

MAINE STATE LEGISLATURE

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1
2 Date: 6/8/07

L.D. 1902
(Filing No. H-480)

3 **CRIMINAL JUSTICE AND PUBLIC SAFETY**

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5 **STATE OF MAINE**
6 **HOUSE OF REPRESENTATIVES**
7 **123RD LEGISLATURE**
8 **FIRST REGULAR SESSION**

9 COMMITTEE AMENDMENT "A" to H.P. 1336, L.D. 1902, Bill, "An Act To
10 Bring Maine into Compliance with Federal Law Regarding Purchases of Firearms by
11 Persons Found To Be a Danger to Themselves or Others"

12 Amend the bill by striking out the title and substituting the following:

13 **'An Act Requiring the State Bureau of Identification To Report Persons**
14 **Found To Be a Danger to Themselves or to Others to the National Instant**
15 **Criminal Background Check System'**

16 Amend the bill by striking out everything after the enacting clause and before the
17 summary and inserting the following:

18 **'Sec. 1. 15 MRSA §393, sub-§1, ¶C,** as amended by PL 2001, c. 549, §2, is
19 further amended to read:

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

23 (1) Under paragraph A-1, subparagraphs (1) to (4) and bodily injury to another
24 person was threatened or resulted; or

25 (3) Under paragraph A-1, subparagraph (5); or

26 **Sec. 2. 15 MRSA §393, sub-§1, ¶D,** as enacted by PL 1997, c. 334, §2, is
27 amended to read:

28 D. Is subject to an order of a court of the United States or a state, territory,
29 commonwealth or tribe that restrains that person from harassing, stalking or
30 threatening an intimate partner, as defined in 18 United States Code, Section 921(a),
31 of that person or a child of the intimate partner of that person, or from engaging in
32 other conduct that would place the intimate partner in reasonable fear of bodily injury
33 to the intimate partner or the child, except that this paragraph applies only to a court

COMMITTEE AMENDMENT

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:

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

(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; or

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

E. Has been:

(1) Committed involuntarily to a psychiatric hospital pursuant to an order of the District Court under Title 34-B, section 3864 because the person was found to present a likelihood of serious harm to self as defined under Title 34-B, section 3801, subsection 4, paragraph A or because the person was found to present a likelihood of serious harm to others as defined under Title 34-B, section 3801, subsection 4, paragraph B;

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

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

Sec. 4. 15 MRSA §393, sub-§2, as amended by PL 2007, c. 194, §3, is further amended to read:

2. Application after 5 years. A person subject to the provisions of subsection 1 may, after the expiration of 5 years from the date that the person is finally discharged from the sentences imposed as a result of the conviction or adjudication, apply to the Commissioner of Public Safety for a permit to carry a firearm. That person may not be issued a permit to carry a concealed firearm pursuant to Title 25, chapter 252. A permit issued pursuant to this subsection is valid for 4 years from the date of issue unless sooner revoked for cause by the Commissioner of Public Safety. For purposes of this subsection, "firearm" does not include a firearm defined under 18 United States Code, Section 921(3). A person subject to the provisions of subsection 1, paragraph E is subject to the requirements of subsection 2-A.

Sec. 5. 15 MRSA §393, sub-§2-A is enacted to read:

2-A. Restoration of right of firearm possession. A person who has been prohibited from possessing a firearm under subsection 1, paragraph E may apply to the Commissioner of Public Safety for restoration of the right to possess a firearm. That person may not be issued a permit to carry a concealed firearm pursuant to Title 25, chapter 252. For purposes of this subsection, "firearm" does not include a firearm defined under 18 United States Code, Section 921(3).

Sec. 6. 15 MRSA §393, sub-§3-A is enacted to read:

3-A. Contents of application for person applying pursuant to subsection 2-A. An application made pursuant to subsection 2-A must be on a form prepared by the

1 Commissioner of Public Safety. The application must include the applicant's full name;
2 all aliases; date and place of birth; place of legal residence; occupation; make, model and
3 serial number of the firearm sought to be possessed; date and court of commitment or
4 action under subsection 1, paragraph E; date of discharge from a psychiatric hospital; and
5 any other information determined by the commissioner to be of assistance.

