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No. 1811

S.P. 612

In Senate, May 30, 2019

**An Act To Enhance Personal and Public Safety by Requiring
Evaluations of and Judicial Hearings for Persons in Protective
Custody Regarding Risk of Harm and Restricting Access to
Dangerous Weapons**

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator KEIM of Oxford.
Cosponsored by Senator: CARPENTER of Aroostook.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **PART A**

3 **Sec. A-1. 34-B MRSA §3862-A** is enacted to read:

4 **§3862-A. Protection from substantial threats**

5 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
6 following terms have the following meanings.

7 A. "Dangerous weapon" or "weapon" has the same meaning as in Title 17-A, section
8 2, subsection 9, paragraph C, including a firearm as defined in Title 17-A, section 2,
9 subsection 12-A.

10 B. "Extended restrictions" means the continued one-year threat-based restrictions
11 imposed by the court pursuant to subsection 6, paragraph D.

12 C. "Initial restrictions" means the immediate and temporary 14-day threat-based
13 restrictions pursuant to subsection 4.

14 D. "Judicial hearing" means a court hearing under subsection 6.

15 E. "Law enforcement agency" has the same meaning as in Title 25, section 3701,
16 subsection 1.

17 F. "Law enforcement officer" means a person vested by law with the power to make
18 arrests for crimes or serve criminal process, whether that power extends to all crimes
19 or is limited to specific crimes, and who possesses a current and valid certificate
20 issued pursuant to Title 25, section 2803-A.

21 G. "Likelihood of serious harm" means a substantial risk of physical harm to the
22 person as manifested by recent threats of, or attempts at, suicide or serious self-
23 inflicted harm; a substantial risk of physical harm to other persons as manifested by
24 recent homicidal or violent behavior or by recent conduct or statements placing
25 others in reasonable fear of serious physical harm; a reasonable certainty that the
26 person will suffer severe physical or mental harm as manifested by recent behavior
27 demonstrating an inability to avoid risk or to protect the person adequately from
28 impairment or injury; or, in view of the person's current behavior, a reasonable
29 likelihood that the person will in the foreseeable future pose a likelihood of serious
30 harm.

31 H. "Medical practitioner" has the same meaning as in section 3801, subsection 4-B.

32 I. "Prohibited person" means a person who may not own, possess or have under that
33 person's control a firearm under Title 15, section 393, subsection 1, paragraph E or
34 E-1.

35 J. "Protective custody" means protective custody under section 3862.

36 K. "Restricted person" means a person taken into protective custody by a law
37 enforcement officer the officer has probable cause to believe possesses or controls a
38 dangerous weapon, and who is found by a medical practitioner pursuant to that

1 custody to present a greater likelihood of serious harm because of access to that
2 weapon.

3 L. "Threat-based restriction" means a prohibition on a restricted person from
4 purchasing, possessing or controlling or attempting to purchase, possess or control a
5 dangerous weapon during the period of the restriction.

6 **2. Evaluation and certification by a medical practitioner.** A law enforcement
7 officer who takes a person into protective custody pursuant to section 3862 shall present
8 that person to a medical practitioner for evaluation in accordance with this subsection. A
9 medical practitioner shall evaluate the person's history, recent actions and behaviors;
10 whether there is a reasonable likelihood that the person's mental health will deteriorate;
11 whether the person will in the foreseeable future pose a likelihood of serious harm; and
12 whether any such likelihood of harm is exacerbated by the person's immediate access to a
13 dangerous weapon. A medical practitioner shall certify the evaluation and, if the
14 evaluation is certified in the affirmative, the person evaluated at the time of notice by law
15 enforcement under subsection 4, paragraph B becomes a restricted person subject to
16 initial restrictions and subject to the prohibitions in Title 15, section 393, subsection 1,
17 paragraphs E and E-1 pending a judicial hearing. In conducting the evaluation, a medical
18 practitioner may consult with other medical or mental health professionals as the medical
19 practitioner determines advisable.

20 **3. Notice by medical practitioner.** The medical practitioner shall at the time of
21 certification under subsection 2 inform the restricted person of the treatment resources
22 that may be available to the restricted person. The medical practitioner shall also notify
23 the law enforcement agency whose officer presented the person of the restricted person's
24 certification.

