

MAINE STATE LEGISLATURE

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R.O.F.S

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L.D. 1175

2

Date: 6/12/2017

Minority

(Filing No. S-250)

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CRIMINAL JUSTICE AND PUBLIC SAFETY

4

Reproduced and distributed under the direction of the Secretary of the Senate.

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STATE OF MAINE

6

SENATE

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128TH LEGISLATURE

8

FIRST REGULAR SESSION

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COMMITTEE AMENDMENT "A" to S.P. 396, L.D. 1175, Bill, "An Act To Expand Options for the Prevention of Domestic Violence"

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

13

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

14

CHAPTER 16

15

GUN VIOLENCE RESTRAINING ORDERS

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§401. Definitions

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

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

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2. Firearm. "Firearm" has the same meaning as in Title 17-A, section 2, subsection 12-A.

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3. Gun violence restraining order. "Gun violence restraining order" means a written order issued by a court pursuant to this chapter prohibiting and enjoining a named person from purchasing, possessing, receiving or having in that person's custody or control any firearms.

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4. Law enforcement officer. "Law enforcement officer" has the same meaning as in Title 17-A, section 2, subsection 17.

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5. Restrained person. "Restrained person" means the person who is the subject of a gun violence restraining order.

COMMITTEE AMENDMENT

R.O.F.S

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§402. Petition, notice and hearing; evidence considered; evidentiary standard

A law enforcement officer or a family or household member of a person may file a petition requesting that a court, after notice and a hearing, issue a gun violence restraining order enjoining the subject of the petition from purchasing, possessing, receiving or having in the person's custody or control any firearms for a period of 6 months.

1. Petition. A petition for a gun violence restraining order must describe the number, types and locations of any firearms believed by the petitioner to be in the possession, custody or control of the person who is the subject of the petition.

2. Hearing; evidence considered. In determining whether grounds for the issuance of a gun violence restraining order exist, the court shall hold a hearing to consider all evidence of the following:

- A. A recent threat or act of violence by the subject of the petition directed toward the subject of the petition or another person;
- B. A violation of a protection from abuse order issued pursuant to Title 19-A, chapter 101 that is in effect at the time the court is considering the petition;
- C. A recent violation of an unexpired protection from abuse order issued pursuant to Title 19-A, chapter 101; and
- D. A pattern of acts or threats of violence within the past 12 months, including, but not limited to, acts or threats of violence by the subject of the petition directed toward the subject of the petition or another person.

For the purposes of this subsection and subsection 3, "recent" means within the 6 months prior to the date the petition is filed.

3. Additional evidence of increased risk for violence. In addition to the evidence considered pursuant to subsection 2, in determining whether grounds for the issuance of a gun violence restraining order exist, the court may also consider any other evidence of an increased risk for violence, including, but not limited to:

- A. The unlawful and reckless use, display or brandishing of a firearm by the subject of the petition;
- B. The history of use, attempted use or threatened use of physical force by the subject of the petition against another person;
- C. Any prior arrest of the subject of the petition in this State or in another jurisdiction for any Class A, Class B or Class C crime;
- D. Any history of a violation by the subject of the petition of an emergency protection from abuse order issued pursuant to Title 19-A, chapter 101;
- E. Documentary evidence, including, but not limited to, police reports and records of convictions, of either recent criminal offenses by the subject of the petition that involve controlled substances or alcohol or ongoing abuse of controlled substances or alcohol by the subject of the petition; and
- F. Evidence of recent acquisition of firearms, ammunition or other deadly weapons.

ROFS

1 4. Evidentiary standard; burden on petitioner. For the purposes of a hearing
2 under this section, the petitioner has the burden of proving by clear and convincing
3 evidence that:

4 A. The subject of the petition poses a significant danger of personal injury to the
5 subject of the petition or another person by having a firearm in the subject of the
6 petition's possession, custody or control; and

7 B. A gun violence restraining order is necessary to prevent personal injury to the
8 subject of the petition or another person because less restrictive alternatives have
9 been tried and found to be ineffective or because less restrictive alternatives are
10 inadequate or inappropriate based on the circumstances of the subject of the petition.

