

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2010

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Legislative Document

No. 1817

S.P. 725

In Senate, March 11, 2010

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### **An Act To Implement the Recommendations of the Working Group Concerning Domestic Violence and Firearms**

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Reported by Senator GERZOFKY of Cumberland for the Joint Standing Committee on Criminal Justice and Public Safety pursuant to Resolve 2009, chapter 86.

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

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

2 Sec. 1. 15 MRSA §1023, sub-§4-A is enacted to read:

3 4-A. Firearms; bail condition upon arrest for certain crimes of domestic  
4 violence. If a law enforcement officer has seized firearms pursuant to chapter 105-A,  
5 subchapter 2; Title 17-A, section 15, subsection 1, paragraph A, subparagraphs (1), (5-A)  
6 or (5-B); or Title 19-A, section 4012, subsection 5, the bail commissioner shall require, as  
7 a condition of bail, that all firearms in the possession of the person arrested be  
8 relinquished to a law enforcement officer and that the person refrain from possessing a  
9 firearm or other specified dangerous weapons until further order of a court. Upon request  
10 of the defendant, a bail condition imposed pursuant to this subsection must be heard by  
11 the court as expeditiously as possible.

12 Sec. 2. 15 MRSA §1026, sub-§3, ¶A, as repealed and replaced by PL 2007, c.  
13 518, §3, is amended to read:

14 A. If, after consideration of the factors listed in subsection 4, the judicial officer  
15 determines that the release described in subsection 2-A will not reasonably ensure the  
16 appearance of the defendant at the time and place required, will not reasonably ensure  
17 that the defendant will refrain from any new criminal conduct, will not reasonably  
18 ensure the integrity of the judicial process or will not reasonably ensure the safety of  
19 others in the community, the judicial officer shall order the pretrial release of the  
20 defendant subject to the least restrictive further condition or combination of  
21 conditions that the judicial officer determines will reasonably ensure the appearance  
22 of the defendant at the time and place required, will reasonably ensure that the  
23 defendant will refrain from any new criminal conduct, will reasonably ensure the  
24 integrity of the judicial process and will reasonably ensure the safety of others in the  
25 community. These conditions may include that the defendant:

26 (1) Remain in the custody of a designated person or organization agreeing to  
27 supervise the defendant, including a public official, public agency or publicly  
28 funded organization, if the designated person or organization is able to  
29 reasonably ensure the appearance of the defendant at the time and place required,  
30 that the defendant will refrain from any new criminal conduct, the integrity of the  
31 judicial process and the safety of others in the community. When it is feasible to  
32 do so, the judicial officer shall impose the responsibility upon the defendant to  
33 produce the designated person or organization. The judicial officer may  
34 interview the designated person or organization to ensure satisfaction of both the  
35 willingness and ability required. The designated person or organization shall  
36 agree to notify immediately the judicial officer of any violation of release by the  
37 defendant;

38 (2) Maintain employment or, if unemployed, actively seek employment;

39 (3) Maintain or commence an educational program;

40 (4) Abide by specified restrictions on personal associations, place of abode or  
41 travel;

- 1 (5) Avoid all contact with a victim of the alleged crime, a potential witness  
2 regarding the alleged crime or with any other family or household members of  
3 the victim or the defendant or to contact those individuals only at certain times or  
4 under certain conditions;
- 5 (6) Report on a regular basis to a designated law enforcement agency or other  
6 governmental agency;
- 7 (7) Comply with a specified curfew;
- 8 (8) Refrain from possessing a firearm and relinquish all firearms or other  
9 dangerous ~~weapon~~ weapons as specified in section 1023, subsection 4-A;
- 10 (9) Refrain from use or excessive use of alcohol and from any use of drugs;
- 11 (10) Undergo, as an outpatient, available medical or psychiatric treatment, or  
12 enter and remain, as a voluntary patient, in a specified institution when required  
13 for that purpose;
- 14 (10-A) Enter and remain in a long-term residential facility for the treatment of  
15 substance abuse;
- 16 (11) Execute an agreement to forfeit, in the event of noncompliance, such  
17 designated property, including money, as is reasonably necessary to ensure the  
18 appearance of the defendant at the time and place required, to ensure that the  
19 defendant will refrain from any new criminal conduct, to ensure the integrity of  
20 the judicial process and to ensure the safety of others in the community and post  
21 with an appropriate court such evidence of ownership of the property or such  
22 percentage of the money as the judicial officer specifies;
- 23 (12) Execute a bail bond with sureties in such amount as is reasonably necessary  
24 to ensure the appearance of the defendant at the time and place required, to  
25 ensure that the defendant will refrain from any new criminal conduct, to ensure  
26 the integrity of the judicial process and to ensure the safety of others in the  
27 community;
- 28 (13) Return to custody for specified hours following release for employment,  
29 schooling or other limited purposes;
- 30 (14) Report on a regular basis to the defendant's attorney;
- 31 (15) Notify the court of any changes of address or employment;
- 32 (16) Provide to the court the name, address and telephone number of a  
33 designated person or organization that will know the defendant's whereabouts at  
34 all times;
- 35 (17) Inform any law enforcement officer of the defendant's condition of release  
36 if the defendant is subsequently arrested or summonsed for new criminal  
37 conduct; and
- 38 (18) Satisfy any other condition that is reasonably necessary to ensure the  
39 appearance of the defendant at the time and place required, to ensure that the  
40 defendant will refrain from any new criminal conduct, to ensure the integrity of  
41 the judicial process and to ensure the safety of others in the community.