25 **4. Initial restrictions; notice by law enforcement.** Upon notice from the medical
26 practitioner of a restricted person's affirmative certification under subsection 2:

27 A. The restricted person, after notice under paragraph B:

28 (1) Is prohibited from possessing, controlling, acquiring or attempting to possess,
29 control or acquire a dangerous weapon pending the outcome of a judicial hearing;

30 (2) Shall immediately and temporarily surrender any weapons possessed,
31 controlled or acquired by the restricted person to a law enforcement officer who
32 has authority in the jurisdiction in which the weapons are located pending the
33 outcome of a judicial hearing; and

34 (3) Has a right to a judicial hearing within 14 days of notice under paragraph B;
35 and

36 B. A law enforcement officer shall as soon as practicable, but no later than 24 hours
37 after the affirmative certification:

38 (1) Notify the restricted person that the restricted person:

39 (a) Is prohibited from possessing, controlling, acquiring or attempting to
40 possess, control or acquire a dangerous weapon pending the outcome of a
41 judicial hearing;

1 **(b) Is required to immediately and temporarily surrender any weapons**
2 **possessed, controlled or acquired by the restricted person to a law**
3 **enforcement officer who has authority in the jurisdiction in which the**
4 **weapons are located pending the outcome of a judicial hearing; and**

5 **(c) Has a right to a judicial hearing within 14 days of the notice under this**
6 **paragraph;**

7 **(2) Notify the contact person, if any, disclosed by the restricted person to the**
8 **medical practitioner and the district attorney in the district of the restricted**
9 **person's residence of the person's restricted status; and**

10 **(3) Report the person's restricted status to the Department of Public Safety**
11 **database for protection orders.**

12 **5. Temporary surrender to law enforcement.** A law enforcement agency shall
13 **store and care for the weapons surrendered by a restricted person in the manner provided**
14 **in subsection 7. A restricted person who makes all practical, immediate efforts to comply**
15 **with a surrender notice under subsection 4 is not subject to arrest or prosecution as a**
16 **prohibited person under Title 15, section 393, subsection 1, paragraph E or E-1. If a law**
17 **enforcement agency has probable cause to believe the restricted person possesses or**
18 **controls but has not surrendered a weapon, law enforcement may, prior to or as part of a**
19 **judicial hearing, search for and seize such a weapon when authorized by a judicially**
20 **issued warrant or other circumstances approved by law.**

21 **6. Judicial hearing.** A judicial hearing under this section is governed by this
22 **subsection.**

23 **A. Within 5 days of the date of the notice given to a restricted person under**
24 **subsection 4, paragraph B, the district attorney in the district of the restricted person's**
25 **residence shall file a petition for judicial review of the initial restrictions by the**
26 **district court. The district attorney shall provide to the restricted person written**
27 **notice of the petition and hearing at least 7 days prior to the hearing. The restricted**
28 **person has the right to be represented by counsel at the hearing, and the court may**
29 **appoint counsel for an indigent party. Upon a showing of good cause, the court may**
30 **extend the time to hold the hearing.**

31 **B. Within 14 days of the notice given under subsection 4, the court shall hold a**
32 **hearing to determine whether to dissolve or extend the initial restrictions. In the**
33 **hearing determining whether to dissolve or extend the initial restrictions, the district**
34 **attorney has the burden to prove by clear and convincing evidence that the restricted**
35 **person will in the foreseeable future pose a likelihood of serious harm, and that such**
36 **likelihood is exacerbated by the person's immediate access to a dangerous weapon.**

37 **C. In determining whether there are grounds to extend the initial restrictions, the**
38 **court shall consider all relevant evidence, including, but not limited to, recent threats**
39 **or acts of violence by the restricted person directed toward other persons; recent**
40 **threats or acts of violence by the restricted person directed toward the restricted**
41 **person; recent acts of unlawful abuse of animals by the restricted person; the reckless**
42 **use or threatening display of a dangerous weapon by the restricted person; a history**
43 **of the use, attempted use or threatened use of physical force by the restricted person**

1 against other persons; prior involuntary confinement of the restricted person in a
2 hospital for persons with psychiatric disabilities; prior violations of protection or
3 harassment orders by the restricted person; evidence of stalking behavior, severe
4 obsession or sexual violence by the restricted person; the illegal use of controlled
5 substances by the restricted person; or evidence of alcohol or drug abuse by the
6 restricted person. The court shall also consider whether the restricted person is
7 receiving treatment responsive to that person's mental health or substance use needs.