11 5. Additional evidentiary requirements if petitioner is law enforcement officer.
12 If the petitioner is a law enforcement officer, the petitioner must prove the requirements
13 of subsection 4 by clear and convincing evidence that includes the petitioner's personal
14 knowledge or observations of the subject of the petition or the petitioner's personal
15 knowledge or observations of the other person to whom the subject of the petition poses a
16 significant danger of personal injury.

17 6. Continuance. A hearing conducted pursuant to this section or pursuant to section
18 403, subsection 3 or 4 may be continued upon a showing of good cause. Notwithstanding
19 any provision of this chapter to the contrary, a gun violence restraining order issued
20 pursuant to this chapter remains in effect during any period of continuance.

21 **§403. Issuance of order; order contents; termination; renewal**

22 1. Issuance. If, after conducting a hearing in accordance with section 402, the court
23 finds by clear and convincing evidence that the requirements for a gun violence
24 restraining order are met, the court shall issue an order prohibiting the subject of the
25 petition from purchasing, possessing, receiving or having in that person's custody or
26 control any firearms for a period of 6 months. A gun violence restraining order issued
27 pursuant to this section expires 6 months from the date of issuance, except if terminated
28 pursuant to subsection 3 or renewed pursuant to subsection 4.

29 2. Order contents. A gun violence restraining order issued in accordance with
30 subsection 1 must include the following:

- 31 A. A statement of the grounds supporting the issuance of the order;
- 32 B. The date and time at which the order expires;
- 33 C. A statement regarding the required filing of the receipt resulting from the
34 surrender of firearms pursuant to section 404, subsection 2, paragraph C; and
- 35 D. The following statement:

36 "To the restrained person: This order will last until the date and time noted above. If
37 you have not done so already, you must surrender all firearms that you possess or
38 have in your custody or control in accordance with the Maine Revised Statutes, Title
39 15, section 404. While this order is in effect, you may not purchase, possess, receive
40 or have in your custody or control any firearm. Pursuant to the Maine Revised
41 Statutes, Title 15, section 403, subsection 3, you have the right to request one hearing

COMMITTEE AMENDMENT

R.O.F.S

1 to terminate this order at any time during its effective period. You have the right to
2 seek the advice of an attorney as to any matter connected with this order."

3 **3. Termination of order.** A restrained person may submit one written request at
4 any time during the effective period of the order for a hearing to terminate the order.

5 A. At the time that the court issues an order under subsection 1, the court shall
6 inform the restrained person that the restrained person is entitled to one hearing to
7 request a termination of the order pursuant to this subsection and shall provide the
8 restrained person with a form to request a termination hearing.

9 B. Upon the written request of a restrained person for a hearing to terminate the
10 order, the court shall conduct a hearing in accordance with section 402 to determine
11 whether there continues to exist clear and convincing evidence that the evidentiary
12 requirements in section 402, subsection 4 supporting the issuance of the order are
13 satisfied. If the court finds after the hearing that the evidentiary requirements are no
14 longer satisfied by clear and convincing evidence, the court shall terminate the order.

15 **4. Renewal of order.** A law enforcement officer or a family or household member
16 of a restrained person may file a petition requesting the renewal of a gun violence
17 restraining order at any time within the 3 months before the order expires.

18 A. The court may, after notice and a hearing in accordance with section 402, renew
19 the order if the petitioner proves, by clear and convincing evidence, that the
20 evidentiary requirements in section 402, subsection 4 supporting the issuance of the
21 order continue to be satisfied.

22 B. If pursuant to paragraph A the court determines that the evidence supports
23 renewal of the order, the court shall issue a gun violence restraining order that
24 replaces the prior order and that meets the requirements of subsections 1 and 2.

25 **§404. Effect of order; service of order; surrender of firearms**

26 **1. Effect of order; service of order.** Upon issuance of a gun violence restraining
27 order, the court shall order the restrained person to surrender to a local law enforcement
28 agency all firearms in the restrained person's possession, custody or control. A restrained
29 person may not purchase, possess, receive or have in that person's custody or control any
30 firearms while the order is in effect.

