

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: SPB 7022

INTRODUCER: For consideration by the Rules Committee

SUBJECT: Firearm Safety

DATE: February 23, 2018

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Cellon</u>	<u>Phelps</u>	_____	Pre-meeting

I. Summary:

SPB 7022 provides law enforcement and the courts with the tools to enhance public safety by temporarily restricting firearm possession by a person who is undergoing a mental health crisis and when there is evidence of a threat of violence.

The bill amends s. 394.463, F.S., to authorize a law enforcement officer who is taking a person into custody for an involuntary examination under the Baker Act to seize and hold a firearm or ammunition the person possesses if the person poses a potential danger to himself or herself or others and has made a credible threat of violence against another person. The law enforcement officer's agency must hold any seized firearm or ammunition for at least 72 hours or until the person appears at the agency to retrieve the firearm or ammunition.

The bill provides that a person who has been adjudicated mentally defective or who has been committed to a mental institution may not own a firearm or possess a firearm until relief from the firearm possession and firearm ownership disability is obtained. The bill provides a process to remove this disability which mirrors the process that currently exists in s. 790.065(2), F.S., as it relates to the firearm purchase disability.

The bill amends s. 790.065, F.S., to raise the age from 18 to 21 years of age for all firearm purchases from licensed firearm dealers, importers, and manufacturers. This prohibition does not apply to a member of the military or naval forces of this state or of the United States or to a law enforcement or correctional officer as defined in s. 943.10, F.S.

The three-day waiting period between the purchase of and the delivery of a handgun as provided in s. 790.0655, F.S., is amended by the bill to create a three-day waiting period for all firearms, not just handguns. Additionally, the bill extends the waiting period beyond three days if additional time is necessary to complete the firearm purchase background check.

The bill defines “bump-fire stock” and prohibits the importation, transfer, distribution, transport, sale, keeping for sale, offering or exposing for sale, or giving away of a bump-fire stock. A violation of the prohibition is a felony of the third degree.

The bill creates a process for a law enforcement officer or law enforcement agency to petition a court for a risk protection order. The intent of the process and court intervention is to temporarily prevent persons who are at high risk of harming themselves or others by accessing firearms when there is demonstrated evidence that a person poses a significant danger to himself or herself or others, including significant danger as a result of a mental health crisis or violent behavior.

If the court issues a risk protection order it may do so for a period that it deems appropriate, up to and including but not exceeding 12 months. The bill also provides for an ex parte temporary risk protection order, in necessary, before the hearing on a final risk protection order.

Within 24 hours after issuance, the clerk of the court shall forward a copy of an order issued under this section to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order into the National Instant Criminal Background Check System.

The law enforcement officer serving a risk protection order, including a temporary ex parte risk protection order, must request that the respondent immediately surrender all firearms and ammunition in his or her custody, control, or possession and any license to carry a concealed weapon or firearm. The bill provides a procedure for the respondent to petition to vacate the risk protection order.

The respondent may submit one written request for a hearing to vacate a risk protection order issued under this section, starting after the date of the issuance of the order, and may request another hearing after every extension of the order, if any.

If a risk protection order is vacated or ends without extension, a law enforcement agency holding a firearm or any ammunition that has been surrendered or seized must return such surrendered firearm or ammunition requested by a respondent only after confirming through a background check that the respondent is currently eligible to own or possess firearms and ammunition.

A respondent may elect to transfer all firearms and ammunition that have been surrendered to or seized by a local law enforcement agency to another person who is willing to receive the respondent’s firearms and ammunition. The law enforcement agency may allow such a transfer only if it is determined that the chosen recipient specified criteria.

The bill will likely have an insignificant fiscal impact. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2018.

II. Present Situation:

Second Amendment

The Second Amendment to the United States Constitution states, “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”¹ Courts have consistently held that the Second Amendment is fully applicable to the states through the due process clause of the Fourteenth Amendment.²

State laws restricting the possession of gun possession and ownership have consistently been challenged on constitutional grounds. In *District of Columbia v. Heller*, a landmark case on interpreting the Second Amendment, a special police officer brought action to enjoin the District of Columbia from enforcing gun-control statutes.³ In *Heller*, the Court found that while the Second Amendment confers an individual right to keep and bear arms, that right is not unlimited.⁴ The Court held that the Second Amendment does not protect the right of citizens to carry arms for any sort of confrontation, but rather that it guarantees the individual right to possess and carry weapons in case of confrontation.⁵ The Court struck down the District of Columbia’s ban on handgun possession in the home and the requirement that any lawful firearm in the home be disassembled or bound by a trigger lock because both provisions made it impossible for citizens to use arms for the core lawful purpose of self-defense, making such provisions unconstitutional.⁶

The Court in *Heller* determined that the Second Amendment protects only “the sorts of weapons” that are “in common use” and “typically possessed by law-abiding citizens for lawful purposes.”⁷ From *Heller*, courts have derived a two-prong approach to Second Amendment challenges. First, the court considers whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment’s guarantee.⁸ If it does not, the inquiry is complete.⁹ If it does, the court must evaluate the law under some form of means-end scrutiny. If the law passes muster under that standard, it is constitutional. If it fails, it is invalid.¹⁰ In Second Amendment challenges, courts have consistently invoked intermediate scrutiny, which provides that a challenged law must further an important government interest and must do so by means that are substantially related to that interest in order to be upheld.¹¹ If the law passes muster under this standard, then it survives intermediate scrutiny and is constitutional.¹²

Since *Heller*, overbroad prohibitions on gun possession have been struck down, but more narrowly tailored restrictions on possession and control of guns have been upheld. The court in

¹ U.S. CONST. amend II.

² *McDonald v. Chicago*, 561 U.S. 742, 778 (2010).

³ 554 U.S. 570 (2008).

⁴ *Id.* at 595.

⁵ *Id.* at 592 and 595.

⁶ *Id.* at 570.

⁷ *Heller*, 554 U.S. at 625, 627.

⁸ *Hope v. State*, 163 Conn. App. 36, 42 (Conn. App. Ct. 2016).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *State v. DeCiccio*, 315 Conn. 79, 144 (Conn. 2014).