8 D. This paragraph governs court orders.

9 (1) If the court finds after hearing that there is not clear and convincing evidence
10 to continue or extend the initial restrictions, the court shall dissolve the initial
11 restrictions and order the return of any weapons surrendered or seized. The court
12 shall direct the Department of Public Safety to remove the record of restrictions
13 from the department's database for protection orders.

14 (2) If the court finds after hearing that there is clear and convincing evidence to
15 continue or extend the initial restrictions, the court shall inform the restricted
16 person that the restricted person is prohibited for one year from purchasing,
17 possessing or controlling any dangerous weapon, or attempting to purchase,
18 possess or control any dangerous weapon. The court shall further order the
19 person to immediately surrender dangerous weapons possessed or controlled by
20 that person to a law enforcement officer and order a law enforcement agency to
21 ensure that the record of the restrictions is entered in the Department of Public
22 Safety database for protection orders.

23 (3) Extended restrictions imposed under this paragraph expire one year from the
24 date the restrictions were ordered by the court. The court shall schedule a
25 hearing within 45 days prior to the expiration of that one-year period to
26 determine if the order should be extended. The district attorney has the burden of
27 proving that the restricted person continues to pose a likelihood of serious harm
28 to the restricted person or others and that such likelihood is exacerbated by the
29 restricted person's immediate access to a firearm or other dangerous weapon. If,
30 after a hearing, the court finds by clear and convincing evidence that the
31 restricted person continues to pose a likelihood of serious harm, the court shall
32 renew the extended restrictions for one year. If the court does not so find, the
33 court shall deny the petition and order the return of any weapons surrendered or
34 seized. Upon motion by the State, the court may for cause shown order that the
35 restricted person be examined for evaluation of whether the restricted person
36 continues to pose a likelihood of serious harm to the restricted person or others
37 and that such likelihood is exacerbated by the restricted person's immediate
38 access to a dangerous weapon. The fees or expenses for an examination or
39 evaluation pursuant to this subparagraph may be paid from the Extradition and
40 Prosecution Expenses Account established by Title 15, section 224-A.

41 (4) A restricted person may file one motion for dissolution during a one-year
42 period of extended restrictions. For that motion, the restricted person has the
43 burden of proving by clear and convincing evidence that the restricted person no
44 longer poses a likelihood of serious harm to the restricted person or others or, if

1 such likelihood exists, that such likelihood is not exacerbated by the person's
2 immediate access to a dangerous weapon.

3 (5) A court shall transmit to the Department of Public Safety, Bureau of State
4 Police, State Bureau of Identification an abstract of the order issued by the court
5 pursuant to this section that includes a prohibition on the possession of a
6 dangerous weapon. The abstract must include the name, date of birth and gender
7 of the person who is the subject of the order; the court's order and the expiration
8 date of that order; and a notation that the person has been notified by the court.

9 The abstract required by this subparagraph is confidential and is not a public
10 record as defined in Title 1, chapter 13; however, a copy of the abstract may be
11 provided by the State Bureau of Identification to a criminal justice agency for law
12 enforcement purposes, to the Federal Bureau of Investigation, National Instant
13 Criminal Background Check System, or to an issuing authority for the purpose of
14 processing concealed firearm permit applications. The State Bureau of
15 Identification shall request that the Federal Bureau of Investigation ensure that,
16 immediately after the order expires, the National Instant Criminal Background
17 Check System no longer reflects that expired order as a ground for prohibiting
18 the subject of the order from possessing or acquiring a firearm. For the purposes
19 of this subsection, "criminal justice agency" means a federal, state, tribal, district,
20 county or local government agency or any subunit of those entities that performs
21 the administration of criminal justice under a statute or executive order, and that
22 allocates a substantial part of its annual budget to the administration of criminal
23 justice. Courts and the Department of the Attorney General are considered
24 criminal justice agencies, as is any equivalent agency at any level of Canadian
25 government.

26 **7. Weapons storage and return.** A law enforcement agency shall store any weapon
27 surrendered to or seized by law enforcement under this section for as long as the threat-
28 based restrictions are in effect. The duties and liability of a law enforcement agency with
29 respect to handling and storage of a weapon surrendered or seized are governed by Title
30 25, section 2804-C, subsection 2-C. A weapon surrendered to or seized by a law
31 enforcement agency must be returned to the restricted person when the threat-based
32 restrictions expire. If a seized or surrendered weapon remains unclaimed for 6 months
33 after the expiration or dissolution of threat-based restrictions, the law enforcement agency
34 may dispose of the weapon consistent with Title 25, section 3503-A.