1           **Sec. 3. 17-A MRSA §15, sub-§1, ¶A**, as amended by PL 2009, c. 142, §3, is  
2 further amended to read:

3           A. Any person who the officer has probable cause to believe has committed or is  
4 committing:

5           (1) Murder; A law enforcement officer who arrests a person pursuant to this  
6 subparagraph shall seize all firearms in the person's possession. A person subject  
7 to firearm seizure pursuant to this subparagraph is subject to a bail condition as  
8 specified in Title 15, section 1023, subsection 4-A;

9           (2) Any Class A, Class B or Class C crime;

10          (3) Assault while hunting;

11          (4) Any offense defined in chapter 45;

12          (5) Assault, criminal threatening, terrorizing or stalking, if the officer reasonably  
13 believes that the person may cause injury to others unless immediately arrested;

14          (5-A) Assault, criminal threatening, terrorizing, stalking, criminal mischief,  
15 obstructing the report of a crime or injury or reckless conduct if the officer  
16 reasonably believes that the person and the victim are family or household  
17 members, as defined in Title 19-A, section 4002, subsection 4; A law  
18 enforcement officer who arrests a person pursuant to this subparagraph shall  
19 seize all firearms in the person's possession. A person subject to firearm seizure  
20 pursuant to this subparagraph is subject to a bail condition as specified in Title  
21 15, section 1023, subsection 4-A;

22          (5-B) Domestic violence assault, domestic violence criminal threatening,  
23 domestic violence terrorizing, domestic violence stalking or domestic violence  
24 reckless conduct; A law enforcement officer who arrests a person pursuant to  
25 this subparagraph shall seize all firearms in the person's possession. A person  
26 subject to firearm seizure pursuant to this subparagraph is subject to a bail  
27 condition as specified in Title 15, section 1023, subsection 4-A;

28          (6) Theft as defined in section 357, when the value of the services is \$1,000 or  
29 less if the officer reasonably believes that the person will not be apprehended  
30 unless immediately arrested;

31          (7) Forgery, if the officer reasonably believes that the person will not be  
32 apprehended unless immediately arrested;

33          (8) Negotiating a worthless instrument if the officer reasonably believes that the  
34 person will not be apprehended unless immediately arrested;

35          (9) A violation of a condition of probation when requested by a probation officer  
36 or juvenile community corrections officer;

37          (10) Violation of a condition of release in violation of Title 15, section 1026,  
38 subsection 3; Title 15, section 1027, subsection 3; Title 15, section 1051,  
39 subsection 2; and Title 15, section 1092;

40          (11) Theft involving a detention under Title 17, section 3521;

