

1 A bill to be entitled
2 An act relating to weapons and firearms; amending s.
3 394.463, F.S.; providing that a petition for
4 involuntary examination also serves as a petition for
5 a risk protection order in certain circumstances;
6 providing requirements for such petition; providing
7 for the confiscation of firearms and ammunition upon a
8 specified number of orders for involuntary examination
9 or involuntary outpatient services within a specified
10 timeframe; amending s. 790.401, F.S.; requiring the
11 court to order a hearing to be held within a specified
12 timeframe for a petition for involuntary examination;
13 amending s. 790.23, F.S.; requiring a minimum
14 mandatory term of imprisonment for a person convicted
15 of a felony while owning or having in his or her care,
16 custody, possession, or control a firearm, ammunition,
17 or electronic weapon or device; providing an effective
18 date.

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

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22 Section 1. Paragraphs (a) and (d) of subsection (2) of
23 section 394.463, Florida Statutes, are amended to read:

24 394.463 Involuntary examination.—

25 (2) INVOLUNTARY EXAMINATION.—

26 (a) An involuntary examination may be initiated by any one
27 of the following means:

28 1. A circuit or county court may enter an ex parte order
29 stating that a person appears to meet the criteria for
30 involuntary examination and specifying the findings on which
31 that conclusion is based. The ex parte order for involuntary
32 examination must be based on written or oral sworn testimony
33 that includes specific facts that support the findings. If other
34 less restrictive means are not available, such as voluntary
35 appearance for outpatient evaluation, a law enforcement officer,
36 or other designated agent of the court, shall take the person
37 into custody and deliver him or her to an appropriate, or the
38 nearest, facility within the designated receiving system
39 pursuant to s. 394.462 for involuntary examination. The order of
40 the court shall be made a part of the patient's clinical record.
41 A fee may not be charged for the filing of an order under this
42 subsection. A facility accepting the patient based on this order
43 must send a copy of the order to the department within 5 working
44 days. The order may be submitted electronically through existing
45 data systems, if available. The order shall be valid only until
46 the person is delivered to the facility or for the period
47 specified in the order itself, whichever comes first. If no time
48 limit is specified in the order, the order shall be valid for 7
49 days after the date that the order was signed. If a person has
50 been subject to involuntary examination under this section or an

51 order for involuntary outpatient services under s. 394.4655
52 twice in the preceding 12 months, the petition shall also serve
53 as a petition for a risk protection order under s. 790.401,
54 except that the petition does not need to meet the requirements
55 of s. 790.401(2)(b), (2)(e)2., or (2)(e)3. Such a petition for a
56 risk protection order shall, except as provided in this
57 paragraph and paragraph (d), proceed as provided in s. 790.401.

58 2. A law enforcement officer shall take a person who
59 appears to meet the criteria for involuntary examination into
60 custody and deliver the person or have him or her delivered to
61 an appropriate, or the nearest, facility within the designated
62 receiving system pursuant to s. 394.462 for examination. The
63 officer shall execute a written report detailing the
64 circumstances under which the person was taken into custody,
65 which must be made a part of the patient's clinical record. Any
66 facility accepting the patient based on this report must send a
67 copy of the report to the department within 5 working days.

68 3. A physician, clinical psychologist, psychiatric nurse,
69 mental health counselor, marriage and family therapist, or
70 clinical social worker may execute a certificate stating that he
71 or she has examined a person within the preceding 48 hours and
72 finds that the person appears to meet the criteria for
73 involuntary examination and stating the observations upon which
74 that conclusion is based. If other less restrictive means, such
75 as voluntary appearance for outpatient evaluation, are not

76 available, a law enforcement officer shall take into custody the
77 person named in the certificate and deliver him or her to the
78 appropriate, or nearest, facility within the designated
79 receiving system pursuant to s. 394.462 for involuntary
80 examination. The law enforcement officer shall execute a written
81 report detailing the circumstances under which the person was
82 taken into custody. The report and certificate shall be made a
83 part of the patient's clinical record. Any facility accepting
84 the patient based on this certificate must send a copy of the
85 certificate to the department within 5 working days. The
86 document may be submitted electronically through existing data
87 systems, if applicable.

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

94 (d)1. A law enforcement officer taking custody of a person
95 under this subsection may seize and hold a firearm or any
96 ammunition the person possesses at the time of taking him or her
97 into custody if the person poses a potential danger to himself
98 or herself or others and has made a credible threat of violence
99 against another person.

100 2.a. Except as provided in sub-subparagraph b., if the law

101 enforcement officer takes custody of the person at the person's
102 residence and the criteria in subparagraph 1. have been met, the
103 law enforcement officer may seek the voluntary surrender of
104 firearms or ammunition kept in the residence which have not
105 already been seized under subparagraph 1. If such firearms or
106 ammunition are not voluntarily surrendered, or if the person has
107 other firearms or ammunition that were not seized or voluntarily
108 surrendered when he or she was taken into custody, a law
109 enforcement officer may petition the appropriate court under s.
110 790.401 for a risk protection order against the person.

