

MAINE STATE LEGISLATURE

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Majority

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Date: 4/18/2018

L.D. 1884
(Filing No. S- 488)

JUDICIARY

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**STATE OF MAINE
SENATE
128TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 719, L.D. 1884, Bill, "An Act To Create a Community Protection Order To Allow Courts To Prevent High-risk Individuals from Possessing Firearms"

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

'PART A

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

**CHAPTER 16
COMMUNITY PROTECTION ORDERS
SUBCHAPTER 1
GENERAL PROVISIONS**

§401. Definitions

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

1. Community protection order. "Community protection order" means a written order signed by the court that prohibits and enjoins temporarily, if issued pursuant to subchapter 3, or on an extended basis, if issued pursuant to subchapter 5, a named individual from having a firearm in that individual's custody or control or purchasing, possessing or receiving or attempting to purchase or receive a firearm.

2. Family or household member. "Family or household member" means a spouse or domestic partner of the subject of a petition under this chapter, a former spouse or former domestic partner of the subject of a petition under this chapter or an individual presently or formerly living as a spouse of the subject of a petition under this chapter, a

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parent of a child of the subject of a petition under this chapter, an adult household member related by consanguinity or affinity to the subject of a petition under this chapter or a minor child of a household member when the subject of a petition under this chapter is an adult household member.

3. High-risk individual. "High-risk individual" means an individual who presents an immediate and present danger of serious bodily injury or death to the individual or to another individual and is the subject of evidence that would give rise to a reasonable belief that the individual has a propensity for violent or emotionally unstable conduct.

The fact that an individual has been released from a mental health facility or has a mental illness that is currently controlled by medication does not establish that the individual presents an immediate and present danger of serious bodily injury or death to the individual or to another individual for the purposes of this chapter.

4. Restrained individual. "Restrained individual" means an individual who is the subject of a community protection order.

SUBCHAPTER 3

ISSUE OF TEMPORARY COMMUNITY PROTECTION ORDERS

§411. Petition

A law enforcement officer or a family or household member of a high-risk individual may file a petition requesting that the court issue a temporary community protection order prohibiting and enjoining the high-risk individual who is the subject of the petition from having in that individual's custody or control or purchasing, possessing or receiving a firearm or attempting to purchase or receive a firearm.

§412. Procedure for issuance of temporary community protection order

1. Grounds. Following review of a petition filed pursuant to section 411, a court may issue a temporary community protection order only if the court finds by clear and convincing evidence that there is cause to believe both of the following:

A. The subject of the petition is a high-risk individual; and

B. A temporary community protection order is necessary to prevent serious bodily injury or death to the subject of the petition or to another person.

2. Evidence. In determining whether grounds for issuance of a temporary community protection order exist, the court shall consider all relevant evidence, including but not limited to 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. The history of use, attempted use or threatened use of physical force by the subject of the petition against another person;

C. A violation by the subject of the petition of a protection from abuse order issued pursuant to Title 19-A, chapter 101, including a temporary protection from abuse order;

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1 D. A violation by the subject of the petition of a community protection order issued
2 pursuant to this chapter, including a temporary community protection order;

3 E. The criminal history of the subject of the petition, including whether the subject of
4 the petition has been convicted of a crime involving domestic violence. For the
5 purposes of this paragraph, "crime involving domestic violence" includes but is not
6 limited to domestic violence assault, domestic violence criminal threatening,
7 domestic violence terrorizing, domestic violence stalking or domestic violence
8 reckless conduct as defined in Title 17-A;

9 F. Excessive alcohol or drug use by the subject of the petition;

10 G. The unlawful and reckless use, display or brandishing of a firearm by the subject
11 of the petition; and

12 H. Recent acquisition of firearms, ammunition or other deadly weapons by the
13 subject of the petition.

14 For the purposes of this subsection, "recent" means within the 6 months prior to the filing
15 of the petition.

16 **3. Testimony or affidavit under oath.** The court, before issuing a temporary
17 community protection order, shall examine under oath the petitioner and any witness the
18 petitioner may produce after informing the petitioner and any witness that false testimony
19 made under oath is perjury, as defined in Title 17-A, section 451, and is a Class C crime.
20 In lieu of examining the petitioner and witness, the court may require the petitioner and
21 witness to submit written affidavits signed under oath. An affidavit supporting a petition
22 for the issuance of a temporary community protection order must set forth the facts
23 tending to establish the grounds of the petition or the reason for believing that the
24 grounds exist.

25 **4. Determination on same day.** The court shall issue or deny a temporary
26 community protection order on the day that the petition is submitted to the court.