¹² *Id.*

Kachalsky v. County of Westchester applied intermediate scrutiny to a state law that restricted individuals' ability to carry firearms in public.¹³ The *Kachalsky* court held that the state's ability to regulate firearms is qualitatively different in public than in the home.¹⁴

Subsequently, in *New York State Rifle and Pistol Association, Inc. v. Cuomo*, the court was faced with two appeals challenging gun-control legislation enacted by the New York and Connecticut legislatures.¹⁵ The court held that laws prohibiting possession of certain semiautomatic assault rifles and large-capacity magazines did not violate the Second Amendment.¹⁶ The court also found that while semiautomatic assault weapons and large-capacity magazines are commonly owned by many law-abiding Americans, such weapons are not nearly as popularly owned and used for self-defense as the handgun.¹⁷ Thus, the court applied intermediate scrutiny and found that prohibitions on semiautomatic assault weapons and large-capacity magazines were substantially related to the achievement of a compelling governmental interest in public safety and crime prevention.¹⁸

Mass Shootings in Recent History

On February 14, 2018 a mass shooting occurred at Marjory Stoneman Douglas High School in Parkland, Florida which left 17 people dead.¹⁹ It was the deadliest school shooting since the December 2012 Sandy Hook Elementary School shooting in Connecticut that resulted in the death of 28 people.

The Parkland shooter was 19 years of age and used an AR-15 semi-automatic rifle during the shooting spree, the same type of firearm used during the Sandy Hook shooting and the Pulse Nightclub shooting in Orlando that left 49 dead and 53 injured on June 12, 2016.²⁰

Broward County Sheriff Scott Israel has said that the sheriff's office received about 20 calls for service over the past few years regarding the Parkland shooter and his younger brother.²¹ Apparently the Federal Bureau of Investigation (FBI) had received information in 2017 about a YouTube comment ("I'm going to be a professional school shooter.") that some had attributed to the Parkland shooter but the identity of the person who posted the comment could not be

¹³ 701 F.3d 81 (2d. Cir. 2012).

¹⁴ *Id.* at 94.

¹⁵ 804 F.3d 242, at 247 (2d. Cir. 2015).

¹⁶ *Id.*

¹⁷ *Id.* at 258.

¹⁸ *Id.* at 261.

¹⁹ Time, *Sheriff's Office Had Received About 20 Calls Regarding Suspect: The Latest on the Florida School Shooting*, Lisa Marie Segarra, Katie Reilly, Eli Meixler, and Jennifer Calfas, Updated February 18, 2018, available at <http://time.com/5158678/what-to-know-about-the-active-shooter-situation/> (last visited February 22, 2018).

²⁰ *Id.*; National Public Radio, *3 Hours in Orlando: Piecing Together an Attack and Its Aftermath*, Ariel Zambelich and Alyson Hurt, June 26, 2016, available at <https://www.npr.org/2016/06/16/482322488/orlando-shooting-what-happened-update> (last visited February 22, 2018).

²¹ Time, *Sheriff's Office Had Received About 20 Calls Regarding Suspect: The Latest on the Florida School Shooting*, Lisa Marie Segarra, Katie Reilly, Eli Meixler, and Jennifer Calfas, Updated February 18, 2018, available at <http://time.com/5158678/what-to-know-about-the-active-shooter-situation/> (last visited February 22, 2018).

ascertained by the FBI.²² It has also been reported that the FBI failed to investigate a tip it received in January 2018 concerning the Parkland shooter.²³

The Parkland shooter is reported to have been expelled from Marjory Stoneman Douglas High School for disciplinary reasons and that he may have had what could be described as a hard time fitting in at school.²⁴ It has also been reported that the Parkland shooter began legally buying firearms, including the one used during the Valentine's Day shooting, on or around his eighteenth birthday in September 2016, and he had collected at least seven rifles during that time.²⁵

Firearm Purchase Process

Firearms are available for purchase from primarily two groups of people: private citizens and federally-licensed gun dealers. A private citizen does not necessarily engage in a business selling firearms but is able to sell firearms at a gun show or elsewhere. A federal firearms licensee (FFL) is licensed by the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to sell or transfer a firearm. An individual must be licensed with the ATF to engage in the business of firearms.²⁶ A private citizen does not necessarily have to follow the processes required of FFLs.

Background Checks

FFL's must facilitate a background check on a person making a firearm purchase from the dealer. The National Instant Criminal Background Check System (NICS) was established for dealers to contact by telephone, or other electronic means, for information to be supplied immediately on whether the transfer of a firearm would be in violation of 18 U.S.C. s. 922(g) or (n), or state law.²⁷

In Florida, the Florida Department of Law Enforcement (FDLE) acts as the contact for a FFL initiating a background check.²⁸ The background check for firearm purchases queries five FDLE and FBI Criminal Justice Information Systems.²⁹ Of the 990,314 inquiries the FDLE received in 2017, over 96 percent received an initial decision approving the firearm transfer at the time the transaction was processed.³⁰

²² *Id.*

²³ CBS News, FBI's deputy director admits there was "a mistake made" regarding tip on Florida shooter, Paula Reid, Rebecca Shabad, and Emily Tillett, February 22, 2018, available at <https://www.cbsnews.com/news/fbi-deputy-director-admits-there-was-a-mistake-made-regarding-tip-on-florida-shooter/> (last visited February 23, 2018).

²⁴ *Id.*

²⁵ Miami Herald, *Before the school killings, the shooter bought an arsenal of rifles, authorities say*, Jay Weaver and Daniel Chang, February 20, 2018, available at <http://www.miamiherald.com/news/local/article201236649.html> (last visited February 22, 2018).

²⁶ Bureau of Alcohol, Tobacco, Firearms, and Explosives, *Types of Federal Firearms Licenses*, available at <https://www.atf.gov/resource-center/types-federal-firearms-licenses-ffls> (last visited February 21, 2018).

²⁷ FBI, *About NICS*, available at <https://www.fbi.gov/services/cjis/nics/about-nics> (last visited February 21, 2018).

²⁸ Thirteen states have agencies that act as full "Points of Contact." *Id.*

²⁹ FDLE, *Criminal Justice Information Services PowerPoint*, October 2017, (on file with Senate Committee on Criminal Justice).

³⁰ Email from the FDLE staff to Senate Committee on Criminal Justice staff on February 21, 2018 (on file with Senate Committee on Criminal Justice).

All FFLs who sell firearms in Florida to persons must:

- Obtain a completed form which provides the purchaser's identification information and verify identification by inspecting a photo ID;
- Collect a fee from the purchaser for processing the criminal history check of the purchaser;
- Contact the FDLE by means of a toll-free telephone number to conduct a criminal history check; and
- Receive an approval number from the FDLE and record the number on the consent form.³¹

Firearm Purchase Disqualifiers

Under 18 U.S.C. s. 922(g), a person is disqualified from purchasing a firearm if the person:

- Is convicted of a crime punishable by imprisonment exceeding one year;
- Is a fugitive from justice;
- Is a unlawful user or addicted to any controlled substance as defined in 21 U.S.C s. 802;
- Has been adjudicated as a mental defective or has been committed to any mental institution;
- Is an illegal alien;
- Has been discharged from the Armed Forces under dishonorable conditions;
- Has renounced his or her U.S. citizenship;
- Is subject to a court order restraining the person from harassing, stalking or threatening an intimate partner or child of the intimate partner; or
- Has been convicted of a misdemeanor crime of domestic violence.