35 **8. Offense.** Possession of a dangerous weapon by a restricted person is a Class D
36 crime.

37 **PART B**

38 **Sec. B-1. 34-B MRSA §3873-A, sub-§5, ¶A-1** is enacted to read:

39 A-1. Prior to the commencement of the hearing, the court shall inform the patient
40 that, if an order is entered, that patient is a prohibited person and may not possess or
41 have under that patient's control a firearm pursuant to Title 15, section 393,
42 subsection 1.

1 (2) Found not criminally responsible by reason of insanity with respect to a
2 criminal charge; or

3 (3) Found not competent to stand trial with respect to a criminal charge; or

4 (4) Ordered to participate in a progressive treatment program pursuant to Title
5 34-B, section 3873-A and, as part of that order, directed not to possess a
6 dangerous weapon pursuant to Title 34-B, section 3873-A, subsection 7-A.

7 Violation of this paragraph is a Class D crime;

8 **Sec. C-3. 15 MRSA §393, sub-§1, ¶E-1** is enacted to read:

9 E-1. Is currently a restricted person under Title 34-B, section 3862-A, subsection 2
10 or subsection 6, paragraph D. Violation of this paragraph is a Class D crime;

11 **Sec. C-4. 25 MRSA §2803-B, sub-§1, ¶L**, as amended by PL 2013, c. 147, §19,
12 is further amended to read:

13 L. Mental illness and the process for involuntary commitment, and the process for
14 protection from substantial threats by a restricted person pursuant to Title 34-B,
15 section 3862-A; and

16 **Sec. C-5. 25 MRSA §2804-C, sub-§2-E** is enacted to read:

17 **2-E. Receipt of certain dangerous weapons; training; procedure; liability.**
18 Beginning in 2020, the Maine Criminal Justice Academy Board of Trustees shall require
19 training as part of its mandated training schedule for municipal, county and state law
20 enforcement officers regarding the process for protection from substantial threats by a
21 restricted person and the proper handling, storage, safekeeping and return of dangerous
22 weapons received pursuant to a certification or court order under Title 34-B, section
23 3862-A or 3873-A. The training must include education concerning the prohibitions on
24 the purchase, control or possession of dangerous weapons. A law enforcement officer
25 who receives custody of a dangerous weapon pursuant to Title 34-B, section 3862-A or
26 3873-A shall exercise reasonable care to avoid loss, damage or reduction in value of the
27 weapon and may not permanently mark or fire the weapon unless there is reasonable
28 suspicion that the weapon has been used in the commission of a crime. Any liability for
29 damage or reduction in value to such a weapon is governed by Title 14, chapter 741.

30 SUMMARY

31 Current law authorizes law enforcement to take a person into protective custody for
32 evaluation by a medical practitioner as protection from imminent threats of substantial
33 self-inflicted harm or substantial harm to others. Part A of this bill requires that a
34 medical practitioner evaluate the history, recent actions and behaviors of a person taken
35 into protective custody and determine whether there is a reasonable likelihood that the
36 person's mental health will deteriorate; whether the person will in the foreseeable future
37 pose a likelihood of serious harm; and whether any such likelihood of harm is
38 exacerbated by the person's immediate access to a firearm or other dangerous weapon. A
39 medical practitioner must certify this evaluation and, if the evaluation is certified in the
40 affirmative, the person is required to surrender any dangerous weapons possessed or

1 controlled by that person to a law enforcement officer pending a judicial review hearing
2 to be held within 14 days. A court then determines whether to dissolve or continue those
3 restrictions for one year. When the person is determined by a court to no longer present a
4 substantial threat, the restrictions end and the weapons are returned. Part B of this bill
5 requires that a court make similar determinations for a person enrolled in the progressive
6 treatment program. When a person in that program is no longer determined by a court to
7 present a substantial threat, the restrictions end and the weapons are returned. Part C
8 makes related changes to the laws governing the Extradition and Prosecution Expenses
9 Account; possession of firearms by prohibited persons; law enforcement agency written
10 policy requirements; and law enforcement agency training requirements.