27 **5. Ex parte order.** The court may issue a temporary community protection order on
28 an ex parte basis.

29 **§413. Contents of order**

30 A temporary community protection order issued pursuant to this subchapter must
31 include all of the following:

32 **1. Grounds.** The finding of facts by the court supporting the issuance of the
33 temporary community protection order;

34 **2. Hearing.** The date, time and place at which a hearing on the temporary
35 community protection order will be held pursuant to section 421; and

36 **3. Notice.** The following notice:

37 "To (name of restrained individual): A hearing will be held, in the District Court, on the
38 question whether the District Court should issue an extended community protection order
39 against you. You are required to surrender all firearms that you possess in accordance
40 with the Maine Revised Statutes, Title 15, section 414 and you may not have a firearm in
41 your custody or control or purchase, possess or receive or attempt to purchase or receive a

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firearm while this order is in effect. You may seek the advice of an attorney as to any matter connected with the order."

§414. Effect of temporary community protection order; surrender of firearm

1. Effect. A temporary community protection order prohibits and enjoins the restrained individual from having a firearm in the restrained individual's custody or control or purchasing, possessing or receiving or attempting to purchase or receive a firearm. The temporary community protection order also must direct the restrained individual to surrender to a local law enforcement agency all firearms in the restrained individual's custody or control or that the restrained individual possesses.

2. Search warrant. The court may concurrently or subsequently issue a search warrant authorizing a law enforcement officer to seize any firearms that there is probable cause to believe that the restrained individual possesses. This subsection does not authorize a law enforcement officer to perform a warrantless search or seizure if a warrant would otherwise be required.

3. Surrender of firearm. A restrained individual subject to a temporary community protection order and upon request of a law enforcement officer shall immediately surrender all firearms in a safe manner to the control of the officer.

§415. Term of order

A temporary community protection order expires 14 days from the date the order is issued.

§416. Law enforcement officer responsibilities

Following the issuance of a temporary community protection order by a court pursuant to this subchapter, the court shall order a law enforcement officer to serve the community protection order. The law enforcement officer shall:

1. Serve order. Serve the temporary community protection order on the restrained individual as soon as practicable after issuance if the restrained individual can reasonably be located;

2. File with court. File with the court a copy of the temporary community protection order and an inventory of all firearms surrendered as a result of the service of the temporary community protection order and all firearms seized as a result of a search warrant issued pursuant to section 414, subsection 2 as soon as practicable after the surrender or seizure of the firearms; and

3. Database. Have the temporary community protection order entered into the database for protection orders maintained by the Department of Public Safety.

SUBCHAPTER 5

ISSUE OF EXTENDED COMMUNITY PROTECTION ORDERS

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§421. Hearing

1. Time for hearing. Within 14 days after the date upon which a restrained individual is served a temporary community protection order, the District Court shall hold a hearing to determine if an extended community protection order should be issued.

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

A. The restrained individual is a high-risk individual; and

B. A community protection order is necessary to reduce the probability of substantial bodily injury to the restrained individual or another individual.

3. Evidence. In determining whether grounds for issuance of an extended community protection order exist, the court shall consider all relevant evidence, including but not limited to evidence of the factors specified in section 412, subsection 2.

4. Representation of petitioner. The prosecutor shall represent a petitioner at a hearing conducted pursuant to this section.

§422. Extended community protection order

1. Issue. If the court finds that a petitioner has met the burden of proof under section 421, subsection 2, the court shall issue an extended community protection order prohibiting a restrained individual from having in that individual's custody or control or purchasing, possessing or receiving or attempting to purchase or receive a firearm. The court may concurrently or subsequently issue a search warrant authorizing a law enforcement officer to seize any firearms that there is probable cause to believe that the restrained individual possesses. This subsection does not authorize a law enforcement officer to perform a warrantless search or seizure if a warrant would otherwise be required.

2. Term. An extended community protection order issued pursuant to this subchapter expires 180 days from the date the order is issued.

3. Contents. An extended community protection order issued pursuant to this subchapter must include the following:

A. The findings of fact by the court supporting the issuance of the extended community protection order;

B. The date that the order expires; and

C. The following notice:

"To (name of restrained individual): You are required to surrender all firearms that you possess in accordance with the Maine Revised Statutes, Title 15, section 422 and you may not have a firearm in your custody or control or purchase, possess or receive or attempt to purchase or receive a firearm while this order is in effect. You may seek the advice of an attorney as to any matter connected with the order."