In Florida, s. 790.065(2)(a), F.S., provides a person is disqualified from purchasing a firearm if the person:

- Has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23, F.S.³²
- Has been convicted of a misdemeanor crime of domestic violence,³³ and therefore is prohibited from purchasing a firearm.
- Has had an withhold of adjudication or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other court set conditions have been fulfilled or an expunction has occurred.
- Has been adjudicated mentally defective, or has been committed to a mental institution by a court or by voluntary admission to a mental institution after having been involuntarily examined where additional criteria are met.³⁴

³¹ Section 790.065(1), F.S. Other FFLs are exempt from this provision.

³² Section 790.23(1), F.S., provides that anyone who has been convicted of a felony in Florida, another state or a crime against the U.S. that would be a felony, or has committed a delinquent act in Florida or another state that would be a felony if committed by an adult and the person is under 24 years old is prohibited from possessing a firearm.

³³ Section 741.28, F.S., defines domestic violence as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

³⁴ Section 790.065(2)(a)4.a., F.S., defines "adjudicated mentally defective" to mean 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), F.S., 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. Section 790.065(2)(a)4.b.(I), F.S., defines "Committed to a mental institution" to mean involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as defined in

The FDLE must also determine if a person has any of the following in his or her background check which disqualifies him or her from purchasing a firearm:

- Has been indicted or had an information filed against her or him for a felony offense.
- Has had an injunction for protection against domestic violence under s. 741.30, F.S., entered against him or her.
- Has had an injunction for protection against repeat violence under s. 784.046, F.S., entered against him or her.
- Has been arrested for a dangerous crime as specified in s. 907.041(4)(a), F.S.³⁵
- Has been arrested for any of the offenses enumerated in s. 790.065, F.S.³⁶

The FDLE has 24 working hours to make such determinations as to whether the potential buyer is prohibited from receiving or possessing a firearm.³⁷ Section 790.065(2)(c)2., F.S., defines working hours to mean from the hours from 8 a.m. to 5 p.m. Monday through Friday excluding legal holidays.

The FDLE reports the following numbers and reasons for not approving a firearm sale during 2017:

- 4,170 for a felony conviction;
- 717 for being under indictment;
- 556 for being a fugitive from justice;
- 920 for being user or addicted to any controlled substance;
- 871 for having been adjudicated as a mental defective or having been committed to any mental institution;
- 449 for being an illegal alien;
- 11 for having been dishonorably discharged from the Armed Forces;
- 3 for renouncing his or her U.S. citizenship;
- 1,185 for being subject to a protection order;
- 1,174 for a misdemeanor crime of domestic violence; and

s. 394.467, F.S., involuntary outpatient placement as defined in s. 394.4655, F.S., involuntary assessment and stabilization under s. 397.6818, F.S., and involuntary substance abuse treatment under s. 397.6957, F.S., 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. A person may petition the court to have these particular firearm purchase disabilities removed.

³⁵ Section 907.041(4)(a), F.S., specifies the following as a dangerous crime: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S., home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of ch. 893, F.S.; attempting or conspiring to commit any such crime; and human trafficking.

³⁶ Section 790.065(2)(c), F.S., lists the following offenses: criminal anarchy under ss. 876.01 and 876.02, F.S.; Extortion under s. 836.05, F.S., explosives violations under s. 552.22(1) and (2), F.S.; controlled substances violations under ch. 893 F.S.; resisting an officer with violence under s. 843.01, F.S.; weapons and firearms violations under ch. 790, F.S.; treason under s. 876.32, F.S.; assisting self-murder under s. 782.08, F.S.; sabotage under s. 876.38, F.S.; talking or aggravated stalking under s. 784.048, F.S.

³⁷ Section 790.065(2)(c)2., F.S.

- 2,587 for a state disqualifier.³⁸

Exemptions from Background Checks

If a person has a valid concealed weapons or firearms license he or she is exempt from the background check requirements for the purchase of a firearm. A law enforcement officer, correctional officer, or correctional probation officer who holds an active certification from the Criminal Justice Standards and Training Commission is also exempt from the background check requirements in s. 790.065, F.S.³⁹

Three-Day Waiting Period

Article I, section 8(b) of the Florida Constitution requires a three day waiting period between the purchase and delivery at retail of handguns. Specifically the Florida Constitution provides:

There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, 'purchase' means the transfer of money or other valuable consideration to the retailer, and 'handgun' means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph.⁴⁰

Section 790.0655, F.S., implements article I, section 8(b), of the Florida Constitution.⁴¹ The 3-day waiting period only applies to handgun sales transacted by retailers, not private sales. A retailer includes every person engaged in the business of making sales at retail or for distribution, use, or consumption, or storage to be used or consumed in this state.⁴²

The Florida Constitution and s. 790.0655, F.S., exempt the following circumstances from the 3-day handgun waiting period:

- A holder of a concealed weapons permit as defined in s. 790.06; F.S., and
- To a trade-in of another handgun.

It is a third degree felony for any retailer, or any employee or agent of a retailer, to deliver a handgun before the expiration of the 3-day waiting period.⁴³

³⁸ The numbers reflect non-approvals as of February 21, 2018. E-mail from the FDLE staff to the Senate Committee on Criminal Justice, February 21, 2018 (on file with Senate Committee on Criminal Justice).

³⁹ Law enforcement officer, correctional officer, and correctional probation officer are defined in s. 943.10, F.S.

⁴⁰ FLA. CONST. art. I, s. 8(b).

⁴¹ There is a mandatory 3-day waiting period, which is 3 days, excluding weekends and legal holidays, between the purchase and the delivery at retail of any handgun. "Purchase" means the transfer of money or other valuable consideration to the retailer. "Handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Section 790.0655, F.S.

⁴² Section 790.0655, F.S.

⁴³ Subject to the exceptions noted above and provided in s. 790.0655(2), F.S. A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

Private Firearm Sale “Loophole”

The widely-used term “gun show loophole” refers to the difference between the way private sales or transfers of firearms occur as compared to the requirements that must be met by FFLs. As discussed above, the FFL must implement the background check process for all firearm purchases and deliveries and the 3-day waiting period for handguns while a person conducting a private transaction does not.

