

# MAINE STATE LEGISLATURE

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# 127th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2015

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Legislative Document

No. 1100

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H.P. 760

House of Representatives, March 25, 2015

### **An Act To Expand Options for the Prevention of Domestic Violence**

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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 "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative DION of Portland.  
Cosponsored by Senator GERZOFSKY of Cumberland and  
Representatives: FREY of Bangor, HERRICK of Paris, McCABE of Skowhegan, PICKETT of  
Dixfield, Senators: CYRWAY of Kennebec, HASKELL of Cumberland, KATZ of Kennebec,  
ROSEN of Hancock.

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

2 **Sec. 1. 15 MRSA c. 16** is enacted to read:

3 **CHAPTER 16**

4 **GUN VIOLENCE RESTRAINING ORDERS**

5 **SUBCHAPTER 1**

6 **GENERAL PROVISIONS**

7 **§401. Definitions**

8 As used in this chapter, unless the context otherwise indicates, the following terms  
9 have the following meanings.

10 **1. Family or household member.** "Family or household member" has the same  
11 meaning as in Title 19-A, section 4002, subsection 4.

12 **2. Gun violence restraining order.** "Gun violence restraining order" means an  
13 order, in writing, signed by the court, prohibiting and enjoining a named person from  
14 having in that person's custody or control, owning, purchasing, possessing or receiving  
15 any firearms or ammunition.

16 **3. Restrained person.** "Restrained person" means the subject of a gun violence  
17 restraining order.

18 **§402. Petition**

19 A petition for a gun violence restraining order must describe the number, types and  
20 locations of any firearms and ammunition believed by the petitioner to be possessed or  
21 controlled by the subject of the petition.

22 **§403. Gun violence restraining order**

23 **1. Firearms and ammunition while order is in effect.** A person subject to a gun  
24 violence restraining order issued pursuant to this chapter may not have in that person's  
25 custody or control, own, purchase, possess or receive any firearms or ammunition while  
26 that order is in effect.

27 **2. Surrender order.** Upon issuance of a gun violence restraining order issued  
28 pursuant to this chapter, the court shall order the restrained person to surrender to a local  
29 law enforcement agency all firearms and ammunition in the restrained person's custody or  
30 control or that the restrained person possesses or owns.

31 **3. Surrender of firearms and ammunition.** The restrained person subject to the  
32 surrender ordered pursuant to subsection 2 shall, upon request of a law enforcement  
33 officer, immediately surrender all firearms and ammunition in a safe manner to the  
34 control of the officer after being served with the gun violence restraining order. A law

1 enforcement officer serving a gun violence restraining order that indicates that the  
2 restrained person possesses firearms or ammunition shall request that all firearms and  
3 ammunition be immediately surrendered. Alternatively, if no request is made by a law  
4 enforcement officer, the restrained person shall comply with the surrender order within  
5 24 hours of being served with the order, either by surrendering all firearms and  
6 ammunition in a safe manner to the control of a local law enforcement agency or by  
7 selling all firearms and ammunition to a federally licensed firearms dealer. The law  
8 enforcement officer or licensed firearms dealer taking possession of firearms or  
9 ammunition pursuant to this subsection shall issue a receipt to the person surrendering the  
10 firearms or ammunition at the time of surrender. A person ordered to surrender all  
11 firearms and ammunition pursuant to subsection 2 shall, within 48 hours after being  
12 served with the order, do both of the following:

13 A. File with the court that issued the gun violence restraining order the original  
14 receipt showing all firearms and ammunition have been surrendered to a local law  
15 enforcement agency or sold to a federally licensed firearms dealer. Failure to timely  
16 file a receipt constitutes a violation of the restraining order; and

17 B. File a copy of the receipt described in paragraph A from a licensed firearms dealer  
18 with the law enforcement agency that served the gun violence restraining order.  
19 Failure to timely file a copy of the receipt constitutes a violation of the restraining  
20 order.

21 **4. Firearms and ammunition retained by law enforcement agency.** A law  
22 enforcement agency shall retain firearms and ammunition surrendered to a law  
23 enforcement officer or law enforcement agency pursuant to this section until the  
24 expiration of the gun violence restraining order that has been issued against the restrained  
25 person. Upon expiration of an order, the law enforcement agency shall return the  
26 firearms and ammunition to the restrained person. The law enforcement agency may  
27 dispose of firearms and ammunition not claimed pursuant to Title 25, section 3503-A.