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§423. Law enforcement officer responsibilities

Following the issuance of an extended community protection order by a court pursuant to this subchapter, a law enforcement officer must be directed to serve the community protection order. The law enforcement officer shall:

1. **Serve order.** Serve the extended community protection order on the restrained individual as soon as practicable after issuance if the restrained individual can reasonably be located;

2. **File with court.** File with the court a copy of the extended community protection order and an inventory of all firearms surrendered as a result of the service of the extended community protection order and all firearms seized as a result of a search warrant issued pursuant to section 422, subsection 1 as soon as practicable after the surrender or seizure of the firearms; and

3. **Database.** Have the extended community protection order entered into the database for protection orders maintained by the Department of Public Safety.

§424. Dissolution of community protection order

1. **Dissolution of temporary community protection order after hearing.** If the court finds at a hearing under section 421 that there is not clear and convincing evidence to support the issuance of an extended community protection order, the court shall dissolve any temporary community protection order in effect and may not issue an extended community protection order. If a temporary community protection order is dissolved pursuant to this subsection, the court shall direct a law enforcement agency to enter the fact that the order was dissolved into the database for protection orders maintained by the Department of Public Safety.

2. **Dissolution of extended community protection order after hearing.** A restrained individual may submit one written request for a hearing to dissolve an extended community protection order issued pursuant to section 422. If the court finds after hearing that the restrained individual has demonstrated by clear and convincing evidence that the grounds for issuance of an extended community protection order set forth in section 421, subsection 2 no longer exist, the court shall dissolve the extended community protection order. If an extended community protection order is dissolved pursuant to this subsection, the court shall direct a law enforcement agency to enter the fact that the order was dissolved into the database for protection orders maintained by the Department of Public Safety.

SUBCHAPTER 7

RETENTION AND RETURN OF FIREARM

§431. Retention and return of firearm

1. **Firearms retained by law enforcement agency.** A law enforcement agency shall retain any firearm surrendered to or seized by a law enforcement officer or law enforcement agency pursuant to this chapter in accordance with this section.

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2. Return of firearm. Upon the latter of the expiration or dissolution of a temporary community protection order and the dissolution or expiration of an extended community protection order, the law enforcement agency shall return any firearm surrendered by or seized from a restrained individual to the restrained individual. If a family or household member of the restrained individual petitioned for the expired or dissolved community protection order, the law enforcement agency must provide prior notice of the return of the firearm to that family or household member. The law enforcement agency may dispose of an unclaimed firearm in accordance with Title 25, section 3503-A.

3. Law enforcement agency duties; liability. The duties and liability of a law enforcement agency with respect to the safe handling and storage of firearms surrendered or seized pursuant to this chapter are governed by Title 25, section 2804-C, subsection 2-C.

4. Return to other claimant. If a person other than a restrained individual claims title to a firearm surrendered or seized pursuant to this chapter and the person is determined by the law enforcement agency that has custody of the firearm to be the lawful owner of the firearm, the law enforcement agency shall return the firearm to that person.

SUBCHAPTER 9

OFFENSE

§441. Offense

An individual who possesses a firearm knowing that the individual is prohibited from doing so by a temporary community protection order issued pursuant to subchapter 3 or an extended community protection order issued after notice and a hearing pursuant to subchapter 5 commits a Class D crime. As part of any sentence, the court shall prohibit the individual from having in the individual's custody or control, purchasing, possessing, receiving or attempting to purchase or receive a firearm for a 2-year period to commence upon the expiration of the community protection order.

Sec. A-2. 25 MRSA §2804-C, sub-§2-C, as amended by PL 2013, c. 147, §30, is further amended to read:

2-C. Receipt of firearms; training; procedure; liability. The Maine Criminal Justice Academy shall provide training for municipal, county and state law enforcement officers regarding the proper handling, storage, safekeeping and return of firearms and firearm accessories received pursuant to a court order under Title 19-A, section 4006, subsection 2-A or, Title 19-A, section 4007, subsection 1, paragraph A-1 or Title 15, chapter 16. Such training must include education concerning the prohibitions on the purchase or possession of a firearm when a protection order has been obtained and communication with parties to protection orders concerning such prohibitions.

In developing materials for training in domestic violence issues, the Maine Criminal Justice Academy may consult with a statewide organization involved in advocacy for victims of domestic violence and with an organization having statewide membership representing the interests of firearms owners.

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1 A law enforcement officer who receives custody of a firearm pursuant to Title 19-A,
2 section 4006, subsection 2-A or, Title 19-A, section 4007, subsection 1, paragraph A-1 or
3 Title 15, chapter 16 shall exercise reasonable care to avoid loss, damage or reduction in
4 value of the firearm and may not permanently mark the firearm or fire the firearm unless
5 there is reasonable suspicion that the firearm has been used in the commission of a crime.
6 Any liability for damage or reduction in value to such a firearm is governed by Title 14,
7 chapter 741.

