

MAINE STATE LEGISLATURE

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Date: 4/4/8

L.D. 1902
(Filing No. H-941)

CRIMINAL JUSTICE AND PUBLIC SAFETY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
123RD LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT "B" to H.P. 1336, L.D. 1902, Bill, "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"

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

Sec. 1. 4 MRSA §152, sub-§13, as enacted by PL 1999, c. 731, Pt. ZZZ, §4 and affected by §42, is amended to read:

13. **Desertion and nonsupport.** Jurisdiction over complaints for desertion and nonsupport or nonsupport of dependents in the district where either the spouse, the dependent or the respondent resides; ~~and~~

Sec. 2. 4 MRSA §152, sub-§14, as enacted by PL 1999, c. 731, Pt. ZZZ, §4 and affected by §42, is amended to read:

14. **Civil violations.** Jurisdiction over all civil violations, as provided in Title 17-A, section 9, and traffic infractions; and

Sec. 3. 4 MRSA §152, sub-§15 is enacted to read:

15. Restoration of right to possess firearms. Exclusive jurisdiction to conduct de novo review of a determination by the Commissioner of Public Safety pursuant to Title 15, section 393, subsection 4-A.

Sec. 4. 15 MRSA §393, sub-§1, ¶C, as amended by PL 2001, c. 549, §2, is further amended to read:

C. Has been adjudicated in this State or under the laws of 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:

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

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COMMITTEE AMENDMENT "B" to H.P. 1336, L.D. 1902

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

2 **Sec. 5. 15 MRSA §393, sub-§1, ¶D**, as enacted by PL 1997, c. 334, §2, is
3 amended to read:

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

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

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

17 **Sec. 6. 15 MRSA §393, sub-§1, ¶E** is enacted to read:

18 E. Has been:

19 (1) Committed involuntarily to a hospital pursuant to an order of the District
20 Court under Title 34-B, section 3864 because the person was found to present a
21 likelihood of serious harm, as defined under Title 34-B, section 3801, subsection
22 4, paragraphs A to C;

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

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

26 **Sec. 7. 15 MRSA §393, sub-§2**, as amended by PL 2007, c. 194, §3, is further
27 amended to read:

28 **2. Application after 5 years.** A person subject to the provisions of subsection 1,
29 paragraph A-1 or C as a result of a conviction or adjudication may, after the expiration of
30 5 years from the date that the person is finally discharged from the sentences imposed as
31 a result of the conviction or adjudication, apply to the ~~Commissioner of Public Safety~~
32 commissioner for a permit to carry a firearm. That person may not be issued a permit to
33 carry a concealed firearm pursuant to Title 25, chapter 252. A permit issued pursuant to
34 this subsection is valid for 4 years from the date of issue unless sooner revoked for cause
35 by the ~~Commissioner of Public Safety~~ commissioner. For purposes of this subsection,
36 "firearm" does not include a firearm defined under 18 United States Code, Section
37 921(3).

38 **Sec. 8. 15 MRSA §393, sub-§4**, as enacted by PL 1977, c. 225, §2, is amended to
39 read:

1 **4. Notification, objection and decision.** Upon receipt of an application, the
2 ~~Commissioner of Public Safety~~ commissioner shall determine if it is in proper form. If
3 the application is proper, ~~he~~ the commissioner shall within 30 days notify in writing the
4 sentencing or presiding judge, the Attorney General, the district attorney for the county
5 where the applicant resides, the district attorney for the county where the conviction
6 occurred, the law enforcement agency ~~which~~ that investigated the crime, the chief of
7 police and sheriff in the municipality and county where the crime occurred and the chief
8 of police and sheriff in the municipality where the applicant resides as of the filing of the
9 application. The commissioner may direct any appropriate investigation to be carried out.
10 If, within 30 days of the sending of notice, any person so notified objects in writing to the
11 issuance of a permit, ~~none shall~~ a permit may not be issued. The commissioner may deny
12 an application even if no objection is filed.

13 **Sec. 9. 15 MRSA §393, sub-§4-A** is enacted to read:

14 **4-A. Application for relief.** Except as otherwise provided, a person subject to the
15 federal prohibition against possession of firearms pursuant to 18 United States Code,
16 Section 922(g)(4) as a result of being adjudicated a mental defective or committed to any
17 psychiatric hospital pursuant to Title 34-B, section 3863 and who has not been committed
18 to a psychiatric hospital pursuant to an order of the District Court pursuant to Title 34-B,
19 section 3864 may, after the expiration of 5 years from the date of final discharge from
20 commitment, apply to the commissioner for relief from the disability.