28 **5. Sale or transfer of firearms and ammunition retained by law enforcement**  
29 **agency.** A restrained person who owns firearms or ammunition that is in the custody of a  
30 law enforcement agency pursuant to this section and who does not wish to have the  
31 firearms or ammunition returned may sell or transfer title of the firearms or ammunition  
32 to a federally licensed firearms dealer if the firearms or ammunition are otherwise legal to  
33 own or possess and the restrained person otherwise has right to title of the firearms or  
34 ammunition.

35 **6. Return to other claimant.** If a person other than the restrained person claims  
36 title to firearms or ammunition surrendered pursuant to this section and the person is  
37 determined by the law enforcement agency that has custody of the firearms or  
38 ammunition to be the lawful owner of the firearms or ammunition, the law enforcement  
39 agency shall return the firearms or ammunition to the other person.

40 **SUBCHAPTER 2**

41 **TEMPORARY EMERGENCY GUN VIOLENCE RESTRAINING ORDERS**

1           **§405. Issuance**

2           **1. Temporary emergency order; issuance.** A court may issue a temporary  
3 emergency gun violence restraining order on an ex parte basis only if a law enforcement  
4 officer asserts and the court finds that there is reasonable cause to believe both of the  
5 following:

6           A. The subject of the petition poses an immediate and present danger of causing  
7 personal injury to that person or another person by having in that person's custody or  
8 control, owning, purchasing, possessing or receiving a firearm; and

9           B. A temporary emergency gun violence restraining order is necessary to prevent  
10 personal injury to the subject of the petition or another person because less restrictive  
11 alternatives either have been tried and found to be ineffective or have been  
12 determined to be inadequate or inappropriate for the circumstances of the subject of  
13 the petition.

14           **2. Order; prohibition; expiration.** A temporary emergency gun violence  
15 restraining order issued pursuant to this subchapter prohibits the subject of the petition  
16 from having in the person's custody or control, owning, purchasing, possessing or  
17 receiving or attempting to purchase or receive a firearm or ammunition. The order  
18 expires 21 days from the date the order is issued.

19           **§406. Order contents**

20           A temporary emergency gun violence restraining order issued pursuant to this  
21 subchapter must include all of the following:

22           **1. Grounds.** A statement of the grounds supporting the issuance of the order;

23           **2. Expiration.** The date and time the order expires; and

24           **3. Statement.** The following statement:

25           "To the restrained person: This order will last until the date and time noted above. You  
26 are required to surrender all firearms and ammunition that you own or possess in  
27 accordance with the Maine Revised Statutes, Title 15, section 403, and you may not have  
28 in your custody or control, own, purchase, possess or receive or attempt to purchase or  
29 receive a firearm or ammunition while this order is in effect. A more permanent gun  
30 violence restraining order may be obtained from the court. You may seek the advice of an  
31 attorney as to any matter connected with the order. The attorney should be consulted  
32 promptly so that the attorney may assist you in any matter connected with the order."

33           **§407. Law enforcement officer responsibilities**

34           A law enforcement officer who requests a temporary emergency gun violence  
35 restraining order under this subchapter shall do all of the following:

36           **1. Memorialize oral order.** If the order is obtained orally, memorialize the order of  
37 the court on a form approved by the Supreme Judicial Court;



1 witness the petitioner may produce, the court may require the petitioner and any witness  
2 to submit a written affidavit signed under oath.

3 **2. Grounds.** In determining whether grounds for an ex parte gun violence  
4 restraining order under this subchapter exist, the court shall consider all evidence of the  
5 following:

6 A. A recent threat of violence or act of violence by the subject of the petition  
7 directed toward another person;

8 B. A recent threat of violence or act of violence by the subject of the petition  
9 directed toward the subject of the petition;

10 C. A violation of a protection from abuse order issued pursuant to Title 19-A,  
11 chapter 101 that is in effect at the time the court is considering the petition;

12 D. A recent violation of an unexpired protection from abuse order pursuant to Title  
13 19-A, chapter 101; and

14 E. A pattern of violent acts or violent threats within the past 12 months, including,  
15 but not limited to, threats of violence or acts of violence by the subject of the petition  
16 directed toward the subject of the petition or another person.

17 **3. Evidence of increased risk for violence.** In determining whether grounds for an  
18 ex parte gun violence restraining order under this subchapter exist, the court may consider  
19 any other evidence of an increased risk for violence, including, but not limited to,  
20 evidence of any of the following:

21 A. The unlawful and reckless use, display or brandishing of a firearm by the subject  
22 of the petition;

23 B. The history of use, attempted use or threatened use of physical force by the  
24 subject of the petition against another person;

25 C. Any prior arrest of the subject of the petition for a Class A, Class B or Class C  
26 crime;

27 D. Any history of a violation by the subject of the petition of an emergency  
28 protection from abuse order issued pursuant to Title 19-A, chapter 101;

29 E. Documentary evidence, including, but not limited to, police reports and records of  
30 convictions, of either recent criminal offenses by the subject of the petition that  
31 involve controlled substances or alcohol or ongoing abuse of controlled substances or  
32 alcohol by the subject of the petition; and

33 F. Evidence of recent acquisition of firearms, ammunition or other deadly weapons.

34 For the purposes of this subsection, "recent" means within the 6 months prior to the date  
35 the petition was filed.

