

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 827

H.P. 623

House of Representatives, March 3, 2011

### **An Act To Bring the State's Laws into Compliance with the National Instant Criminal Background Check System**

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

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative BLODGETT of Augusta.  
Cosponsored by Representatives: MORRISON of South Portland, O'BRIEN of Lincolnville,  
PLUMMER of Windham, RUSSELL of Portland, STEVENS of Bangor, VALENTINO of  
Saco, Senator: PATRICK of Oxford.

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

2 **Sec. 1. 15 MRSA §393, sub-§1, ¶E**, as amended by PL 2009, c. 651, §1, is  
3 further amended to read:

4 E. Has been:

5 (1) Committed involuntarily to a hospital pursuant to an order of the District  
6 Court under Title 34-B, section 3864 because the person was found to present a  
7 likelihood of serious harm, as defined under Title 34-B, section 3801, subsection  
8 4-A, paragraphs A to C;

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

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

12 (4) Admitted involuntarily to a hospital pursuant to Title 34-B, section 3863; or

13 (5) Found by a Probate Court to be incapacitated as defined in Title 18-A,  
14 section 5-101 and therefore lacking the capacity to contract or manage the  
15 person's own affairs.

16 **Sec. 2. 15 MRSA §393, sub-§4-A**, as enacted by PL 2007, c. 670, §9 and  
17 affected by §24, is amended to read:

18 **4-A. Application for relief.** Except as otherwise provided, a person subject to the  
19 federal prohibition against possession of firearms pursuant to 18 United States Code,  
20 Section 922(g)(4) as a result of being adjudicated a mental defective or ~~committed to any~~  
21 ~~psychiatric hospital pursuant to Title 34-B, section 3863 and who has not been committed~~  
22 ~~to a psychiatric hospital pursuant to an order of the District Court pursuant to Title 34-B,~~  
23 ~~section 3864~~ subject to the provisions of subsection 1, paragraph E may, after the  
24 expiration of 5 years from the date of final discharge from commitment, apply to the  
25 commissioner for relief from the disability.

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

29 A. An application under this subsection must be on a form developed by the  
30 commissioner. The application must include the applicant's full name; all aliases;  
31 date and place of birth; place of legal residence; occupation; make and model of the  
32 firearm sought to be possessed; reason for the request; date, place and docket number  
33 of commitment; name of institution to which applicant was committed; names of  
34 providers that provided mental health treatment for the applicant; date of discharge  
35 from commitment; release for all mental health records; and any other information  
36 determined by the commissioner to be of assistance. The application must be  
37 accompanied by certified or attested copies of the commitment from which the  
38 applicant seeks relief and the report of an independent psychologist or psychiatrist  
39 licensed to practice in this State specifically addressing the factors set forth in  
40 paragraph E. In reviewing the application, the commissioner shall also receive and  
41 consider the circumstances regarding the disability, the applicant's mental health and

1 criminal history records and the applicant's reputation, which must be developed, at a  
2 minimum, through character witness statements and any other character evidence.

3 The commissioner may establish a roster of psychologists and psychiatrists qualified  
4 and interested in doing these evaluations. The psychologist or psychiatrist must be  
5 available for cross-examination. The psychologist or psychiatrist listed on the roster  
6 is an employee for the purposes of the Maine Tort Claims Act for evaluations under  
7 this paragraph.

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

10 (1) Application fee; and

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

12 C. Upon receipt of a completed application, the commissioner shall notify persons  
13 who received notice of the commitment pursuant to Title 34-B, section 3864,  
14 subsection 3, paragraph A, subparagraph (2) and the district attorney, chief of police  
15 and sheriff and Probate Court, if the applicant was found to be incapacitated, in the  
16 municipality and county where the applicant resides of the filing of the application,  
17 with a request to provide to the commissioner any information relevant to the factors  
18 in paragraph E.

19 D. Upon receipt of a completed application, the commissioner shall review the  
20 application and determine whether the person has made a prima facie showing of the  
21 elements of paragraph E. If the commissioner determines that the person has made a  
22 prima facie showing, the commissioner shall schedule a hearing.

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

28 F. If the commissioner finds by clear and convincing evidence that the circumstances  
29 that led to the involuntary commitment have changed, that the applicant is not likely  
30 to act in a manner dangerous to public safety and that granting the application for  
31 relief will not be contrary to the public interest, the commissioner ~~may~~ shall grant  
32 relief.

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

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

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

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

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

13 **Sec. 3. 25 MRSA §1541, sub-§3, ¶C**, as amended by PL 2009, c. 651, §2, is  
14 further amended to read:

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

18 (1) Committed involuntarily to a hospital pursuant to Title 34-B, section 3863 or  
19 an order of the District Court under Title 34-B, section 3864 because the person  
20 was found to present a likelihood of serious harm, as defined under Title 34-B,  
21 section 3801, subsection 4-A, paragraphs A to D;

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

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

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

28 **SUMMARY**

29 This bill amends current law regarding the possession of firearms to create a  
30 comprehensive system for the restoration of the right to possess firearms by persons with  
31 mental illness who prove that they are no longer a danger to themselves or others. The  
32 change will qualify Maine for federal funding under the National Instant Criminal  
33 Background Check System pursuant to the federal NICS Improvement Amendments Act  
34 of 2007.

35 The bill expands the list of those who can apply to have the right to possess a firearm  
36 restored to include persons who have been admitted to a hospital pursuant to the Maine  
37 Revised Statutes, Title 34-B, section 3863 and persons found by a Probate Court to lack  
38 the capacity to contract or manage their own affairs. Existing law permits application for  
39 restoration by persons who are committed involuntarily to a hospital pursuant to Title  
40 34-B, section 3864; persons who are found not criminally responsible by reason of

1 insanity with respect to a criminal charge; and persons who are found not competent to  
2 stand trial with respect to a criminal charge.

3 The bill requires that the Commissioner of Public Safety, when reviewing  
4 applications for restoration, at a minimum consider mental health and criminal history  
5 records and the applicant's reputation developed through character witnesses and any  
6 other character evidence. The bill also removes the Commissioner of Public Safety's  
7 discretion to grant restoration if the applicant satisfies the statutory criteria that the person  
8 is not likely to act in a manner that is dangerous to public safety and that the restoration  
9 would not be contrary to public interest.