Age Restrictions on Purchase and Use of Firearms

Federal law prohibits FFLs from selling a handgun to a person less than 21 years of age.⁴⁴

Florida law prohibits the sale or transfer of a firearm to a minor by *any* person although ownership of the firearm may be transferred to the minor with a parent or guardian’s permission. A person who violates this prohibition commits a third degree felony.⁴⁵

In Florida it is unlawful for any firearm dealer to sell or transfer to a minor any firearm, pistol, Springfield rifle or other repeating rifle, bowie knife or dirk knife, brass knuckles, or electric weapon or device. A firearm dealer who violates this provision commits a second degree felony.⁴⁶

A minor under 18 years of age may not possess a firearm in Florida, other than an unloaded firearm at his or her home. There are exceptions to the general rule for these circumstances:

- The minor is engaged in a lawful hunting activity and is:
 - At least 16 years of age or
 - Under 16 years of age and supervised by an adult.
- The minor is engaged in a lawful marksmanship competition or practice or other lawful recreational shooting activity and is:
 - At least 16 years of age or
 - Under 16 years of age and supervised by an adult who is acting with the consent of the minor’s parent or guardian.
- The firearm is unloaded and is being transported by the minor directly to or from an event authorized above.⁴⁷

Bump-Fire Stocks

A bump stock (or bump-fire stock) is a piece of plastic or metal molded that attaches to the lower end of a rifle. The device allows a semi-automatic rifle to mimic a fully automatic rifle firing rate. This can allow a person to fire dozens of rounds in seconds by harnessing the gun’s natural

⁴⁴ 18 U.S.C. s. 922(8)(b)1, specifically provides that it shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age.

⁴⁵ Section 790.17, F.S.

⁴⁶ Section 790.18, F.S. A second degree felony is punishable by up to 15 years imprisonment and up to a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁴⁷ Section 790.22(3), F.S.

recoil without much concern for accuracy, as the recoil from simulated automatic fire would make it difficult to hit specific targets at a long range. A rifle with this type of mechanism works best with a high-capacity magazine that can hold between 60 and 100 rounds and a hand grip that allows a shooter to push the rifle away from the body to bounce, or bump, the weapon into the trigger finger.⁴⁸ Experts have stated that semi-automatic rifles with bump stocks could fire hundreds of rounds per minute.⁴⁹

The shooter at the October 2017 Las Vegas county music festival had 12 rifles with bump stocks which allowed him to kill 59 people and injure more than 500 others.⁵⁰

While machine guns are regulated under the National Firearms Act, the ATF concluded that bump stocks didn't convert a semi-automatic firearm into one that is fully automatic, which would make it equivalent to machine guns. Currently, bump stocks are legal and not regulated by the ATF.⁵¹

Other States, Congress, Presidential Memorandum

Following the Las Vegas shooting and the recent shooting at Marjory Stoneman Douglas High School in Parkland, Florida, much public attention has been focused on bump stock-type devices.

Congress has not passed any legislation to restrict bump stocks, but there is a bill filed that would require persons who possess bump-fire stocks to register them with the Secretary of the Treasury.⁵²

⁴⁸ The Washington Post, *Trump recommended outlawing bump stocks. Here's what they are*. Julie Vitkovskaya and Alex Horton, February 20, 2018, available at https://www.washingtonpost.com/news/checkpoint/wp/2017/10/05/what-are-bump-stocks/?utm_term=.c0d30fa732a8 (last visited February 22, 2018) and Fox News, *What are bump stocks? How they work and why Trump wants them banned*, Jennifer Earl, February 21, 2018, available at <http://www.foxnews.com/us/2018/02/20/what-are-bump-stocks-how-work-and-why-trump-wants-them-banned.html> (last visited February 23, 2018).

⁴⁹ Fox News, *What are bump stocks? How they work and why Trump wants them banned*, Jennifer Earl, February 21, 2018, available at <http://www.foxnews.com/us/2018/02/20/what-are-bump-stocks-how-work-and-why-trump-wants-them-banned.html> (last visited February 23, 2018).

⁵⁰ *Id.*; See also The Washington Post, *At least 59 killed in Las Vegas shooting rampage, more than 500 others injured*, Matt Zapotosky, Devlin Barrett and Mark Berman, October 3, 2017, available at <https://www.msn.com/en-us/news/breakingnews/at-least-59-killed-in-las-vegas-shooting-rampage-more-than-500-others-injured/ar-AAAM6kd> (last visited February 22, 2018).

⁵¹ Federal Register: The Daily Journal of the United States Government, *Application of the Definition of Machinegun to "Bump Fire" Stocks and Other Similar Devices*, available at <https://www.federalregister.gov/documents/2017/12/26/2017-27898/application-of-the-definition-of-machinegun-to-bump-fire-stocks-and-other-similar-devices> (last visited February 22, 2018).*Id.*

⁵² House Bill 4168, filed October 31, 2017. H.R.4168 – Closing the Bump-Stock Loophole Act, available at <https://www.congress.gov/bill/115th-congress/house-bill/4168> (last visited February 23, 2018).

At least four states have banned the possession and sale of bump-fire stocks, although the definitions and descriptions of the devices vary.⁵³ At least 15 states are considering legislation that would ban bump stocks.⁵⁴

Additionally, President Trump issued a Memorandum on February 20, 2018, directing the Department of Justice to propose a rule banning “all devices that turn legal weapons into machine guns.”⁵⁵

Baker Act

In 1971, the Legislature adopted the Florida Mental Health Act, otherwise known as the Baker Act.⁵⁶ The Baker Act authorizes treatment programs for mental, emotional, and behavioral disorders. The Baker Act requires programs to include comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment to facilitate recovery. Additionally, the Baker Act provides protections and rights to individuals examined or treated for mental illness. Legal procedures are addressed for mental health examination and treatment, including voluntary admission, involuntary admission, involuntary inpatient treatment, and involuntary outpatient treatment.

Receiving Facility

Individuals in acute mental or behavioral health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a voluntary or involuntary basis.⁵⁷ Involuntary patients must be taken to a receiving facility, which is a public or private facility or hospital designated by the Department of Children and Families (DCF) to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health evaluation and to provide treatment or transportation to the appropriate service provider. A county jail is not a receiving facility.⁵⁸

Criteria for Taking a Person to a Receiving Facility for Involuntary Examination

An involuntary examination includes an examination performed under s. 394.463, F.S.⁵⁹ The purpose of the examination is to determine whether a person qualifies for involuntary services.⁶⁰ Involuntary services include court-ordered outpatient services or inpatient placement for mental

⁵³ These states are: California (Sections 32900, 32990, and 16930, California Penal Code.); Michigan (Section 750.224e., Michigan Penal Code); Minnesota (Section 690.67, Minnesota Statutes); and New Jersey Senate Bill 3477 (SCS), signed by the Governor January 16, 2018, P.L. 2017, c. 323.