36 **4. Order; contents; expiration.** If the court determines that grounds to issue an ex  
37 parte gun violence restraining order under this subchapter exist, it shall issue an ex parte  
38 gun violence restraining order that prohibits the subject of the petition from having in the  
39 person's custody or control, owning, purchasing, possessing or receiving or attempting to

1 purchase or receive a firearm or ammunition and that expires no later than 21 days from  
2 the date of the order.

3 **§412. Order**

4 **1. Ex parte order; contents.** An ex parte gun violence restraining order issued  
5 pursuant to this subchapter must include all of the following:

6 A. A statement of the grounds supporting the issuance of the order;

7 B. The date and time the order expires;

8 C. The address of the court in which any responsive pleading must be filed;

9 D. The date and time of the hearing scheduled pursuant to section 413; and

10 E. The following statement:

11 "To the restrained person: This order is valid until the expiration date and time noted  
12 above. You are required to surrender all firearms and ammunition that you own or  
13 possess in accordance with the Maine Revised Statutes, Title 15, section 403, and you  
14 may not have in your custody or control, own, purchase, possess or receive or attempt  
15 to purchase or receive a firearm or ammunition while this order is in effect. A  
16 hearing will be held on the date and at the time noted above to determine if a more  
17 permanent gun violence restraining order should be issued. Failure to appear at that  
18 hearing may result in a court issuing an order against you that is valid for a year. You  
19 may seek the advice of an attorney as to any matter connected with the order. The  
20 attorney should be consulted promptly so that the attorney may assist you in any  
21 matter connected with the order."

22 **2. Served on person.** An ex parte gun violence restraining order issued pursuant to  
23 this subchapter must be personally served on the restrained person by a law enforcement  
24 officer if the restrained person can reasonably be located. When serving the order, a law  
25 enforcement officer shall inform the restrained person of the hearing scheduled pursuant  
26 to section 413.

27 **§413. Hearing**

28 Within 21 days after the date on an ex parte gun violence restraining order issued  
29 pursuant to this subchapter, the court shall hold a hearing pursuant to section 416 to  
30 determine if a gun violence restraining order should be issued pursuant to subchapter 4.

31 **SUBCHAPTER 4**

32 **GUN VIOLENCE RESTRAINING ORDERS ISSUED AFTER NOTICE AND**  
33 **HEARING**

34 **§415. One-year order**

35 A law enforcement officer or a household or family member of a person may file a  
36 petition requesting that a court, after notice and a hearing, issue a gun violence restraining  
37 order enjoining the subject of the petition from having in that person's custody or control.



1 owning, purchasing, possessing or receiving a firearm or ammunition for a period of one  
2 year.

3 **§416. Issuance**

4 **1. Grounds.** In determining whether to issue a gun violence restraining order  
5 pursuant to this chapter, the court shall hold a hearing to consider evidence of the facts  
6 identified in section 411, subsection 2 and may consider any other evidence of an  
7 increased risk for violence, including, but not limited to, evidence of the facts identified  
8 in section 411, subsection 3.

9 **2. Burden on plaintiff.** At a hearing under this section, the petitioner has the burden  
10 of proving by clear and convincing evidence that both of the following are true:

11 A. The subject of the petition or a person subject to an ex parte gun violence  
12 restraining order, as applicable, poses a significant danger of personal injury to that  
13 person or another person by having in that person's custody or control, owning,  
14 purchasing, possessing or receiving a firearm or ammunition; and

15 B. A gun violence restraining order is necessary to prevent personal injury to the  
16 subject of the petition or the person subject to an ex parte gun violence restraining  
17 order, as applicable, or another person because less restrictive alternatives either have  
18 been tried and found to be ineffective or are inadequate or inappropriate for the  
19 circumstances of the subject of the petition or the person subject to an ex parte gun  
20 violence restraining order, as applicable.

