-  
173 examine witnesses called by the state attorney. A record of the  
174 hearing shall be made by a certified court reporter or by court-  
175 approved electronic means. The court shall make written findings

176 of fact and conclusions of law on the issues before it and issue  
177 a final order. The court shall grant the relief requested in the  
178 petition if the court finds, based on the evidence presented  
179 with respect to the petitioner's reputation, the petitioner's  
180 mental health record and, if applicable, criminal history  
181 record, the circumstances surrounding the firearm disability,  
182 and any other evidence in the record, that the petitioner will  
183 not be likely to act in a manner that is dangerous to public  
184 safety and that granting the relief would not be contrary to the  
185 public interest. If the final order denies relief, the  
186 petitioner may not petition again for relief from firearm  
187 disabilities until 1 year after the date of the final order. The  
188 petitioner may seek judicial review of a final order denying  
189 relief in the district court of appeal having jurisdiction over  
190 the court that issued the order. The review shall be conducted  
191 de novo. Relief from a firearm disability granted under this  
192 sub-subparagraph has no effect on the loss of civil rights,  
193 including firearm rights, for any reason other than the  
194 particular adjudication of mental defectiveness or commitment to  
195 a mental institution from which relief is granted.

196 e. Upon receipt of proper notice of relief from firearm  
197 disabilities granted under sub-subparagraph d., the department  
198 shall delete any mental health record of the person granted  
199 relief from the automated database of persons who are prohibited  
200 from purchasing a firearm based on court records of



201 adjudications of mental defectiveness or commitments to mental  
202 institutions.

203 f. The department is authorized to disclose data collected  
204 pursuant to this subparagraph to agencies of the Federal  
205 Government and other states for use exclusively in determining  
206 the lawfulness of a firearm sale or transfer. The department is  
207 also authorized to disclose this data to the Department of  
208 Agriculture and Consumer Services for purposes of determining  
209 eligibility for issuance of a concealed weapons or concealed  
210 firearms license and for determining whether a basis exists for  
211 revoking or suspending a previously issued license pursuant to  
212 s. 790.06(10). When a potential buyer or transferee appeals a  
213 nonapproval based on these records, the clerks of court and  
214 mental institutions shall, upon request by the department,  
215 provide information to help determine whether the potential  
216 buyer or transferee is the same person as the subject of the  
217 record. Photographs and any other data that could confirm or  
218 negate identity must be made available to the department for  
219 such purposes, notwithstanding any other provision of state law  
220 to the contrary. Any such information that is made confidential  
221 or exempt from disclosure by law shall retain such confidential  
222 or exempt status when transferred to the department.

223 Section 2. Section 790.233, Florida Statutes, is amended  
224 to read:

225 790.233 Possession of firearm or ammunition prohibited

HB 941

2019

226 when person is subject to an injunction against committing acts  
227 of domestic violence, stalking, or cyberstalking; misdemeanor  
228 domestic violence offenses; surrender of firearms and  
229 ammunition; penalties.—

230 (2) As used in this section, the term "misdemeanor offense  
231 of domestic violence" means a misdemeanor conviction for any act  
232 constituting domestic violence, as defined in s. 741.313, and  
233 includes a misdemeanor conviction of domestic violence for  
234 dating violence, as defined in s. 784.046(1)(d).

235 (3)~~(1)~~ A person may not have in his or her care, custody,  
236 possession, or control a ~~any~~ firearm or any ammunition if the  
237 person:

238 (a) Has been issued a final injunction that is currently  
239 in force and effect, ~~restraining that person from committing~~  
240 acts of domestic violence, as issued under s. 741.30, or from  
241 committing acts of stalking or cyberstalking, as issued under s.  
242 784.0485; or

243 (b) Has been convicted of a misdemeanor offense of  
244 domestic violence.

245 (4) A person convicted of a misdemeanor offense of  
246 domestic violence shall, upon conviction, be required to  
247 surrender all firearms and ammunition in his or her possession  
248 as provided in subsection (5).

249 (5) (a) Upon being convicted of a misdemeanor offense of  
250 domestic violence under this section, the court shall order the

251 defendant to surrender to the local law enforcement agency all  
252 firearms and ammunition owned by the defendant in the  
253 defendant's custody, control, or possession except as provided  
254 in subsection (6), and to surrender any license to carry a  
255 concealed weapon or firearm issued under s. 790.06.

