

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1568

S.P. 527

In Senate, April 14, 2003

An Act To Protect Plaintiffs and Minor Children in Certain Civil Protection Order Cases

Submitted by the Department of the Attorney General pursuant to Joint Rule 204.
Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN
Secretary of the Senate

Presented by President DAGGETT of Kennebec.

Under suspension of the rules, cosponsored by Speaker COLWELL of Gardiner and
Senators: BENNETT of Oxford, BRENNAN of Cumberland, BROMLEY of Cumberland,
BRYANT of Oxford, CARPENTER of York, CATHCART of Penobscot, DAVIS of
Piscataquis, DOUGLASS of Androscoggin, EDMONDS of Cumberland, GAGNON of
Kennebec, GILMAN of Cumberland, HATCH of Somerset, KNEELAND of Aroostook,
LEMONT of York, MARTIN of Aroostook, MAYO of Sagadahoc, MITCHELL of Penobscot,
NASS of York, PENDLETON of Cumberland, ROTUNDO of Androscoggin, SAVAGE of
Knox, SAWYER of Penobscot, SHOREY of Washington, STANLEY of Penobscot,

STRIMLING of Cumberland, TREAT of Kennebec, TURNER of Cumberland, WESTON of Waldo, WOODCOCK of Franklin, YOUNGBLOOD of Penobscot, Representatives: ANDREWS of York, AUSTIN of Gray, BARSTOW of Gorham, BENNETT of Caribou, BERRY of Belmont, BERUBE of Lisbon, BLANCHETTE of Bangor, BLISS of South Portland, BRANNIGAN of Portland, BRUNO of Raymond, BRYANT-DESCHENES of Turner, BULL of Freeport, CANAVAN of Waterville, CARR of Lincoln, CLARK of Millinocket, CROSTHWAITE of Ellsworth, CUMMINGS of Portland, CURLEY of Scarborough, DAVIS of Falmouth, DUNLAP of Old Town, DUPLESSIE of Westbrook, EARLE of Damariscotta, EDER of Portland, FINCH of Fairfield, FISCHER of Presque Isle, GERZOFKY of Brunswick, GREELEY of Levant, GROSE of Woolwich, HATCH of Skowhegan, HOTHAM of Dixfield, KANE of Saco, LAVERRIERE-BOUCHER of Biddeford, LEDWIN of Holden, LEMOINE of Old Orchard Beach, LESSARD of Topsham, LEWIN of Eliot, LORING of the Penobscot Nation, MAILHOT of Lewiston, MAKAS of Lewiston, McKEE of Wayne, McLAUGHLIN of Cape Elizabeth, McNEIL of Rockland, MILLETT of Waterford, MILLS of Farmington, MURPHY of Kennebunk, NORBERT of Portland, O'BRIEN of Augusta, PARADIS of Frenchville, PATRICK of Rumford, PERRY of Bangor, RECTOR of Thomaston, RICHARDSON of Brunswick, ROGERS of Brewer, SHERMAN of Hodgdon, SIMPSON of Auburn, SMITH of Monmouth, SNOWE-MELLO of Poland, TARDY of Newport, TOBIN of Windham, TRAHAN of Waldoboro, USHER of Westbrook, WATSON of Bath, YOUNG of Limestone.

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

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Sec. 1. 19-A MRSA §4005, sub-§5 is enacted to read:

6 5. Notice. Prior to the plaintiff signing a complaint, the
7 court shall notify the plaintiff that it is a crime to make a
8 false statement under oath in a court document.