21 Relief is not available under this subsection for a person found not criminally responsible
22 by reason of insanity or incompetent to stand trial in a criminal case or a person adjudged
23 by a Probate Court to lack the capacity to contract or manage the person's own affairs.

24 A. An application under this subsection must be on a form developed by the
25 commissioner. The application must include the applicant's full name; all aliases;
26 date and place of birth; place of legal residence; occupation; make and model of the
27 firearm sought to be possessed; reason for the request; date, place and docket number
28 of commitment; name of institution to which applicant was committed; names of
29 providers that provided mental health treatment for the applicant; date of discharge
30 from commitment; release for all mental health records; and any other information
31 determined by the commissioner to be of assistance. The application must be
32 accompanied by certified or attested copies of the commitment from which the
33 applicant seeks relief and the report of an independent psychologist or psychiatrist
34 licensed to practice in this State specifically addressing the factors set forth in
35 paragraph E. The commissioner may establish a roster of psychologists and
36 psychiatrists qualified and interested in doing these evaluations. The psychologist or
37 psychiatrist must be available for cross-examination. The psychologist or psychiatrist
38 listed on the roster is an employee for the purposes of the Maine Tort Claims Act for
39 evaluations under this paragraph.

40 B. The commissioner has the independent authority to establish the following, to be
41 paid by the applicant:

42 (1) Application fee; and

43 (2) Fees for evaluations required by paragraph A.

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1 C. Upon receipt of a completed application, the commissioner shall notify persons
2 who received notice of the commitment pursuant to Title 34-B, section 3864,
3 subsection 3, paragraph A, subparagraph (2) and the district attorney, chief of police
4 and sheriff in the municipality and county where the applicant resides of the filing of
5 the application, with a request to provide to the commissioner any information
6 relevant to the factors in paragraph E.

7 D. Upon receipt of a completed application, the commissioner shall review the
8 application and determine whether the person has made a prima facie showing of the
9 elements of paragraph E. If the commissioner determines that the person has made a
10 prima facie showing, the commissioner shall schedule a hearing.

11 E. The burden of proof is on the applicant to prove, by clear and convincing
12 evidence, that the circumstances that led to the involuntary commitment to a hospital
13 have changed, that the applicant is not likely to act in a manner dangerous to public
14 safety and that granting the application for relief will not be contrary to the public
15 interest.

16 F. If the commissioner finds by clear and convincing evidence that the circumstances
17 that led to the involuntary commitment have changed, that the applicant is not likely
18 to act in a manner dangerous to public safety and that granting the application for
19 relief will not be contrary to the public interest, the commissioner may grant relief.

20 G. Notwithstanding any other provision of law, and except as indicated in this
21 paragraph, all applications for relief pursuant to this subsection and documents made
22 a part of the application, refusals and any information of record collected by the
23 commissioner during the process of determining whether an applicant qualifies for
24 relief are confidential and may not be made available for public inspection or copying
25 unless:

26 (1) The applicant waives this confidentiality in writing or on the record of any
27 hearing; or

28 (2) A court of record so orders. Proceedings relating to the grant or denial of
29 relief are not public proceedings under Title 1, chapter 13.

30 The commissioner shall make a permanent record, in the form of a summary, of the
31 final decision regarding each application. The summary must include the name of the
32 applicant and indicate whether the application for relief was granted or denied. The
33 information contained in this summary is available for public inspection.

34 H. An applicant may appeal the denial of an application for relief under this
35 subsection within 30 days of receipt of the written notice of decision by filing a
36 complaint in the District Court for de novo review in the district where the
37 Department of Public Safety has its principal office. Hearings are closed unless
38 otherwise agreed to by the applicant. A party aggrieved by a decision of the District
39 Court may not appeal as of right. The time for taking the appeal and the manner and
40 any conditions for the taking of the appeal are as the Supreme Judicial Court provides
41 by rule.

42 **Sec. 10. 15 MRSA §393, sub-§5, as enacted by PL 1977, c. 225, §2, is amended**
43 **to read:**

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1 **5. Appeal.** Any person to whom a permit under subsection 2 has been denied may
2 ~~appeal to the Superior Court of Kennebec County. The decision of the commissioner may~~
3 ~~not be overturned unless the court shall find that the applicant's request is reasonable and~~
4 ~~that the denial of the commissioner was arbitrary, capricious or discriminatory~~ file a
5 petition for review pursuant to Title 5, chapter 375, subchapter 7.