⁵⁴ The Washington Post, *Facing congressional inaction, states move to ban bump stocks*, January 18, 2018, available at https://www.washingtonpost.com/national/2018/01/18/facing-congressional-inaction-states-move-to-ban-bump-stocks/?utm_term=.bbcb450f232f (last visited February 22, 2018).

⁵⁵ Presidential Memorandum on the Application of the Definition of Machinegun to “Bump Fire” Stocks and Other Similar Devices, Issued February 20, 2018, available at <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-application-definition-machinegun-bump-fire-stocks-similar-devices/> (last visited February 22, 2018).

⁵⁶ Section 394.451, F.S. The act was created by ch. 71-131, L.O.F., and is codified in Part I of ch. 394, F.S. (ss. 394.451-394.47892, F.S.).

⁵⁷ Sections 394.4625 and 394.463, F.S.

⁵⁸ Section 394.455(39), F.S.

⁵⁹ Section 394.455(22), F.S.

⁶⁰ *Id.*

health treatment.⁶¹ Section 394.463, F.S., provides that a person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness⁶² and because of his or her mental illness:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; **or**
- The person is unable to determine for himself or herself whether examination is necessary; **and**
- Either of the following applies:
 - Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being, and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services.
 - There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.⁶³

Initiation of Involuntary Examination

There are three means of initiating an involuntary examination. First, a 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. 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 takes the person into custody and delivers him or her to an appropriate, or the nearest, facility within the designated receiving system for examination.⁶⁴

Second, a law enforcement officer must 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 for examination. The officer executes a written report detailing the circumstances under which the person was taken into custody, which is made a part of the patient's clinical record.⁶⁵

Third, 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 takes the person named in the certificate into custody and delivers him or her to the appropriate, or nearest, facility for examination. The law

⁶¹ Section 394.455(23), F.S.

⁶² "Mental illness" means an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with the person's ability to meet the ordinary demands of living. For purposes of Part I of ch. 394, F.S., the term does not include a developmental disability as defined in ch. 393, F.S., intoxication, or conditions manifested only by antisocial behavior or substance abuse.

Section 394.455(28), F.S.

⁶³ Section 394.463(1), F.S.

⁶⁴ Section 394.463(2)(a)1., F.S.

⁶⁵ Section 394.463(2)(a)2., F.S.

enforcement officer executes a written report detailing the circumstances under which the person was taken into custody. The certificate and the law enforcement officer's report are made a part of the patient's clinical record.⁶⁶

Transportation to a Receiving Facility

The Baker Act requires each county to designate a single law enforcement agency within the county to transfer the person in need of services to a receiving facility for involuntary examination.⁶⁷ If the person is in custody based on noncriminal or minor criminal behavior that meets the statutory guidelines for involuntary examination under s. 394.463, F.S., the law enforcement officer must transport the person to the appropriate facility within the designated receiving system pursuant to a transportation plan or an exception granted by the DCF Secretary, or to the nearest receiving facility if neither apply⁶⁸

If the person is arrested for a felony and it appears the person meets the statutory guidelines for involuntary examination or placement under Part I of ch. 394, F.S., the person must first be processed in the same manner as any other criminal suspect. Thereafter, the law enforcement officer must immediately notify the appropriate facility within the designated receiving system pursuant to a transportation plan or an exception granted by the DCF Secretary, or to the nearest receiving facility if neither apply. The receiving facility is responsible for promptly arranging for the examination and treatment of the person, but is not required to admit a person charged with a crime for whom the facility determines and documents that it is unable to provide adequate security.⁶⁹

If the law enforcement officer believes the person has an emergency medical condition, the person may be first transported to a hospital for emergency medical treatment, regardless of whether the hospital is a designated receiving facility.⁷⁰

A designated law enforcement agency may decline to transport a person to a receiving facility only if:

- The jurisdiction designated by the county has contracted on an annual basis with an emergency medical transport service or private transport company for transportation of persons to receiving facilities pursuant to this section at the sole cost of the county; and
- The law enforcement agency and the emergency medical transport service or private transport company agree that the continued presence of law enforcement personnel is not necessary for the safety of the person or others.⁷¹

The appropriate facility within the designated receiving system pursuant to a transportation plan or an exception granted by the DCF Secretary, or the nearest receiving facility if neither apply, must accept a person brought by a law enforcement officer, or an emergency medical transport

⁶⁶ Section 394.463(2)(a)3., F.S.

⁶⁷ Section 394.462(1)(a), F.S.

⁶⁸ Section 394.462(1)(g), F.S.

⁶⁹ Section 394.462(1)(h), F.S. If the facility is unable to provide adequate security, examination or treatment of the person is provided where he or she is held. *Id.*

⁷⁰ Section 394.462(1)(i), F.S.

⁷¹ Section 394.462(1)(b)1., F.S.

service or private transport company authorized by the county, for involuntary examination pursuant to s. 394.463, F.S.⁷²

Time Limitations for Conducting an Involuntary Examination

Specified time periods apply to holding a person in a receiving facility for involuntary examination. Generally, the examination period must be for up to 72 hours.⁷³ However, for a minor, the examination must be initiated within 12 hours after the minor arrives at the facility.⁷⁴ Within the examination period or, if the examination period ends on a weekend or holiday, no later than the next working day thereafter, one of the following actions must be taken, based on the individual needs of the patient:

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will resume custody;
- The patient must be released into voluntary outpatient treatment;
- The patient must be asked to give consent to be placed as a voluntary patient if placement is recommended; or
- A petition for involuntary placement must be filed in circuit court for outpatient or inpatient treatment.⁷⁵

Gun Violence Protective Orders

Gun violence protective order laws, also known as gun violence restraining orders and extreme risk protection orders, operate as a temporary restraint on a person's possession of his or her guns. Specifically, gun violence protective order laws enables law enforcement, and in some states, family and household members, to petition a court to remove a person's access to guns if he or she poses an imminent danger to self or others.⁷⁶ With a court-ordered gun violence protective order, a person's access to firearms is temporarily blocked until they can demonstrate that there is no longer a risk.⁷⁷

⁷² Section 394.462(1)(k), F.S.

⁷³ Section 394.463(2)(g), F.S.

⁷⁴ *Id.*

⁷⁵ *Id.* A person for whom an involuntary examination has been initiated who is being evaluated or treated at a hospital for an emergency medical condition must be examined by a facility within the examination period specified in s. 394.463(2)(g), F.S. 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 or involuntary inpatient placement, the patient may be offered voluntary services or placement, if appropriate, or released directly from the hospital providing emergency medical services. Section 394.463(2)(h), F.S. One of the following must occur within 12 hours after the patient's attending physician documents that the patient's medical condition has stabilized or that an emergency medical condition does not exist: the patient must be examined by a facility and released; or the patient must be transferred to a designated facility in which appropriate medical treatment is available. However, the facility must be notified of the transfer within two hours after the patient's condition has been stabilized or after determination that an emergency medical condition does not exist. Section 394.463(2)(i), F.S.

