

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1175

S.P. 396

In Senate, March 28, 2017

An Act To Expand Options for the Prevention of Domestic Violence

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
Secretary of the Senate

Presented by Senator DION of Cumberland.
Cosponsored by Representative WARREN of Hallowell and
Senators: CHIPMAN of Cumberland, HILL of York, Representatives: RECKITT of South
Portland, SANBORN of Portland, SPEAR of South Thomaston.

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 federally 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 federally licensed
18 firearms dealer with the law enforcement agency that served the gun violence
19 restraining order. Failure to timely file a copy of the receipt constitutes a violation of
20 the restraining 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 **§411. 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 or ammunition; 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 **§412. 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 **§413. 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 For the purposes of this subsection, "recent" means within the 6 months prior to the date
18 the petition was filed.

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

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

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

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

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

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

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

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

37 **4. Order; contents; expiration.** If the court determines that grounds to issue an ex
38 parte gun violence restraining order under this subchapter exist, it shall issue an ex parte
39 gun violence restraining order that prohibits the subject of the petition from having in the

1 person's custody or control, owning, purchasing, possessing or receiving or attempting to
2 purchase or receive a firearm or ammunition and that expires no later than 21 days from
3 the date of the order.

4 **§423. Order contents**

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

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

8 B. The date and time the order expires;

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

10 D. The date and time of the hearing scheduled pursuant to section 424; and

11 E. The following statement:

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

23 **2. Served on person.** An ex parte gun violence restraining order issued pursuant to
24 this subchapter must be personally served on the restrained person by a law enforcement
25 officer if the restrained person can reasonably be located. When serving the order, a law
26 enforcement officer shall inform the restrained person of the hearing scheduled pursuant
27 to section 424.

28 **§424. Hearing**

29 Within 21 days after the date on an ex parte gun violence restraining order issued
30 pursuant to this subchapter, the court shall hold a hearing pursuant to section 432 to
31 determine if a gun violence restraining order should be issued pursuant to subchapter 4.

32 **SUBCHAPTER 4**

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

35 **§431. One-year order**

36 A law enforcement officer or a family or household member of a person may file a
37 petition requesting that a court, after notice and a hearing, issue a gun violence restraining
38 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 **§432. 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 422, 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 422, subsection 3.

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

11 A. The subject of the petition or the 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 434 and renewal by further order
29 of the court pursuant to section 435.

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 gun violence
33 restraining order or ex parte gun violence restraining order in effect.

34 **§433. Order contents**

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 434, 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 this 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 434, and
12 shall provide the restrained person with a form to request a hearing.

13 **§434. 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 432, subsection 2 are true, the court shall terminate the order.

20 **§435. Renewal of order**

21 **1. Request a renewal.** A law enforcement officer or a family or household 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 432, 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 422, 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 422,
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
36 432, 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 **6. Renewed order contents.** A gun violence restraining order renewed pursuant to
2 this section must include the information identified in section 433, subsection 1.

3 **§436. Expiration of order**

4 A gun violence restraining order issued or renewed pursuant to this subchapter
5 expires one year from the date of issuance or renewal, subject to termination by further
6 order of the court at a hearing held pursuant to section 434 and renewal by further order
7 of the court pursuant to section 435.

8 **§437. Hearing**

9 A hearing held pursuant to this subchapter may be continued upon a showing of good
10 cause. A gun violence restraining order issued pursuant to this subchapter remains in
11 effect during the period of continuance.

12 **§438. Service of order**

13 If a person subject to a gun violence restraining order issued or renewed pursuant to
14 this subchapter was not present in court at the time the order was issued or renewed, the
15 gun violence restraining order must be personally served on the restrained person by a
16 law enforcement officer if the restrained person can reasonably be located.

17 **SUBCHAPTER 5**

18 **OFFENSE**

19 **§441. Offense**

20 A person who owns or possesses a firearm or ammunition knowing that the person is
21 prohibited from doing so by a temporary emergency gun violence restraining order issued
22 pursuant to subchapter 2, an ex parte gun violence restraining order issued pursuant to
23 subchapter 3 or a gun violence restraining order issued after notice and a hearing pursuant
24 to subchapter 4 commits a Class D crime. As part of the sentencing alternative, the court
25 shall prohibit the person from having in the person's custody or control, owning,
26 purchasing, possessing or receiving or attempting to purchase or receive a firearm or
27 ammunition for a 5-year period, to commence upon the expiration of the gun violence
28 restraining order.

29 **SUMMARY**

30 This bill creates a gun violence restraining order to authorize a court to order a person
31 to surrender that person's firearms and ammunition for a specific period of time when it
32 has been proved that the person poses a danger of causing personal injury to that person
33 or another person. The bill provides that:

34 1. A law enforcement officer may file for a temporary emergency gun violence
35 restraining order, which expires in 21 days;

1 2. A law enforcement officer or a family or household 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 family or household 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 and that the
8 order is necessary to prevent injury because less restrictive alternatives have been tried or
9 are 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.