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11
Sec. 2. 19-A MRSA §4006, sub-§2-A is enacted to read:

12 2-A. Temporary orders; possession of dangerous weapons.
13 The court may direct the defendant not to possess a firearm or
14 other dangerous weapon for the duration of the temporary order if
15 the complaint demonstrates:

16 A. Abuse that involves a firearm or other dangerous weapon;
17 or

18 B. A heightened risk of immediate abuse to the plaintiff or
19 a minor child. In determining whether a heightened risk of
20 immediate abuse is present, the court shall consider, but is
21 not limited to consideration of, whether:

22
23 (1) The temporary order of protection is not likely to
24 achieve its purpose in the absence of such a condition;

25 (2) The defendant has violated orders of protection;

26
27 (3) Past or present abuse to a victim resulted in
28 injury;

29 (4) The abuse occurred in public; and

30 (5) The abuse includes:

31
32 (a) Threats of suicide or homicide;

33 (b) Killing or threatening to kill pets;

34 (c) An escalation of violence;

35 (d) Stalking behavior or extreme obsession;

36 (e) Sexual violence;

37 (f) Excessive alcohol or drug use; and

38 (g) Abuse against a pregnant victim.

2 If the court prohibits the defendant from possessing a firearm or
4 other dangerous weapon in a temporary order and if the defendant
6 moves for dissolution or modification of an order pursuant to
8 subsection 7, the court must hear and decide the motion as
10 expeditiously as possible and must issue a written decision on
12 the motion within 24 hours after a hearing on that motion.

14 If the court prohibits the defendant from possessing a dangerous
16 weapon other than a firearm in a temporary order, the court shall
18 specify the type of weapon the defendant is prohibited from
20 possessing.

22 If the court prohibits the defendant from possessing a firearm or
24 other dangerous weapon in a temporary order, the court shall
26 direct the defendant to relinquish, within 24 hours after service
28 of the order on the defendant or such earlier time as the court
30 specifies in the order, all firearms and specified dangerous
32 weapons in the possession of the defendant to a law enforcement
34 officer or other individual for the duration of the order. If
36 the weapons are relinquished to an individual other than a law
38 enforcement officer, the defendant must file, within 24 hours
40 after such relinquishment, with the court or local law
42 enforcement agency designated in the order a written statement
44 that contains the name and address of the individual holding the
46 weapons and a description of all weapons held by that
48 individual. The court may subsequently issue a search warrant
50 authorizing a law enforcement officer to seize any firearms and
other dangerous weapons at any location if there is probable
cause to believe such firearms or dangerous weapons have not been
relinquished by the defendant.

32 **Sec. 3. 19-A MRS §4007, sub-§1-A is enacted to read:**

34 **1-A. No possession of firearm or dangerous weapons for**
36 **duration of order. If the court prohibits the defendant from**
38 **possessing a dangerous weapon other than a firearm, the court**
shall specify the type of weapon the defendant is prohibited from
possessing.

40 If the court prohibits the defendant from possessing a firearm or
42 other dangerous weapon, the court shall direct the defendant to
44 relinquish, within 24 hours after service of the order on the
46 defendant or such earlier time as the court specifies in the
48 order, all firearms and specified dangerous weapons in the
50 possession of the defendant to a law enforcement officer or other
individual for the duration of the order. If the weapons are
relinquished to an individual other than a law enforcement
officer, the defendant must file, within 24 hours after such
relinquishment, with the court or local law enforcement agency
designated in the order a written statement that contains the
name and address of the individual holding the weapons and a

2 description of all weapons held by that individual. The court
3 may subsequently issue a search warrant authorizing a law
4 enforcement officer to seize any firearms and other dangerous
5 weapons at any location if there is probable cause to believe
6 such firearms or dangerous weapons have not been relinquished by
7 the defendant.

8

SUMMARY

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11 This bill allows the court, in the most dangerous protection
12 from abuse cases, to issue a temporary order that prohibits the
13 defendant from possessing a firearm or other dangerous weapon.
14 The bill incorporates proven indicators of increased risk of
15 death in domestic violence situations to help the court determine
16 when it is appropriate to grant the permitted relief. It also
17 provides the defendant with a prompt hearing and decision on a
18 motion for dissolution or modification. Finally, the bill
19 requires a defendant to relinquish possession of firearms and
20 specified dangerous weapons if the defendant is prohibited from
21 possession in either a temporary or permanent protection order.
22