8 **PART B**

9 **Sec. B-1. 15 MRSA §393, sub-§1, ¶E**, as amended by PL 2015, c. 470, §1, is
10 further amended to read:

- 11 E. Has been:
 - 12 (1) Committed involuntarily to a hospital pursuant to an order of the District
 - 13 Court under Title 34-B, section 3864 because the person was found to present a
 - 14 likelihood of serious harm, as defined under Title 34-B, section 3801, subsection
 - 15 4-A, paragraphs A to C;
 - 16 (2) Found not criminally responsible by reason of insanity with respect to a
 - 17 criminal charge; or
 - 18 (3) Found not competent to stand trial with respect to a criminal charge; or
 - 19 (4) Ordered to participate in a progressive treatment program pursuant to Title
 - 20 34-B, section 3873-A and, as part of that order, directed not to possess firearms
 - 21 pursuant to Title 34-B, section 3873-A, subsection 7-A.

22 Violation of this paragraph is a Class D crime;

23 **Sec. B-2. 34-B MRSA §3873-A, sub-§5, ¶A-1** is enacted to read:

24 A-1. Prior to the commencement of the hearing, the court shall inform the patient
25 that if an order is entered pursuant to subsection 7-A, that patient is a prohibited
26 person and may not own, possess or have under that person's control a firearm
27 pursuant to Title 15, section 393, subsection 1.

28 **Sec. B-3. 34-B MRSA §3873-A, sub-§§7-A and 7-B** are enacted to read:

29 **7-A. Firearms.** If the court directs a patient to follow an individualized treatment
30 plan pursuant to subsection 6, the court may also prohibit the patient from possessing a
31 firearm, muzzle-loading firearm, bow, crossbow or other dangerous weapon for the
32 duration of the treatment plan. If the court prohibits the patient from possessing a
33 dangerous weapon other than a firearm, muzzle-loading firearm, bow or crossbow, the
34 court shall specify the type of weapon the patient is prohibited from possessing.

35 If the court prohibits the patient from possessing a firearm, muzzle-loading firearm, bow,
36 crossbow or other dangerous weapon, the court shall notify the patient that possession of
37 a firearm by the person is prohibited pursuant to Title 15, section 393. The court also
38 shall direct the patient to relinquish, within 24 hours after service of the order on the
39 patient or such earlier time as the court specifies in the order, all firearms, muzzle-loading

1 firearms, bows, crossbows and specified dangerous weapons in the possession of the
2 patient to a law enforcement officer or other individual for the duration of the order. If
3 the weapons are relinquished to an individual other than a law enforcement officer, the
4 patient must file, within 24 hours after such relinquishment, with the court or local law
5 enforcement agency designated in the order a written statement that contains the name
6 and address of the individual holding the weapons and a description of all weapons held
7 by that individual.

8 The duties and liability of a law enforcement agency with respect to firearms surrendered
9 pursuant to this subsection are governed by Title 25, section 2804-C, subsection 2-C.

10 **7-B. Transmission of abstract of court ruling to the State Bureau of**
11 **Identification.** Notwithstanding any other provision of this section or section 1207, a
12 court shall transmit to the Department of Public Safety, Bureau of State Police, State
13 Bureau of Identification an abstract of any order issued by the court pursuant to this
14 section that includes a prohibition on the possession of a firearm pursuant to subsection
15 7-A. The abstract must include:

16 A. The name, date of birth and gender of the person who is the subject of the order;

17 B. The court's order pursuant to subsection 7-A and the expiration date of that order;
18 and

19 C. A notation that the person has been notified by the court in accordance with
20 subsection 5, paragraph A-1 and subsection 7-A.

21 The abstract required by this subsection is confidential and is not a public record as
22 defined in Title 1, chapter 13; however, a copy of the abstract may be provided by the
23 State Bureau of Identification to a criminal justice agency for legitimate law enforcement
24 purposes, to the Federal Bureau of Investigation, National Instant Criminal Background
25 Check System or to an issuing authority for the purpose of processing concealed firearm
26 permit applications.

27 For the purposes of this subsection, "criminal justice agency" means a federal, state,
28 tribal, district, county or local government agency or any subunit of those entities that
29 performs the administration of criminal justice under a statute or executive order and that
30 allocates a substantial part of its annual budget to the administration of criminal justice.
31 Courts and the Department of the Attorney General are considered criminal justice
32 agencies. "Criminal justice agency" also includes any equivalent criminal justice agency
33 at any level of Canadian government.

