

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST SPECIAL SESSION-1997

Legislative Document

No. 1791

H.P. 1264

House of Representatives, April 15, 1997

**An Act to Bring the State into Conformity with the Firearms Provisions
of the Violence against Women Provisions of the Federal Violent Crime
Control Act.**

Reference to the Committee on Criminal Justice suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative MITCHELL of Portland.
Cosponsored by Senator PINGREE of Knox and
Representatives: FULLER of Manchester, QUINT of Portland, STEVENS of Orono,
TOWNSEND of Portland, Senators: ABROMSON of Cumberland, LONGLEY of Waldo.

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

2
4 **Sec. 1. 15 MRSA §393, sub-§1, ¶¶B and C**, as enacted by PL 1993, c. 368, §1, are amended to read:

6 B. Has been convicted of a crime, under the laws of the
8 United States, this State or any other state, that was
10 committed with the use of a dangerous weapon or a firearm
 against a person, except for a violation of former Title 12,
 chapter 319, subchapter III; or

12 C. Has been adjudicated in this State or under the laws of
14 the United States or any other state to have engaged in
 conduct as a juvenile that, if committed by an adult, would
 have been a disqualifying conviction:

16 (1) Under paragraph A and bodily injury to another
18 person was threatened or resulted; or

20 (2) Under paragraph B; or

22 **Sec. 2. 15 MRSA §393, sub-§1, ¶D** is enacted to read:

24 D. Is subject to an order of a court of the United States
26 or a state, territory, commonwealth or tribe that restrains
28 that person from harassing, stalking or threatening an
30 intimate partner, as defined in 18 United States Code,
32 Section 921(a), of that person or a child of the intimate
34 partner of that person, or from engaging in other conduct
36 that would place the intimate partner in reasonable fear of
 bodily injury to the intimate partner or the child, except
 that this paragraph applies only to a court order that was
 issued after a hearing for which that person received actual
 notice and at which that person had the opportunity to
 participate and that:

38 (1) Includes a finding that the person represents a
40 credible threat to the physical safety of an intimate
42 partner or a child; or

44 (2) By its terms, explicitly prohibits the use,
 attempted use or threatened use of physical force
 against an intimate partner or a child that would
 reasonably be expected to cause bodily injury.

46 **Sec. 3. 19-A MRSA §4007, sub-§1**, as enacted by PL 1995, c.
48 694, Pt. B, §2 and affected by Pt. E, §2, is amended by amending
 the first paragraph to read:

2 **1. Protection order; consent agreement.** The court, after a
4 hearing and upon finding that the defendant has committed the
6 alleged abuse, may grant a protective order or, upon making that
8 finding, approve a consent agreement to bring about a cessation
10 of abuse. This subsection does not preclude the parties from
 voluntarily requesting a consent agreement without a finding of
 abuse. The court may enter a finding that the defendant
 represents a credible threat to the physical safety of the
 plaintiff or a minor child residing in the plaintiff's
 household. Relief granted under this section may include:

12 **Sec. 4. 19-A MRSA §4007, sub-§1, ¶A-1** is enacted to read:

14 A-1. Directing the defendant not to possess a firearm or
16 other dangerous weapon for the duration of the order;

18 **Sec. 5. 19-A MRSA §4007, sub-§3,** as enacted by PL 1995, c.
 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

20 **3. Consequences of violation.** A protective order or
22 approved consent agreement must indicate, in a clear and
24 conspicuous manner, the potential consequences of violation of
 the order or agreement, as provided in section 4011 and Title 15,
 section 393, subsection 1, paragraph D, if applicable.

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SUMMARY

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30 This bill makes the penalty provisions of the crimes between
32 family members and the domestic abuse laws consistent with each
 other and the federal Violent Crime Control Act.

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34 The federal Violent Crime Control Act prohibits persons
36 against whom certain protective orders are issued from possessing
38 a firearm. The orders must contain specific findings or other
40 provisions, and the prohibition applies to orders issued in all
42 state, federal and tribal courts. This bill incorporates the
44 federal requirements into state law to provide for enforcement by
46 state law enforcement officers and prosecutors. This bill
48 establishes a Class C crime for possessing a firearm while under
 a protective order that was issued after a hearing for which the
 person received actual notice and at which the person had an
 opportunity to participate. The protective order must also
 either include a finding that the person represents a credible
 threat to the physical safety of an intimate partner or children
 residing in the intimate partner's household or explicitly
 prohibit the use, attempted use or threatened use of physical
 force against an intimate partner or a child. The bill
 incorporates federal language rather than the terms used in the
 protection from abuse chapter of state law in order to comply

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2 with the federal mandate requiring states to give full faith and
credit to other states' protective orders.

4 The bill revises the protection from abuse laws in 2 ways.
6 First, it specifically authorizes a court to make a finding that
the defendant represents a credible threat to the plaintiff or
8 minor children in the household. Second, it specifically
authorizes a court to direct the defendant not to possess a
10 firearm or other weapon for the duration of the protective
order. This does not remove from the court its current
discretion to order a defendant not to possess a firearm.

12
14 The bill requires a protection from abuse order to state the
potential consequences of violating the order. Specifically, the
order must state that possessing a firearm when the required
16 findings and directives are made is a Class C crime.