6 **Sec. 11. 15 MRSA §393, sub-§7, ¶E** is enacted to read:

7 E. "Commissioner" means the Commissioner of Public Safety or the commissioner's
8 designee.

9 **Sec. 12. 15 MRSA §393, sub-§8,** as amended by PL 2005, c. 527, §5, is further
10 amended to read:

11 **8. Penalty.** A violation of subsection 1, paragraph A-1 or C is a Class C crime. A
12 violation of subsection 1, paragraph D or E is a Class D crime. A violation of subsection
13 1-A by a person at least 18 years of age is a Class C crime.

14 **Sec. 13. 15 MRSA §393, sub-§9** is enacted to read:

15 **9. Prima facie evidence.** Notwithstanding any other law or rule of evidence, a copy
16 of a court abstract provided by a court to the Department of Public Safety, State Bureau
17 of Identification pursuant to Title 34-B, section 3864, subsection 12, if certified by the
18 custodian of the records of that bureau, or the custodian's designee, is admissible in a
19 criminal prosecution brought pursuant to this section as prima facie evidence that the
20 person identified in the abstract has been involuntarily committed by the court issuing the
21 abstract and has been provided the notice required in Title 34-B, section 3864, subsection
22 5, paragraph A-1 and Title 34-B, section 3864, subsection 13.

23 **Sec. 14. 15 MRSA §393, sub-§10** is enacted to read:

24 **10. Subpoena power.** The commissioner is authorized to issue a subpoena in the
25 name of the commissioner in accordance with Title 5, section 9060, except that this
26 authority applies to any stage of an investigation under this section and is not limited to
27 an adjudicatory hearing. If a witness refuses to obey a subpoena or to give any evidence
28 relevant to proper inquiry by the commissioner, the Attorney General may petition the
29 Superior Court in the county where the refusal occurred to find the witness in contempt.
30 The Attorney General shall cause to be served on that witness an order requiring the
31 witness to appear before the Superior Court to show cause why the witness should not be
32 adjudged in contempt. The court shall, in a summary manner, hear the evidence and, if it
33 is such as to warrant the court in doing so, punish that witness in the same manner and to
34 the same extent as for contempt committed before the Superior Court or with reference to
35 the process of the Superior Court.

36 **Sec. 15. 15 MRSA §393, sub-§11** is enacted to read:

37 **11. Rules.** The commissioner may adopt rules to implement the provisions of
38 subsections 2 to 4-A. Rules adopted pursuant to this subsection are routine technical
39 rules as defined by Title 5, chapter 375, subchapter 2-A.

40 **Sec. 16. 25 MRSA §1541, sub-§3, ¶C** is enacted to read:

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1 C. The commanding officer shall report to the Federal Bureau of Investigation,
2 National Instant Criminal Background Check System a court's finding, upon the
3 commanding officer's receipt of an abstract from a court that a person has been:

4 (1) Committed involuntarily to a hospital pursuant to an order of the District
5 Court under Title 34-B, section 3864 because the person was found to present a
6 likelihood of serious harm, as defined under Title 34-B, section 3801, subsection
7 4, paragraphs A to D;

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

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

11 The commanding officer may adopt rules to implement the requirements of this
12 paragraph. Rules adopted pursuant to this paragraph are routine technical rules, as
13 defined in Title 5, chapter 375, subchapter 2-A.

14 **Sec. 17. 34-B MRSA §1207, sub-§1, ¶B,** as amended by PL 2007, c. 286, §2, is
15 further amended to read:

16 B. Information may be disclosed if necessary to carry out the statutory functions of
17 the department; the hospitalization provisions of chapter 3, subchapter 4; the
18 purposes of sections 3607-A and 3608; the purposes of Title 5, section 19506 or; the
19 purposes of United States Public Law 99-319, dealing with the investigatory function
20 of the independent agency designated with advocacy and investigatory functions
21 under United States Public Law 88-164, Title I, Part C or United States Public Law
22 99-319; or the investigation and hearing pursuant to Title 15, section 393, subsection
23 4-A;

24 **Sec. 18. 34-B MRSA §3864, sub-§5, ¶A-1** is enacted to read:

25 A-1. Prior to the commencement of the hearing, the court shall inform the person
26 that if an order of involuntary commitment is entered, that person is a prohibited
27 person and may not own, possess or have under that person's control a firearm
28 pursuant to Title 15, section 393, subsection 1.

29 **Sec. 19. 34-B MRSA §3864, sub-§12** is enacted to read:

30 **12. Transmission of abstract of court ruling to the State Bureau of**
31 **Identification. Notwithstanding any other provision of this section or section 1207, a**
32 **court shall transmit to the Department of Public Safety, State Bureau of Identification an**
33 **abstract of any order for involuntary commitment issued by the court pursuant to this**
34 **section. The abstract must include:**

35 A. The name, date of birth and gender of the person who is the subject of the order
36 for involuntary commitment;

37 B. The court's ruling that the person has been involuntarily committed; and

38 C. A notation that the person has been notified by the court in accordance with
39 subsection 5, paragraph A-1 and subsection 13.