⁷⁶ Giffords Law Center to Prevent Gun Violence, *Gun Violence Protective Orders*, available at <http://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/gun-violence-protective-orders/> (last visited February 22, 2018).

⁷⁷ ABC News, *How a Temporary Restraining Order for Guns Could Help Stop Mass Shootings*, Andy Fies, February 16, 2018, available at <http://abcnews.go.com/US/temporary-restraining-order-guns-stop-mass-shootings/story?id=51042163> (last visited February 21, 2018).

Under federal law, as discussed above, a person who has committed a violent act towards others is not prohibited from possessing guns unless he or she is the subject of a domestic violence restraining order, has been convicted of a felony, or has been convicted of a domestic violence misdemeanor.⁷⁸ Additionally, federal law provides that a person suffering from mental illness is not prohibited from purchasing and possessing a gun unless he or she has been formally, and involuntarily, committed to a mental institution, or undergone some other formalized court proceeding regarding his or her mental illness.⁷⁹

Individual states have begun to implement laws that restrict a person's access to possession and control of firearms. Connecticut became the first state to pass a law providing for a gun violence protective order in 1999.⁸⁰ The state's risk-warrant law grants law enforcement or a state attorney the authority to temporarily remove firearms from individuals when there is probable cause to believe they pose a significant risk of harm to themselves or to others.⁸¹ Indiana, California, Oregon, and Washington also have also implemented a gun violence protective order-type law.⁸² Gun violence protective orders or "red flag" laws are currently pending in 18 states.⁸³

A nationwide study of mass shootings from 2009 to 2016 indicated that in at least 42 percent of those incidents, the attacker exhibited dangerous warning signs prior to the shooting.⁸⁴ A recent analysis of Connecticut's risk-warrant law demonstrates that risk-based firearm removal laws provide effective tools to save lives. Specifically, research estimates that for every 10-20 risk-warrants issued, one life is saved.⁸⁵ Research also indicates that 29 percent of gun owners who had a risk-warrant ordered against them went on to receive mental health and substance abuse services in the state system.⁸⁶ Additionally, a study of Connecticut's risk-warrant laws found that, 99 percent of warrants issued from 1999 to 2013, which led to the confiscation of at least one gun, resulted in the gun owner receiving psychiatric treatment.⁸⁷

States with a gun violence protective order-type law have a process outlined in statute for obtaining a court order. Typically, before a gun violence protective order may be issued, the person is entitled to a full legal proceeding. However, an emergency order may be issued when a

⁷⁸ 18 U.S.C. s. 922(d)(9).

⁷⁹ 18 U.S.C. s. 922(d)(4).

⁸⁰ Section 29-38C, Conn. Gen. Stat.

⁸¹ The Educational Fund to Stop Gun Violence, *Data Behind Extreme Risk Protective Order Policies*, September 2017, available at <http://efsgv.org/wp-content/uploads/2017/09/CT-Risk-Warrant-Data-One-pager-ERPO-9-15-17-FINAL.pdf> (last visited February 21, 2018).

⁸² Section 35-47-14, Ind. Code Ann.; Section 18100 Cal. Penal Code; SB 719, 2017 Regular Session (Oregon 2017); Section 7.94.010, Wash. Rev. Code Ann.

⁸³ Everytown for Gun Safety, *Red Flag Laws: Helping Prevent Mass Shootings*, February 15, 2018, available at <https://everytownresearch.org/red-flag-laws-helping-prevent-mass-shooting/> (last visited February 21, 2018).

⁸⁴ Everytown for Gun Safety, *Analysis of Recent Mass Shootings*, available at https://everytownresearch.org/wp-content/uploads/2017/04/Analysis_of_Mass_Shooting_062117.pdf (last visited February 21, 2018).

⁸⁵ The Educational Fund to Stop Gun Violence, *Data Behind Extreme Risk Protective Order Policies*, available at <http://efsgv.org/wp-content/uploads/2017/09/CT-Risk-Warrant-Data-One-pager-ERPO-9-15-17-FINAL.pdf> (last visited February 21, 2018).

⁸⁶ *Id.*

⁸⁷ The New York Times, *In Wake of Florida Massacre, Gun Control Advocates Look to Connecticut*, Lisa W. Foderaro and Kristin Hussey, February 17, 2018, available at <https://www.nytimes.com/2018/02/17/nyregion/florida-shooting-parkland-gun-control-connecticut.html> (last visited February 21, 2018).

person poses an immediate danger. Standard protocol for obtaining a gun violence protective order or similar type of restraining order requires a family or household member or a law enforcement officer or agency to submit a petition that alleges that the gun owner poses a significant danger to themselves or to others by virtue of his or her custody or control of a firearm.⁸⁸

Notice must be issued to the gun owner, or respondent, to make them aware of the impending court hearing, with certain exceptions provided if such notice would put others at risk of imminent danger or harm. At the hearing, the petitioner must establish that the respondent poses a significant danger of causing personal injury to themselves or to others. In the event that the petitioner meets the burden of proof, the court must issue a protection order. Though gun violence protective order-type laws vary between each state, they are uniform in the duration of such issued order – one year.⁸⁹

Upon entering an order to temporarily restrain a gun owner from his or her firearms, the respondent must surrender his or her firearms. Additionally, the order must detail that the respondent has a right to request one hearing to terminate the order every 12-month period that such order is in effect.⁹⁰

The question of constitutionality of such protective orders has been raised with respect to the Second Amendment to the United States Constitution. In *Heller*, the United States Supreme Court recognized that the Second Amendment protects “the right of law-abiding, responsible citizens to use arms in defense of hearth and home.”⁹¹ However, in the same case, the Supreme Court also recognized that the Second Amendment does not confer the “right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose,” and that legislatures may use a variety of regulatory measures to prevent violence associated with firearms.⁹²

The Supreme Court stated that lawful regulatory measures implemented by the legislatures include “longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.”⁹³ In *Hope v. State*, the court held that the Connecticut risk-warrant law did not implicate the Second Amendment because it does not restrict the right of law-abiding, responsible citizens to use arms in defense of their homes.⁹⁴ The court in *Hope* echoed the Supreme Court’s sentiments in *Heller*, reasoning that Connecticut’s risk-warrant statute was an example of the longstanding “presumptively lawful regulatory measures” that can be adopted by legislatures.⁹⁵

⁸⁸ See Section 35-47-14, Ind. Code Ann.; Section 18100 Cal. Penal Code; SB 719, 2017 Regular Session (Oregon 2017); Section 7.94.010, Wash. Rev. Code Ann.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ 554 U.S. 570, 635 (2008).