31 If the restrained person is not present in court at the time the order is issued or renewed,
32 the order must be personally served on the restrained person by a law enforcement officer
33 if the restrained person can reasonably be located.

34 **2. Surrender of firearms.** A restrained person ordered to surrender all firearms
35 pursuant to subsection 1 shall, upon request of a law enforcement officer and after service
36 of the gun violence restraining order, immediately surrender to the officer all firearms in
37 the restrained person's possession, custody or control.

38 A. A law enforcement officer who serves a gun violence restraining order on a
39 restrained person that indicates that the restrained person possesses or has in the
40 restrained person's custody or control any firearms shall request that the restrained
41 person immediately surrender all firearms to the officer.

R.O.F.S

COMMITTEE AMENDMENT "A" to S.P. 396, L.D. 1175

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B. If a law enforcement officer serves a gun violence restraining order on a restrained person but does not request that the restrained person immediately surrender all firearms in the restrained person's possession, custody or control, the restrained person shall, within 24 hours of being served with the order:

(1) Surrender all firearms in the restrained person's possession, custody or control to the control of a local law enforcement agency; or

(2) Sell all firearms in the restrained person's possession, custody or control to a federally licensed firearms dealer.

C. A law enforcement officer or a federally licensed firearms dealer who assumes custody or control of a restrained person's firearms pursuant to this subsection shall issue a receipt to the restrained person at the time of surrender or sale. Within 48 hours after being served with the gun violence restraining order, the restrained person shall:

(1) File with the court that issued the order the original receipt showing that all firearms in the restrained person's possession, custody or control have been surrendered to a local law enforcement agency or sold to a federally licensed firearms dealer. Failure to timely file a receipt in accordance with this subparagraph constitutes a violation of the order and is subject to penalties under section 405; and

(2) If the restrained person sells the restrained person's firearms to a federally licensed firearms dealer, file with the law enforcement agency that served the gun violence restraining order a copy of the original receipt from the dealer. Failure to timely file a copy of the receipt in accordance with this subparagraph constitutes a violation of the order and is subject to penalties under section 405.

3. Firearms retained by law enforcement agency. A law enforcement agency to which a restrained person's firearms are surrendered pursuant to subsection 2 shall retain the firearms until the expiration of the gun violence restraining order that the restrained person is subject to. Upon expiration of the order, the law enforcement agency shall return the firearms to the restrained person, except that:

A. After making a reasonable attempt to locate or notify the restrained person of the expiration of the order and the availability of the person's firearms, the law enforcement agency may dispose of any unclaimed firearms in accordance with Title 25, section 3503-A if the agency is unable to locate the restrained person;

B. The restrained person may sell the person's firearms that are in the custody or control of the law enforcement agency to a federally licensed firearms dealer as long as the firearms are otherwise legal to own or possess in the State and the restrained person otherwise has right to title of the firearms; and

C. If a person other than the restrained person claims title to a firearm of the restrained person in the custody or control of the law enforcement agency and the agency determines that the other person is the lawful owner of the firearm, the agency shall return the firearm to the other person.

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§405. Violations

A restrained person who intentionally or knowingly purchases, receives, possesses or has in the restrained person's custody or control a firearm in violation of a gun violence restraining order issued pursuant to this chapter commits a Class D crime.

In sentencing a person for a violation of a gun violence restraining order under this section, the court shall, in addition to any other sentencing alternative imposed under Title 17-A, chapter 47, prohibit the person from purchasing, receiving, possessing or having in the person's custody or control any firearm for a 5-year period, with the period commencing upon the expiration of the order.

For the purposes of this section, "intentionally" has the same meaning as in Title 17-A, section 2, subsection 15 and "knowingly" has the same meaning as in Title 17-A, section 2, subsection 16.

Sec. 2. Appropriations and allocations. The following appropriations and allocations are made.