6 **Sec. 7. 15 MRSA §393, sub-§4**, as enacted by PL 1977, c. 225, §2, is amended to
7 read:

8 **4. Notification, objection and hearing.** Upon receipt of an application, the
9 Commissioner of Public Safety shall determine if it is in proper form. If the application is
10 proper, ~~he the commissioner~~ shall within 30 days notify in writing the sentencing or
11 presiding judge, the Attorney General, the district attorney for the county where the
12 applicant resides, the district attorney for the county where the conviction, alleged
13 criminal conduct, commitment or action under subsection 1, paragraph E occurred, the
14 law enforcement agency which that investigated the crime, the chief of police and sheriff
15 in the municipality and county where the crime, alleged criminal conduct, commitment or
16 action under subsection 1, paragraph E occurred and the chief of police and sheriff in the
17 municipality where the applicant resides as of the filing of the application. The
18 commissioner may direct any appropriate investigation to be carried out. If, within 30
19 days of the sending of notice, any person so notified objects in writing to the issuance of a
20 permit, none shall a permit may not be issued. The commissioner may deny an
21 application if no objection is filed.

22 **Sec. 8. 15 MRSA §393, sub-§8**, as amended by PL 2005, c. 527, §5, is further
23 amended to read:

24 **8. Penalty.** A violation of subsection 1, paragraph A-1 or, C or E is a Class C crime.
25 A violation of subsection 1, paragraph D is a Class D crime. A violation of subsection
26 1-A by a person at least 18 years of age is a Class C crime.

27 **Sec. 9. 25 MRSA §1541, sub-§3, ¶C** is enacted to read:

28 C. The commanding officer shall report the resulting disqualification of a person
29 from possessing or having under that person's control a firearm to the Federal Bureau
30 of Investigation upon receipt of a report from a court that a person has been:

31 (1) Committed involuntarily to a psychiatric hospital pursuant to an order of the
32 District Court under Title 34-B, section 3864 because the person was found to
33 present a likelihood of serious harm to self as defined under Title 34-B, section
34 3801, subsection 4, paragraph A or because the person was found to present a
35 likelihood of serious harm to others as defined under Title 34-B, section 3801,
36 subsection 4, paragraph B;

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

39 (3) Found not competent to stand trial with respect to a criminal charge.

40 The commanding officer may adopt routine technical rules, as defined in Title 5,
41 chapter 375, subchapter 2-A, as necessary to implement the requirements of this
42 paragraph.

Sec. 10. 34-B MRSA §1207, sub-§1, ¶B, as corrected by RR 2005, c. 2, §22, is amended to read:

B. Information may be disclosed if necessary to carry out any of the statutory functions of the department; the hospitalization provisions of chapter 3, subchapter 4; the purposes of sections 3607 and 3608; the purposes of Title 15, section 393; the purposes of Title 5, section 19506; or the purposes of United States Public Law 99-319, dealing with the investigatory function of the independent agency designated with advocacy and investigatory functions under United States Public Law 88-164, Title I, Part C or United States Public Law 99-319;

Sec. 11. 34-B MRSA §3864, sub-§12 is enacted to read:

12. Firearms possession prohibition notification; reporting. A court that orders a person to be committed involuntarily pursuant to this section shall inform the person that possession, ownership or control of a firearm by that person is prohibited pursuant to Title 15, section 393, subsection 1. At the conclusion of the proceeding ordering involuntary commitment, the court shall transmit to the Department of Public Safety, State Bureau of Identification a duly authorized abstract of the proceeding on forms provided by the bureau. As used in this subsection, "firearm" has the same meaning as in Title 17-A, section 2, subsection 12-A.'

SUMMARY

This amendment replaces the bill and proposes a procedure to prevent possession of a firearm by a person who has been committed involuntarily to a psychiatric hospital after a commitment hearing under the Maine Revised Statutes, Title 34-B, section 3864, subsection 7 because the person was found to present a threat of substantial risk of physical harm to self, was found to present a threat of substantial risk of physical harm to others, was found not criminally responsible by reason of insanity with respect to a criminal charge or was found not competent to stand trial with respect to a criminal charge.

The amendment requires the court to report information about a person adjudicated as being a danger to self or to others to the Department of Public Safety, State Bureau of Identification, which is then required to pass the fact of disqualification on to the Federal Bureau of Investigation for use in the National Instant Criminal Background Check System. The amendment also authorizes a person who has been previously prohibited from possessing a firearm under these new prohibitions to apply to the Commissioner of Public Safety for the restoration of the right to possess a black powder rifle or any other firearm that does not fall within the definition of "firearm" under 18 United States Code, Section 921(3).

FISCAL NOTE REQUIRED
(See attached)



123rd MAINE LEGISLATURE

LD 1902

LR 2640(02)

**An Act To Bring Maine into Compliance with Federal Law Regarding Purchases of Firearms by
Persons Found To Be a Danger to Themselves or Others**

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Criminal Justice and Public Safety

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

The additional costs to provide certain information to the State Bureau of Identification can be absorbed by the Judicial Department utilizing existing budgeted resources. The additional costs that will be incurred by the State Bureau of Identification within the Department of Public Safety to process certain information and to administer changes to the firearm permitting process can be absorbed by the department utilizing existing budgeted resources.