1 The abstract required in this subsection is confidential and is not a "public record" as
2 defined in Title 1, chapter 13; however, a copy of the abstract may be provided by the
3 State Bureau of Identification to a criminal justice agency for legitimate law enforcement
4 purposes, to the Federal Bureau of Investigation, National Instant Criminal Background
5 Check System or to an issuing authority for the purpose of processing concealed firearm
6 permit applications.

7 For the purposes of this subsection, "criminal justice agency" means a federal, state,
8 tribal, district, county or local government agency or any subunit thereof that performs
9 the administration of criminal justice under a statute or executive order and that allocates
10 a substantial part of its annual budget to the administration of criminal justice. Courts
11 and the Department of the Attorney General are considered criminal justice agencies.
12 "Criminal justice agency" also includes any equivalent agency at any level of Canadian
13 government.

14 **Sec. 20. 34-B MRSA §3864, sub-§13** is enacted to read:

15 **13. Firearms possession prohibition notification.** A court that orders a person to
16 be committed involuntarily pursuant to this section shall inform the person that
17 possession, ownership or control of a firearm by that person is prohibited pursuant to
18 Title 15, section 393, subsection 1. As used in this subsection, "firearm" has the same
19 meaning as in Title 17-A, section 2, subsection 12-A.

20 **Sec. 21. Report.** The Commissioner of Public Safety shall report to the joint
21 standing committee of the Legislature having jurisdiction over criminal justice and public
22 safety matters by January 15, 2010 regarding the administration of the relief from
23 disabilities provision allowing certain persons to regain the ability to possess a firearm.
24 The report must include a summary of the number of applications for relief, the hearing
25 and appeals process, the amount of resources necessary to administer the law and the fee
26 structure. Upon receiving the report, the joint standing committee of the Legislature
27 having jurisdiction over criminal justice and public safety matters may report out
28 legislation to the Second Regular Session of the 124th Legislature if necessary.

29 **Sec. 22. Appropriations and allocations.** The following appropriations and
30 allocations are made.

31 **JUDICIAL DEPARTMENT**

32 **Courts - Supreme, Superior, District and Administrative 0063**

33 Initiative: Appropriates funds for one-time contractual services for computer
34 programming and other required expenses to deal with the increased workload resulting
35 from the filing of complaints.

36	GENERAL FUND	2007-08	2008-09
37	Personal Services	\$0	\$15,900
38	All Other	\$0	\$169,310
39			
40	GENERAL FUND TOTAL	<u>\$0</u>	<u>\$185,210</u>

1	JUDICIAL DEPARTMENT		
2	DEPARTMENT TOTALS	2007-08	2008-09
3			
4	GENERAL FUND	\$0	\$185,210
5			
6	DEPARTMENT TOTAL - ALL FUNDS	\$0	\$185,210
7	PUBLIC SAFETY, DEPARTMENT OF		
8	State Police 0291		
9	Initiative: Provides funding for one Office Associate II position, computer development		
10	and maintenance and associated administrative costs to process registrations and appeals.		
11	Of this funding, \$48,000 is for a one-time expense to develop a new computer system to		
12	transmit information to the Federal Government.		
13	GENERAL FUND	2007-08	2008-09
14	POSITIONS - LEGISLATIVE COUNT	0.000	1.000
15	Personal Services	\$0	\$21,755
16	All Other	\$0	\$18,370
17			
18	GENERAL FUND TOTAL	\$0	\$40,125
19	HIGHWAY FUND	2007-08	2008-09
20	Personal Services	\$0	\$32,633
21	All Other	\$0	\$35,554
22			
23	HIGHWAY FUND TOTAL	\$0	\$68,187
24	PUBLIC SAFETY, DEPARTMENT OF		
25	DEPARTMENT TOTALS	2007-08	2008-09
26			
27	GENERAL FUND	\$0	\$40,125
28	HIGHWAY FUND	\$0	\$68,187
29			
30	DEPARTMENT TOTAL - ALL FUNDS	\$0	\$108,312
31	SECTION TOTALS	2007-08	2008-09

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1			
2	GENERAL FUND	\$0	\$225,335
3	HIGHWAY FUND	\$0	\$68,187
4			
5	SECTION TOTAL - ALL FUNDS	\$0	\$293,522
6			

SUMMARY

8 This amendment replaces the bill. Legislative Document 1902 was carried over from
 9 the First Regular Session of the 123rd Legislature because the Joint Standing Committee
 10 on Criminal Justice and Public Safety learned that the Federal Government was
 11 considering legislation that would require states to amend their reporting requirements for
 12 persons prohibited from possessing firearms.