JUDICIAL DEPARTMENT

Courts - Supreme, Superior and District 0063

Initiative: Provides funds for one Judge position, one Assistant Clerk position and one Deputy Marshal position to address anticipated new cases and required information technology updates.

GENERAL FUND	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	3,000	3,000
Personal Services	\$263,770	\$366,304
All Other	\$439,800	\$16,900
GENERAL FUND TOTAL	\$703,570	\$383,204

JUDICIAL DEPARTMENT		
DEPARTMENT TOTALS	2017-18	2018-19
GENERAL FUND	\$703,570	\$383,204
DEPARTMENT TOTAL - ALL FUNDS	\$703,570	\$383,204

PUBLIC SAFETY, DEPARTMENT OF

State Police 0291

Initiative: Provides one-time funding for increased storage costs related to retaining firearms under a gun violence restraining order process.

R O F S

COMMITTEE AMENDMENT "A" to S.P. 396, L.D. 1175

1	GENERAL FUND	2017-18	2018-19
2	All Other	\$33,150	\$0
3			
4	GENERAL FUND TOTAL	<u>\$33,150</u>	<u>\$0</u>
5	HIGHWAY FUND	2017-18	2018-19
6	All Other	\$18,170	\$0
7			
8	HIGHWAY FUND TOTAL	<u>\$18,170</u>	<u>\$0</u>
9	PUBLIC SAFETY, DEPARTMENT OF		
10	DEPARTMENT TOTALS	2017-18	2018-19
11			
12	GENERAL FUND	\$33,150	\$0
13	HIGHWAY FUND	\$18,170	\$0
14			
15	DEPARTMENT TOTAL - ALL FUNDS	<u>\$51,320</u>	<u>\$0</u>
16	SECTION TOTALS	2017-18	2018-19
17			
18	GENERAL FUND	\$736,720	\$383,204
19	HIGHWAY FUND	\$18,170	\$0
20			
21	SECTION TOTAL - ALL FUNDS	<u>\$754,890</u>	<u>\$383,204</u>
22			

SUMMARY

This amendment, which is the minority report of the committee, replaces the bill and creates a judicial process for the imposition of a gun violence restraining order whereby a court is authorized to order a person to surrender that person's firearms for a 6-month period of time when it has been proved by clear and convincing evidence that the person poses a danger of causing personal injury to that person or to another person. A person who possesses a firearm in violation of a gun violence restraining order commits a Class D crime, the sentence for which must include a prohibition on the possession of firearms for a 5-year period of time. The amendment also adds an appropriations and allocations section to provide funding to address anticipated new cases and required information technology updates within the Judicial Department and to provide funding to the Department of Public Safety for increased storage costs relating to retaining firearms under a gun violence restraining order process.

FISCAL NOTE REQUIRED

(See attached)

COMMITTEE AMENDMENT



128th MAINE LEGISLATURE

LD 1175

LR 2097(02)

An Act To Expand Options for the Prevention of Domestic Violence

Fiscal Note for Bill as Amended by Committee Amendment "A" (S-250)
Committee: Criminal Justice and Public Safety
Fiscal Note Required: Yes

Fiscal Note

	FY 2017-18	FY 2018-19	Projections FY 2019-20	Projections FY 2020-21
Net Cost (Savings)				
General Fund	\$736,720	\$383,204	\$394,193	\$405,521
Highway Fund	\$18,170	\$0	\$0	\$0
Appropriations/Allocations				
General Fund	\$736,720	\$383,204	\$394,193	\$405,521
Highway Fund	\$18,170	\$0	\$0	\$0

Fiscal Detail and Notes

This bill includes General Fund appropriations of \$703,570 in fiscal year 2017-18 and \$383,204 in fiscal year 2018-19 for the judicial branch for one Judge position, one Assistant Clerk position and one Deputy Marshal position to address anticipated new cases and required information technology updates.

The bill also includes a one-time General Fund appropriation of \$33,150 and a one-time Highway Fund allocation of \$18,170 in fiscal year 2017-18 for increased storage costs related to retaining firearms under a gun violence restraining order process.