- 1 (12) Harassment, as set forth in section 506-A;
- 2 (13) Violation of a protection order, as specified in Title 5, section 4659,
- 3 subsection 2; Title 15, section 321, subsection 6; former Title 19, section 769,
- 4 subsection 2; former Title 19, section 770, subsection 5; Title 19-A, section 4011,
- 5 subsection 3; and Title 19-A, section 4012, subsection 5;
- 6 (14) A violation of a sex offender registration provision under Title 34-A,
- 7 chapter 15;
- 8 (15) A violation of a requirement of administrative release when requested by the
- 9 attorney for the State;
- 10 (16) A violation of a condition of supervised release for sex offenders when
- 11 requested by a probation officer;
- 12 (17) A violation of a court-imposed deferment requirement of a deferred
- 13 disposition when requested by the attorney for the State;
- 14 (18) A violation of a condition of release as provided in Title 15, section
- 15 3203-A, subsection 9;
- 16 (19) A violation of a condition of supervised community confinement granted
- 17 pursuant to Title 34-A, section 3036-A when requested by a probation officer;
- 18 (20) A violation of a condition of placement on community reintegration status
- 19 granted pursuant to Title 34-A, sections 3810 and 4112 when requested by a
- 20 juvenile community corrections officer; or
- 21 (21) A violation of a condition of furlough or other rehabilitative program
- 22 authorized under Title 34-A, section 3035 when requested by a probation officer
- 23 or juvenile community corrections officer; and

24 **Sec. 4. 19-A MRSA §4012, sub-§5**, as enacted by PL 1995, c. 694, Pt. B, §2 and  
25 affected by Pt. E, §2, is amended to read:

26 **5. Arrest in certain situations.** When a law enforcement officer has probable cause  
27 to believe that there has been a criminal violation under section 4011 of a court-approved  
28 consent agreement or a protection order issued pursuant to this chapter or Title 15,  
29 chapter 12-A, or that a violation of Title 17-A, section 208 has occurred between  
30 members of the same family or household, that enforcement officer shall arrest and take  
31 into custody the alleged offender. A law enforcement officer who arrests a person  
32 pursuant to this subsection shall seize all firearms in the person's possession. A person  
33 subject to firearm seizure pursuant to this subsection is subject to a bail condition as  
34 specified in Title 15, section 1023, subsection 4-A.

35 **Sec. 5. 25 MRSA §2803-B, sub-§1, ¶D**, as amended by PL 2003, c. 361, §1, is  
36 further amended to read:

- 37 D. Domestic violence, which must include, at a minimum, the following:
  - 38 (1) A process to ensure that a victim receives notification of the defendant's
  - 39 release from jail;

1 (2) A process for the collection of information regarding the defendant that  
2 includes the defendant's previous history, the parties' relationship, the name of the  
3 victim and a process to relay this information to a bail commissioner before a bail  
4 determination is made; and

5 (3) A process for the safe retrieval of personal property belonging to the victim  
6 or the defendant that includes identification of a possible neutral location for  
7 retrieval, the presence of at least one law enforcement officer during the retrieval  
8 and giving the victim the option of at least 24 hours notice to each party prior to  
9 the retrieval; and

10 (4) A process for the seizure of firearms and safe storage of firearms seized by a  
11 law enforcement officer in a domestic violence arrest;

12 **Sec. 6. 25 MRSA §2803-B, sub-§2**, as amended by PL 2009, c. 336, §18 and c.  
13 451, §4, is repealed and the following enacted in its place:

14 **2. Minimum policy standards.** The board shall establish minimum standards for  
15 each law enforcement policy no later than June 1, 1995, except that policies for expanded  
16 requirements for domestic violence under subsection 1, paragraph D, subparagraphs (1)  
17 to (3) must be established no later than January 1, 2003; policies for death investigations  
18 under subsection 1, paragraph I must be established no later than January 1, 2004;  
19 policies for public notification regarding persons in the community required to register  
20 under Title 34-A, chapter 15 under subsection 1, paragraph J must be established no later  
21 than January 1, 2006; policies for the recording and preservation of interviews of suspects  
22 in serious crimes under subsection 1, paragraph K must be established no later than  
23 January 1, 2005; policies for the expanded use of physical force, including the use of  
24 electronic weapons and less-than-lethal munitions under subsection 1, paragraph A, must  
25 be established no later than January 1, 2010; policies for mental illness and the process  
26 for involuntary commitment under subsection 1, paragraph L must be established no later  
27 than January 1, 2010; and policies for expanded requirements for domestic violence  
28 under subsection 1, paragraph D, subparagraph (4) for the seizure of firearms and safe  
29 storage of firearms seized by a law enforcement officer in a domestic violence arrest must  
30 be established no later than January 1, 2011.