256 (b) The law enforcement officer carrying out the court  
257 order shall request that the defendant immediately surrender all  
258 firearms and ammunition owned by the defendant in his or her  
259 custody, control, or possession and any license to carry a  
260 concealed weapon or firearm issued under s. 790.06. The law  
261 enforcement officer shall take possession of all firearms and  
262 ammunition owned by the defendant and any license to carry a  
263 concealed weapon or firearm issued under s. 790.06 which are  
264 surrendered. Alternatively, if personal service by a law  
265 enforcement officer is not possible or is not required because  
266 the defendant was present at the court hearing when the judge  
267 entered the order, the defendant must surrender any firearms and  
268 ammunition he or she owns and any license to carry a concealed  
269 weapon or firearm issued under s. 790.06 in a safe manner to the  
270 control of the local law enforcement agency immediately after  
271 being served with the order by service or immediately after the  
272 hearing at which the defendant was present. Notwithstanding ss.  
273 933.02 and 933.18, a law enforcement officer may seek a search  
274 warrant from a court of competent jurisdiction to conduct a  
275 search for firearms or ammunition owned by the defendant if the

276 officer has probable cause to believe that there are firearms or  
277 ammunition owned by the defendant in the defendant's custody,  
278 control, or possession which have not been surrendered.

279 (c) At the time of surrender, a law enforcement officer  
280 taking possession of any firearm or ammunition owned by the  
281 defendant, or a license to carry a concealed weapon or firearm  
282 issued under s. 790.06, shall issue a receipt identifying all  
283 firearms surrendered, the quantity and type of ammunition  
284 surrendered, and any license surrendered and shall provide a  
285 copy of the receipt to the defendant. Within 72 hours after  
286 service of the order, the law enforcement officer serving the  
287 order shall file the original receipt with the court and shall  
288 ensure that his or her law enforcement agency retains a copy of  
289 the receipt.

290 (d) Notwithstanding ss. 933.02 and 933.18, upon the sworn  
291 statement or testimony of any person alleging that the defendant  
292 has failed to comply with the surrender of firearms or  
293 ammunition owned by the defendant, as required by an order  
294 issued under this subsection, the court shall determine whether  
295 probable cause exists to believe that the defendant has failed  
296 to surrender all firearms or ammunition owned by the defendant  
297 in the defendant's custody, control, or possession. If the court  
298 finds that probable cause exists, the court must issue a warrant  
299 describing the firearms or ammunition owned by the defendant and  
300 authorizing a search of the locations where the firearms or

301 ammunition owned by the defendant are reasonably believed to be  
302 found and requiring the seizure of any firearms or ammunition  
303 owned by the defendant discovered pursuant to such search.

304 (e) If a person other than the defendant claims title to  
305 any firearms or ammunition surrendered pursuant to this section  
306 and he or she is determined by the law enforcement agency to be  
307 the lawful owner of the firearm or ammunition, the firearm or  
308 ammunition must be returned to him or her if:

309 1. The lawful owner agrees to store the firearm or  
310 ammunition in a manner such that the defendant does not have  
311 access to or control of the firearm or ammunition; and

312 2. The firearm or ammunition is not otherwise unlawfully  
313 possessed by the owner.

314 (f) All law enforcement agencies must develop policies and  
315 procedures regarding the acceptance, the storage, and the return  
316 of firearms, ammunition, or licenses required to be surrendered  
317 under this section.

318 (6) A defendant may elect to transfer all firearms and  
319 ammunition he or she owns which have been surrendered to or  
320 seized by a local law enforcement agency pursuant to subsection  
321 (5) to another person who is willing to receive the defendant's  
322 firearms and ammunition. The law enforcement agency must allow  
323 such a transfer only if it is determined that the chosen  
324 recipient:

325 (a) Currently is eligible to own or possess a firearm and

326 ammunition under federal and state law after confirmation  
 327 through a background check;

328 (b) Attests to storing the firearms and ammunition in a  
 329 manner such that the defendant does not have access to or  
 330 control of the firearms and ammunition; and

331 (c) Attests not to transfer the firearms or ammunition  
 332 back to the defendant.

333 (7)-(2) A person who violates this section ~~subsection (1)~~  
 334 commits a misdemeanor of the first degree, punishable as  
 335 provided in s. 775.082 or s. 775.083.

336 (1)-(3) It is the intent of the Legislature that the  
 337 disabilities regarding possession of firearms and ammunition are  
 338 consistent with federal law. Accordingly, this section does not  
 339 apply to a state or local officer as defined in s. 943.10(14),  
 340 holding an active certification, who receives or possesses a  
 341 firearm or ammunition for use in performing official duties on  
 342 behalf of the officer's employing agency, unless otherwise  
 343 prohibited by the employing agency.

344 Section 3. Section 790.234, Florida Statutes, is created  
 345 to read:

346 790.234 Domestic violence; temporary custody of firearms.-

347 (1) As used in this section, the term "domestic violence"  
 348 means an act constituting domestic violence, as defined in s.  
 349 741.313, and includes acts of domestic violence between dating  
 350 partners as provided in s. 784.046(1)(d).

HB 941

2019

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

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

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

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

360 (a) Provide to the owner a receipt identifying all  
361 firearms seized and information concerning the process for  
362 retaking possession of the firearm; and

363 (b) Provide for the safe storage of the firearm during the  
364 pendency of any proceeding related to the alleged act of  
365 domestic violence.

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

370 Section 4. This act shall take effect October 1, 2019.