⁹² *Id.* at 626, 636 (2008).

⁹³ *Id.* at 626-27.

⁹⁴ 163 Conn.App. 36, 43 (Conn. App. Ct. 2016).

⁹⁵ *Id.*

Additionally, similar measures have been upheld in California. In *City of San Diego v. Boggess*, the court held that the protections of the Second Amendment do not extend to persons whose firearms are seized because they were found to be a danger to themselves by reason of their mental health.⁹⁶ Furthermore, the court reasoned that the government is not prohibited from regulating the possession of guns by persons proven to be dangerous due to mental illness and further held that such regulations do not appear to be in direct conflict with the Second Amendment.⁹⁷ The court held that California case law has affirmed that the state may ensure that firearms are not in the hands of someone who may use them dangerously.⁹⁸

III. Effect of Proposed Changes:

Baker Act and Firearm Safety

The bill amends s. 394.463, F.S., to authorize a law enforcement officer who is taking a person into custody for an involuntary examination under a court's ex parte order under the Baker Act to seize and hold a firearm or ammunition the person possesses if the person:

- Poses a potential danger to himself or herself or others; and
- Has made a credible threat of violence against another person.

The law enforcement officer's agency must hold any seized firearm or ammunition for at least 72 hours or until the person appears at the agency to retrieve the firearm or ammunition. The agency must develop policies and procedures relative to the seizure, storage, and return of the firearms or ammunition provided for in the bill.

If the person has a firearm that was not seized when he or she was taken into custody for the involuntary examination under the Baker Act, a law enforcement officer may petition a court for a risk protection order pursuant to a newly-created procedure in the bill.

Firearm Possession and Ownership Disability

The bill provides that a person who has been adjudicated mentally defective or who has been committed to a mental institution as those terms are defined in s. 790.065(2), F.S. may not own a firearm or possess a firearm until relief from the firearm possession and firearm ownership disability is obtained.

The term "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), F.S., 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.

Committed to a mental institution means involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes

⁹⁶ 216 Cal.App.4th 1494, at 1505-06 (Cal. Ct. App. 2013).

⁹⁷ *Id.* at 1506.

⁹⁸ *Id.*

involuntary inpatient placement as defined in s. 394.467, F.S., involuntary outpatient placement as defined in s. 394.4655, F.S., involuntary assessment and stabilization under s. 397.6818, F.S., and involuntary substance abuse treatment under s. 397.6957, F.S., 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. The term also includes persons who have been involuntary examined under the Baker Act statute but then consented to voluntary inpatient or outpatient treatment.

The bill provides a process for the person who has the firearm disability related to possession and ownership of a firearm to petition a court to have the disability removed. This process currently exists in s. 790.065(2), F.S., as it relates to the firearm purchase disability.

Firearm Purchase Age Restriction

The bill amends s. 790.065, F.S., to raise the age from 18 to 21 years of age for all firearm purchases from licensed firearm dealers, importers, and manufacturers. A violation of the prohibition against the sale or purchase is a felony of the third degree.

The prohibition on the purchase of a firearm by a person younger than 21 years of age or the sale or transfer by a licensed importer, licensed manufacturer, or licensed dealer to a person younger than 21 years of age does not apply to a member of the military or naval forces of this state or of the United States or to a law enforcement or correctional officer as defined in s. 943.10, F.S.

Three-Day Waiting Period

The three-day waiting period between the purchase of and the delivery of a handgun as provided in s. 790.0655, F.S., is amended by the bill to create a three-day waiting period for all firearms, not just handguns.

Additionally, the bill extends the waiting period beyond three days if additional time is necessary to complete the firearm purchase background check.

The bill adds a new exception to the waiting period requirement for persons who complete a 16-hour hunter education or hunter safety course approved by the Fish and Wildlife Conservation Commission or similar agency of another state.

Bump-Fire Stock Purchase

The bill defines “bump-fire stock” as a gun conversion kit, a tool, an accessory, or a device used to alter the rate of fire of a firearm to mimic automatic weapon fire or which is used to increase the rate of fire of a semiautomatic firearm to a faster rate than is possible for a person to fire such semiautomatic firearm unassisted by a kit, a tool, an accessory, or a device.

The bill prohibits the importation, transfer, distribution, transport, sale, keeping for sale, offering or exposing for sale, or giving away of a bump-fire stock. A violation of the prohibition is a felony of the third degree.

Risk Protection Order

The bill creates a process for a law enforcement officer to petition a court for a temporary ex parte risk protection order and a final risk protection order in s. 790.401, F.S. The intent of the process and court intervention is to temporarily prevent persons who are at high risk of harming themselves or others by accessing firearms when there is demonstrated evidence that a person poses a significant danger to himself or herself or others, including significant danger as a result of a mental health crisis or violent behavior. The process strikes a balance between the rights of the person (respondent) including due process of law, and reducing death or injury as a result of his or her use of firearms during a mental health crisis.

The court must find by clear and convincing evidence based on the following considerations that the respondent poses a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm to issue a risk protection order:

- A recent act or threat of violence by the respondent against himself or herself or others, whether or not such violence or threat of violence involves a firearm;
- An act or threat of violence by the respondent within the past 12 months, including, but not limited to, acts or threats of violence by the respondent against himself or herself or others;
- Evidence of the respondent being seriously mentally ill or having recurring mental health issues;
- A violation by the respondent of a protection order or a no contact order issued under ss. 741.30, 784.046, or 784.0485, F.S.;
- A previous or existing risk protection order issued against the respondent;
- A violation of a previous or existing risk protection order issued against the respondent;
- Whether the respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime that constitutes domestic violence as defined in s. 741.28, F.S.;
- The respondent's ownership of, access to, or intent to possess firearms;
- The unlawful or reckless use, display, or brandishing of a firearm by the respondent;
- The recurring use of, or threat to use, physical force by the respondent against another person, or the respondent stalking another person;
- Whether the respondent, in this state or any other state, has been arrested, convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence;
- Corroborated evidence of the abuse of controlled substances or alcohol by the respondent;
- Evidence of recent acquisition of firearms by the respondent; and
- Any relevant information from family and household members concerning the respondent.

If the court issues a risk protection order it may do so for a period that it deems appropriate, up to and including but not exceeding 12 months.

The procedure for an ex parte temporary risk protection order is expedited and intended to prevent any death or injury during the time immediately following an involuntary examination and before the hearing on a final risk protection order.