31 **Sec. 7. 25 MRSA §2803-B, sub-§3**, as amended by PL 2009, c. 336, §18 and c.  
32 451, §5, is repealed and the following enacted in its place:

33 **3. Agency compliance.** The chief administrative officer of each law enforcement  
34 agency shall certify to the board no later than January 1, 1996 that the agency has adopted  
35 written policies consistent with the minimum standards established by the board pursuant  
36 to subsection 2, except that certification to the board for expanded policies for domestic  
37 violence under subsection 1, paragraph D, subparagraphs (1) to (3) must be made to the  
38 board no later than June 1, 2003; certification to the board for adoption of a death  
39 investigation policy under subsection 1, paragraph I must be made to the board no later  
40 than June 1, 2004; certification to the board for adoption of a public notification policy  
41 under subsection 1, paragraph J must be made to the board no later than June 1, 2006;  
42 certification to the board for adoption of a policy for the recording and preservation of  
43 interviews of suspects in serious crimes under subsection 1, paragraph K must be made to

1. the board no later than June 1, 2005; certification to the board for adoption of an  
2. expanded use of physical force policy under subsection 1, paragraph A must be made to  
3. the board no later than June 1, 2010; and certification to the board for adoption of a  
4. policy regarding mental illness and the process for involuntary commitment under  
5. subsection 1, paragraph L must be made to the board no later than June 1, 2010. The  
6. certification must be accompanied by copies of the agency policies. The chief  
7. administrative officer of each agency shall certify to the board no later than June 1, 1996  
8. that the agency has provided orientation and training for its members with respect to the  
9. policies, except that certification for orientation and training with respect to expanded  
10. policies for domestic violence under subsection 1, paragraph D, subparagraphs (1) and (3)  
11. must be made to the board no later than January 1, 2004; certification for orientation and  
12. training with respect to policies regarding death investigations under subsection 1,  
13. paragraph I must be made to the board no later than January 1, 2005; certification for  
14. orientation and training with respect to policies regarding public notification under  
15. subsection 1, paragraph J must be made to the board no later than January 1, 2007;  
16. certification for orientation and training with respect to policies regarding the recording  
17. and preservation of interviews of suspects in serious crimes under subsection 1,  
18. paragraph K must be made to the board no later than January 1, 2006; certification for  
19. orientation and training with respect to policies regarding expanded use of physical force  
20. under subsection 1, paragraph A must be made to the board no later than January 1, 2011;  
21. certification for orientation and training with respect to policies regarding mental illness  
22. and the process for involuntary commitment under subsection 1, paragraph L must be  
23. made to the board no later than January 1, 2011; and certification to the board for  
24. expanded policies for domestic violence under subsection 1, paragraph D, subparagraph  
25. (4) for the seizure of firearms and safe storage of firearms seized by a law enforcement  
26. officer in a domestic violence arrest must be made to the board no later than June 1, 2011.

## 27. SUMMARY

28. This bill implements the recommendations of the working group concerning domestic  
29. violence and firearms established under Resolve 2009, chapter 86.

30. Specifically, the bill authorizes a law enforcement officer to seize firearms from a  
31. person upon arrest for certain crimes of domestic violence, including: murder; assault,  
32. criminal threatening, terrorizing, stalking, criminal mischief, obstructing the report of a  
33. crime or injury or reckless conduct if the officer reasonably believes that the person and  
34. the victim are family or household members; domestic violence assault, domestic  
35. violence criminal threatening, domestic violence terrorizing, domestic violence stalking  
36. or domestic violence reckless conduct; violating a court-ordered consent agreement or  
37. protection from abuse order or aggravated assault on a family or household member. A  
38. person subject to firearm seizure pursuant to this authority is subject to a new bail  
39. condition established in the Maine Revised Statutes, Title 15, section 1023, subsection  
40. 4-A. The new provision requires, as a condition of bail, that all firearms in the possession  
41. of the person arrested be relinquished to a law enforcement officer and that the person  
42. refrain from possessing a firearm or other specified dangerous weapons until further order  
43. of a court. Upon request of the defendant, such a bail condition must be heard by the  
44. court as expeditiously as possible.



1       The bill also amends Title 25, section 2803-B to expand policies for domestic  
2 violence by specifying that all law enforcement agencies adopt a written policy for the  
3 seizure of firearms and safe storage of firearms seized by a law enforcement officer in a  
4 domestic violence arrest.