111 b. If a person has been subject to involuntary examination
112 under this section or an order for involuntary outpatient
113 services under s. 394.4655 twice in the preceding 12 months, a
114 law enforcement officer taking custody of a person under
115 subparagraph (a)1. shall seize and hold a firearm or any
116 ammunition the person possesses at the time of taking him or her
117 into custody as well as any firearms and ammunition seized at
118 the person's residence as if a temporary ex parte risk
119 protection order had been issued under s. 790.401.

120 3.a. Firearms or ammunition seized or voluntarily
121 surrendered under sub-subparagraph 2.a. ~~this paragraph~~ must be
122 made available for return no later than 24 hours after the
123 person taken into custody can document that he or she is no
124 longer subject to involuntary examination and has been released
125 or discharged from any inpatient or involuntary outpatient

126 treatment provided or ordered under paragraph (g), unless a risk
 127 protection order entered under s. 790.401 directs the law
 128 enforcement agency to hold the firearms or ammunition for a
 129 longer period or the person is subject to a firearm purchase
 130 disability under s. 790.065(2), or a firearm possession and
 131 firearm ownership disability under s. 790.064. The process for
 132 the actual return of firearms or ammunition seized or
 133 voluntarily surrendered under this paragraph may not take longer
 134 than 7 days.

135 b. Firearms and ammunition seized under sub-subparagraph
 136 2.b. may be returned as provided in s. 790.401.

137 4. Law enforcement agencies must develop policies and
 138 procedures relating to the seizure, storage, and return of
 139 firearms or ammunition held under this paragraph.

140 Section 2. Paragraph (a) of subsection (3) of section
 141 790.401, Florida Statutes, is amended to read:

142 790.401 Risk protection orders.—

143 (3) RISK PROTECTION ORDER HEARINGS AND ISSUANCE.—

144 (a) Upon receipt of a petition, the court must order a
 145 hearing to be held no later than 14 days after the date of the
 146 order, except for a petition initiated under s. 394.463(2)(a)1.
 147 for which the court must order a hearing to be held no later
 148 than 14 days after the date of the conclusion of the
 149 respondent's involuntary examination, and must issue a notice of
 150 hearing to the respondent for the same.

151 1. The clerk of the court shall cause a copy of the notice
 152 of hearing and petition to be forwarded on or before the next
 153 business day to the appropriate law enforcement agency for
 154 service upon the respondent as provided in subsection (5).

155 2. The court may, as provided in subsection (4), issue a
 156 temporary ex parte risk protection order pending the hearing
 157 ordered under this subsection. Such temporary ex parte order
 158 must be served concurrently with the notice of hearing and
 159 petition as provided in subsection (5).

160 3. The court may conduct a hearing by telephone pursuant
 161 to a local court rule to reasonably accommodate a disability or
 162 exceptional circumstances. The court must receive assurances of
 163 the petitioner's identity before conducting a telephonic
 164 hearing.

165 Section 3. Section 790.23, Florida Statutes, is amended to
 166 read:

167 790.23 Felons and delinquents; possession of firearms,
 168 ammunition, or electric weapons or devices unlawful.—

169 (1) It is unlawful for any person to own or to have in his
 170 or her care, custody, possession, or control any firearm,
 171 ammunition, or electric weapon or device, or to carry a
 172 concealed weapon, including a tear gas gun or chemical weapon or
 173 device, if that person has been:

- 174 (a) Convicted of a felony in the courts of this state;
- 175 (b) Found, in the courts of this state, to have committed

176 a delinquent act that would be a felony if committed by an adult
 177 and such person is under 24 years of age;

178 (c) Convicted of or found to have committed a crime
 179 against the United States which is designated as a felony;

180 (d) Found to have committed a delinquent act in another
 181 state, territory, or country that would be a felony if committed
 182 by an adult and which was punishable by imprisonment for a term
 183 exceeding 1 year and such person is under 24 years of age; or

184 (e) Found guilty of an offense that is a felony in another
 185 state, territory, or country and which was punishable by
 186 imprisonment for a term exceeding 1 year.

187 (2) This section does ~~shall~~ not apply to a person:

188 (a) Convicted of a felony whose civil rights and firearm
 189 authority have been restored.

190 (b) Whose criminal history record has been expunged
 191 pursuant to s. 943.0515(1)(b).

192 (3) Except as otherwise provided in subsection (4), any
 193 person who violates this section commits a felony of the second
 194 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 195 775.084, with a mandatory minimum term of imprisonment of 5
 196 years.

197 (4) Notwithstanding ~~the provisions of~~ s. 874.04, if the
 198 offense described in subsection (1) has been committed by a
 199 person who has previously qualified or currently qualifies for
 200 the penalty enhancements provided for in s. 874.04, the offense

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201 is a felony of the first degree, punishable by a term of years
202 not exceeding life or as provided in s. 775.082, s. 775.083, or
203 s. 775.084, with a mandatory minimum term of imprisonment of 5
204 years.

205 Section 4. This act shall take effect October 1, 2020.