34 PART C

35 **Sec. C-1. Appropriations and allocations.** The following appropriations and
36 allocations are made.

37 JUDICIAL DEPARTMENT

38 Courts - Supreme, Superior and District 0063

39 Initiative: Appropriates funds on a one-time basis for programming and related
40 information technology costs for case management system changes.

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1	GENERAL FUND	2017-18	2018-19
2	All Other	\$0	\$281,000
3			
4	GENERAL FUND TOTAL	<u>\$0</u>	<u>\$281,000</u>
5			

SUMMARY

7 This amendment, which is the majority report of the committee, replaces the bill.
8 Part A of the amendment makes the following changes to the bill.

9 1. It limits the categories of individuals who may petition for a community protection
10 order to include only a law enforcement officer, a former or current spouse or domestic
11 partner of the subject of the petition, an individual who formerly was or currently is living
12 with the subject of the petition as a spouse, the parent of a child of the subject of the
13 petition and household members related by consanguinity or affinity to the subject of the
14 petition.

15 2. It changes the definition of "high-risk individual" to remove references to mental
16 illness.

17 3. It enumerates specific factors that a court must consider when deciding whether to
18 issue a temporary or extended community protection order.

19 4. It reduces the duration of a temporary community protection order from 21 days to
20 14 days.

21 5. It removes the prohibition on ownership of a firearm by a restrained individual but
22 continues to prohibit a restrained individual from having a firearm in the individual's
23 custody or control or purchasing, possessing or receiving or attempting to purchase or
24 receive a firearm.

25 6. It authorizes the court to issue a search warrant authorizing a law enforcement
26 officer to seize any firearms that there is probable cause to believe the restrained
27 individual possesses either concurrently with or subsequent to issuance of a temporary or
28 extended community protection order.

29 7. It permits an individual restrained by an extended community protection order to
30 submit one written request to dissolve the extended community protection order and
31 requires law enforcement to update the Department of Public Safety database for
32 protection orders when a community protection order is dissolved.

33 8. It requires, prior to the return of a firearm to an individual who was restrained by
34 an expired or dissolved community protection order, that the law enforcement agency
35 provide notice of the return of the firearm to the petitioner, if the petitioner is a family or
36 household member of the restrained individual.

37 9. It requires law enforcement agencies to exercise reasonable care to avoid loss,
38 damage or reduction in value of firearms surrendered by or seized from restrained
39 individuals and provides that the Maine Tort Claims Act governs liability of law
40 enforcement for damage to or reduction in value of such firearms.

1 Part B of the amendment authorizes a court to order a person admitted to a
2 progressive treatment program not to possess firearms, muzzle-loading firearms, bows,
3 crossbows or other specified dangerous weapons for the duration of the patient's court-
4 ordered participation in the program. Possession of a firearm by a patient in violation of
5 such an order is a Class D crime. A law enforcement officer to whom a patient
6 surrenders a firearm must exercise reasonable care to avoid loss, damage or reduction in
7 value of the surrendered firearm.

8 Part C provides funds to the Judicial Department for programming and related
9 information technology costs for case management system changes.

10 **FISCAL NOTE REQUIRED**

11 (See attached)



128th MAINE LEGISLATURE

LD 1884

LR 2943(02)

An Act To Create a Community Protection Order To Allow Courts To Prevent High-risk Individuals from Possessing Firearms

Fiscal Note for Bill as Amended by Committee Amendment "A" (S-488)
Committee: Judiciary

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	\$0	\$281,000	\$32,500	\$6,500
Highway Fund	\$0	\$0	\$17,820	\$3,564
Appropriations/Allocations				
General Fund	\$0	\$281,000	\$32,500	\$6,500
Highway Fund	\$0	\$0	\$17,820	\$3,564

Correctional and Judicial Impact Statements

Increases caseload of civil suits and Class D crimes.

The additional workload associated with the minimal number of new cases filed in the court system does not require additional funding at this time.

The collection of additional fines may increase General Fund or other dedicated revenue by minor amounts.

Fiscal Detail and Notes

Provides a one-time appropriation of \$281,000 in fiscal year 2018-19 for the Judicial Department for programming and related information technology costs for changes to the department's case management system. The Department of Public Safety will require a General Fund appropriation and a Highway Fund allocation of \$32,500 and \$17,820, respectively, in fiscal year 2019-20 for one-time programming costs and ongoing maintenance costs related to reprogramming of the METRO switch.

Any additional costs to the Department of Health and Human Services from the provisions of this bill are expected to be minor and can be absorbed within existing budgeted resources.