21 **3. Issuance of order; expiration; termination; renewal.** If the court finds at a  
22 hearing under this section that there is clear and convincing evidence to issue a gun  
23 violence restraining order, the court shall issue a gun violence restraining order that  
24 prohibits the subject of the petition from having in that person's custody or control,  
25 owning, purchasing, possessing or receiving or attempting to purchase or receive a  
26 firearm or ammunition. A gun violence restraining order issued pursuant to this  
27 subchapter expires one year from the date of issuance, subject to termination by further  
28 order of the court at a hearing held pursuant to section 418 and renewal by further order  
29 of the court pursuant to section 419.

30 **4. Dissolution of existing order.** If the court finds at a hearing under this section  
31 that there is not clear and convincing evidence to support the issuance of a gun violence  
32 restraining order, the court shall dissolve any temporary emergency or ex parte gun  
33 violence restraining order in effect.

34 **§417. Order**

35 **1. One-year order; contents.** A gun violence restraining order issued pursuant to  
36 this subchapter must include all of the following:

37 A. A statement of the grounds supporting the issuance of the order;

38 B. The date and time the order expires; and

39 C. The following statement:

1           "To the restrained person: This order will last until the date and time noted above. If  
2           you have not done so already, you must surrender all firearms and ammunition that  
3           you own or possess in accordance with the Maine Revised Statutes, Title 15, section  
4           403. You may not have in your custody or control, own, purchase, possess or receive  
5           or attempt to purchase or receive a firearm or ammunition while this order is in  
6           effect. Pursuant to section 418, you have the right to request one hearing to terminate  
7           this order at any time during its effective period. You may seek the advice of an  
8           attorney as to any matter connected with the order."

9           **2. Notice of one hearing.** When the court issues a gun violence restraining order  
10          pursuant to this subchapter, the court shall inform the restrained person that the person is  
11          entitled to one hearing to request a termination of the order, pursuant to section 418, and  
12          shall provide the restrained person with a form to request a hearing.

13          **§418. Termination of order**

14          **1. Request to terminate order.** A person subject to a gun violence restraining order  
15          issued pursuant to this subchapter may submit one written request at any time during the  
16          effective period of the order for a hearing to terminate the order.

17          **2. Termination of order.** If the court finds after the hearing under subsection 1 that  
18          there is no longer clear and convincing evidence to believe that the conditions under  
19          section 416, subsection 2 are true, the court shall terminate the order.

20          **§419. Renewal of order**

21          **1. Request a renewal.** A law enforcement officer or a household or family member  
22          of a restrained person may file a petition requesting a renewal of a gun violence  
23          restraining order issued pursuant to this subchapter at any time within the 3 months  
24          before the expiration of the gun violence restraining order.

25          **2. Notice and hearing.** A court may, after notice and a hearing, renew a gun  
26          violence restraining order issued pursuant to this subchapter if the petitioner proves, by  
27          clear and convincing evidence, that the conditions under section 416, subsection 2  
28          continue to be true.

29          **3. Grounds.** In determining whether to renew a gun violence restraining order  
30          issued pursuant to this subchapter, the court shall consider evidence of the facts identified  
31          in section 411, subsection 2 and any other evidence of an increased risk for violence,  
32          including, but not limited to, evidence of any of the facts identified in section 411,  
33          subsection 3.

34          **4. Burden on petitioner.** At the hearing under subsection 2, the petitioner has the  
35          burden of proving, by clear and convincing evidence, that the conditions under section  
36          416, subsection 2 continue to be true.

37          **5. Renewal.** If the renewal petition under subsection 1 is supported by clear and  
38          convincing evidence, the court shall renew the gun violence restraining order issued  
39          pursuant to this subchapter.



1           2. A law enforcement officer or a household or family member of the person may  
2 request an ex parte gun violence restraining order, which expires in 21 days. The court is  
3 required to hold a hearing to determine if a one-year order should be issued within 21  
4 days;

5           3. A law enforcement officer or a household or family member of the person may  
6 request that a one-year gun violence restraining order be issued. The plaintiff must prove  
7 by clear and convincing evidence that the person poses a significant danger, that the order  
8 is necessary to prevent injury and that less restrictive alternatives have been tried or are  
9 inappropriate in the specific case;

10          4. The subject of a gun violence restraining order is required to surrender all firearms  
11 and ammunition in the person's possession to a law enforcement officer or to sell the  
12 firearms and ammunition to a federally licensed firearms dealer. If the firearms and  
13 ammunition are surrendered to a law enforcement agency, the firearms and ammunition  
14 must be returned to the person at the expiration of the gun violence restraining order; and

15          5. A person who possesses firearms or ammunition in violation of a gun violence  
16 restraining order commits a Class D crime. Part of the sentence must include the  
17 prohibition on possession of firearms and ammunition for an additional 5 years.