Upon issuance of a risk protection order, including a temporary ex parte risk protection order, the court must order the respondent to surrender to the local law enforcement agency all firearms and ammunition in the respondent's custody, control, or possession, and any license to carry a concealed weapon or firearm issued under s. 790.06, F.S.

The law enforcement officer serving a risk protection order, including a temporary ex parte risk protection order, must request that the respondent immediately surrender all firearms and ammunition in his or her custody, control, or possession and any license to carry a concealed weapon or firearm. The law enforcement officer must conduct a search authorized by law for such firearms and ammunition and take possession of all firearms and ammunition belonging to the respondent which are surrendered, in plain sight, or discovered pursuant to a lawful search.

Alternatively, if personal service by a law enforcement officer is not possible or is not required because the respondent was present at the risk protection order hearing, the respondent must surrender the firearms and ammunition in a safe manner to the control of the local law enforcement agency immediately after being served with the order by service or immediately after the hearing at which the respondent was present.

At the time of surrender, a law enforcement officer taking possession of a firearm, any ammunition, or a license to carry a concealed weapon or firearm shall issue a receipt identifying all firearms and the quantity and type of ammunition that have been surrendered and must provide a copy of the receipt to the respondent. Within 72 hours after service of the order, the law enforcement officer serving the order shall file the original receipt with the court and ensure that his or her law enforcement agency retains a copy of the receipt. All law enforcement agencies must develop policies and procedures by January 1, 2019, regarding the acceptance, storage, and return of firearms or ammunition required to be surrendered.

Upon the sworn statement or testimony of any person alleging that the respondent has failed to comply with the surrender of firearms or ammunition as required by a risk protection order, the court must determine whether probable cause exists to believe that the respondent has failed to surrender all firearms or ammunition in his or her custody, control, or possession. If the court finds that probable cause exists, the court must issue a warrant authorizing a search of the locations where the firearms or ammunition are reasonably believed to be found and the seizure of any firearms or ammunition discovered pursuant to such search.

The respondent may submit one written request for a hearing to vacate a risk protection order starting after the date of the issuance of the order, and may request another hearing after every extension of the order, if any. The respondent shall have the burden of proving by clear and convincing evidence that he or she does not pose a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, purchasing, possessing, or receiving a firearm or ammunition. If the court finds after the hearing that the respondent has met his or her burden of proof, the court must vacate the order.

The petitioner may, by motion, request an extension of a risk protection order at any time within 30 calendar days before the end of the order. If the court finds by clear and convincing evidence that the requirements for issuance of a risk protection order continue to be met, the court must extend the order. However, if, after notice, the motion for extension is uncontested and no

modification of the order is sought, the order may be extended. The court may extend a risk protection order for a period that it deems appropriate, up to and including but not exceeding 12 months, subject to an order to vacate or to another extension order by the court.

If a risk protection order is vacated or ends without extension, a law enforcement agency holding a firearm or any ammunition that has been surrendered or seized must return such surrendered firearm or ammunition requested by a respondent only after confirming through a background check that the respondent is currently eligible to own or possess firearms and ammunition under federal and state law and after confirming with the court that the risk protection order has been vacated or has ended without extension.

If a risk protection order is vacated or ends without extension, the Department of Agriculture and Consumer Services, if it has suspended a license to carry a concealed weapon or firearm pursuant to this section, must reinstate such license only after confirming that the respondent is currently eligible to have a license to carry a concealed weapon or firearm pursuant to s. 790.06, F.S.

A law enforcement agency must provide notice to any family or household members of the respondent before the return of any surrendered firearm and ammunition.

A respondent may elect to transfer all firearms and ammunition that have been surrendered to or seized by a local law enforcement agency to another person who is willing to receive the respondent's firearms and ammunition. The law enforcement agency may allow such a transfer only if it is determined that the chosen recipient:

- Currently is eligible to own or possess a firearm and ammunition under federal and state law after confirmation through a background check;
- Attests to storing the firearms and ammunition in a manner such that the respondent does not have access to or control of the firearms and ammunition until the risk protection order against the respondent is vacated or ends without extension; and
- Attests not to transfer the firearms or ammunition back to the respondent until the risk protection order against the respondent is vacated or ends without extension.

Within 24 hours after issuance, the clerk of the court shall enter any risk protection order or temporary ex parte risk protection order issued under this section into the uniform case reporting system.

Also within 24 hours after issuance, the clerk of the court shall forward a copy of an order issued under this section to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order into the National Instant Criminal Background Check System, any other federal or state computer-based systems used by law enforcement agencies or others to identify prohibited purchasers of firearms or ammunition, and into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order must remain in each system for the period stated in the order, and the law enforcement agency shall only remove orders from the systems that have ended or been vacated. Entry into the Florida Crime Information Center and National Crime Information Center constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in this state.

The issuing court shall, within 3 business days after issuance of a risk protection order or temporary ex parte risk protection order, forward all available identifying information concerning the respondent, along with the date of order issuance, to the Department of Agriculture and Consumer Services. Upon receipt of the information, the department shall determine if the respondent has a license to carry a concealed weapon or firearm. If the respondent does have a license to carry a concealed weapon or firearm, the department must immediately suspend the license.

If a risk protection order is vacated before its end date, the clerk of the court shall, on the day of the order to vacate, forward a copy of the order to the Department of Agriculture and Consumer Services and the appropriate law enforcement agency specified in the order to vacate. Upon receipt of the order, the law enforcement agency shall promptly remove the order from any computer-based system in which it was entered.

A person who files a petition knowing the information in such petition is materially false, or files with the intent to harass the respondent, commits a first degree misdemeanor.⁹⁹

A person who has in his or her custody or control a firearm or any ammunition or who purchases, possesses, or receives a firearm or any ammunition with knowledge that he or she is prohibited from doing so by a risk protection order commits a third felony of the third degree felony.

The Office of the State Courts Administrator shall develop and prepare instructions and informational brochures, standard petitions and risk protection order forms, and a court staff handbook on the risk protection order process. The standard petition and order forms must be used after January 1, 2019,

The bill is effective October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁹⁹ A first degree misdemeanor is punishable by up to one year in jail and up to a \$1,000 fine. Sections 775.082 and 775.083, F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Although local law enforcement agencies may incur some additional expense resulting from the law enforcement officer's participation in the newly-created risk protection order process and related administration of the firearms and ammunition seizure, storage and release and will likely have an insignificant fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.463, 790.065, and 790.0655.

This bill creates the following sections of the Florida Statutes: 790.064, 790.34, and 790.401.

This bill reenacts the following sections of the Florida Statutes: 397.6760 and 790.335.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.