13 Pursuant to Executive Order Number 02 FY 08/09, the Governor created a task force
 14 to review and enhance the State's reporting of information to the Federal Bureau of
 15 Investigation, National Instant Criminal Background Check System. This amendment
 16 includes recommendations of that task force and the committee. Subsequent to the task
 17 force report, the federal bill was enacted. Specifically this amendment:

18 1. Authorizes the development and implementation of a data system to transmit
 19 records of involuntary commitment rulings, after a judicial hearing, at which the patient
 20 has been represented by counsel;

21 2. Directs the court both prior to the commencement of a hearing and after a hearing
 22 in which a person is committed involuntarily to inform the person that when an order of
 23 involuntary commitment is entered, that person is a prohibited person and may not own,
 24 possess or have under that person's control a firearm pursuant to the Maine Revised
 25 Statutes, Title 15, section 393, subsection 1;

26 3. Creates a relief from disability procedure that allows persons subject to the federal
 27 prohibition against possession of firearms pursuant to 18 United States Code, Section
 28 922(g)(4) as a result of being adjudicated a mental defective or committed to any
 29 psychiatric hospital pursuant to Title 34-B, section 3863 and who has not been committed
 30 to a psychiatric hospital pursuant to an order of the District Court pursuant to Title 34-B,
 31 section 3864, after the expiration of 5 years from the final discharge from commitment, to
 32 apply to the Commissioner of Public Safety for relief from the disability. This is intended
 33 to provide a mechanism for relief for persons who have been committed pursuant to the
 34 emergency so-called "blue-paper" process under Title 34-B, section 3863 but not to those
 35 persons committed after a judicial hearing;

36 4. Permits the court to transmit the final ruling of involuntary commitment, without
 37 transmitting the record, mental health records or notes or testimony, to the Department of
 38 Public Safety, State Bureau of Identification for the sole purpose of transmitting the
 39 finding to the Federal Bureau of Investigation, National Instant Criminal Background
 40 Check System and to duly authorized law enforcement agencies pursuant to Title 34-B,
 41 section 3864;

COMMITTEE AMENDMENT "B" to H.P. 1336, L.D. 1902

1 5. Permits authorized criminal justice agencies to use the data transmitted for law
2 enforcement purposes, including processing of concealed firearms permit applications,
3 enforcement of bail conditions and protection from abuse orders, and for enforcement of
4 state and federal laws concerning the prohibition against possession of firearms by
5 prohibited persons;

6 6. Provides accurate and timely information to the Federal Bureau of Investigation,
7 National Instant Criminal Background Check System, which will assist federally licensed
8 firearms dealers in Maine and across the country to properly carry out their duties and
9 obligations under federal firearms laws; and

10 7. Using the Department of Public Safety's current web services, provides interfacing
11 with the Administrative Office of the Courts to exchange and share mental health
12 adjudication data.

13 The amendment also adds an appropriations and allocations section.

14 **FISCAL NOTE REQUIRED**

15 (See attached)



123rd MAINE LEGISLATURE

LD 1902

LR 2640(04)

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 "B"

Committee: Criminal Justice and Public Safety

Fiscal Note Required: Yes

Fiscal Note

	2007-08	2008-09	Projections 2009-10	Projections 2010-11
Net Cost (Savings)				
General Fund	\$0	\$225,335	\$56,118	\$56,809
Highway Fund	\$0	\$68,187	\$37,192	\$38,228
Appropriations/Allocations				
General Fund	\$0	\$225,335	\$56,118	\$56,809
Highway Fund	\$0	\$68,187	\$37,192	\$38,228

Fiscal Detail and Notes

This bill includes a General Fund appropriation to the Judicial Department of \$185,210 in fiscal year 2008-09 and \$31,323 annually thereafter to provide funds for one-time contractual services for new computer programming responsibilities and other required expenses to deal with the additional workload resulting from the filing of complaints.

The bill also includes a General Fund appropriation of \$40,125 and a Highway Fund allocation of \$68,187 in fiscal year 2008-09 to the Department of Public Safety for an Office Associate II position, computer development and maintenance, and associated administrative costs to process registrations and appeals. \$16,000 of this appropriation and \$32,000 of this allocation are one-time expenses to develop a new computer system to transmit information to the federal government. The Department indicates that federal funds may be available to cover this cost and the Department plans to submit an application.