

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

SECOND REGULAR SESSION-2018

Legislative Document

No. 1884

S.P. 719

In Senate, March 27, 2018

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

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator DION of Cumberland.

Cosponsored by Speaker GIDEON of Freeport and

Senators: HILL of York, KEIM of Oxford, VOLK of Cumberland, Representatives:

BICKFORD of Auburn, MALABY of Hancock, O'CONNOR of Berwick, TALBOT ROSS of
Portland, VACHON of Scarborough.

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 **COMMUNITY PROTECTION 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. Community protection order.** "Community protection order" means a written
11 order signed by the court that prohibits and enjoins temporarily, if issued pursuant to
12 subchapter 2, or on an extended basis, if issued pursuant to subchapter 3, a named
13 individual from having a firearm in that individual's custody or control or owning,
14 purchasing, possessing or receiving or attempting to purchase or receive a firearm.

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

17 **3. High-risk individual.** "High-risk individual" means an individual who presents
18 an imminent and substantial risk of serious bodily injury or death to the individual or to
19 another individual and:

20 A. Has a mental illness that may be controlled by medication but has not
21 demonstrated a pattern of voluntarily and consistently taking the individual's
22 medication while not under supervision; or

23 B. Is the subject of documented evidence that would give rise to a reasonable belief
24 that the individual has a propensity for violent or emotionally unstable conduct.

25 The fact that an individual has been released from a mental health facility or has a mental
26 illness that is currently controlled by medication does not establish that the individual
27 presents an imminent and substantial risk of serious bodily injury or death to the
28 individual or to another individual for the purposes of this chapter. As used in this
29 subsection, "mental illness" has the same meaning as in section 3318-A, subsection 1,
30 paragraph B.

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

33 **SUBCHAPTER 3**

34 **ISSUE OF TEMPORARY COMMUNITY PROTECTION ORDERS**

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§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 owning, purchasing, possessing or receiving a firearm or attempting to purchase or receive a firearm. A petition for a temporary community protection order must describe any firearm that the petitioner reasonably believes the high-risk individual possesses or controls.

§412. Procedure for issuance of temporary community protection order

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

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

4. Ex parte order. The court may issue a temporary community protection order on an ex parte basis.

§413. Contents of order

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

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

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

3. Notice. The following notice:

1 "To (name of restrained individual): A hearing will be held, in the District Court, on the
2 question as to whether an extended community protection order is issued against you.
3 You are required to surrender all firearms that you own or possess in accordance with the
4 Maine Revised Statutes, Title 15, section 414 and you may not have a firearm in your
5 custody or control or own, purchase, possess or receive or attempt to purchase or receive
6 a firearm while this order is in effect. You may seek the advice of an attorney as to any
7 matter connected with the order."

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

9 **1. Effect.** A temporary community protection order prohibits and enjoins the
10 restrained individual from having a firearm in the restrained individual's custody or
11 control or owning, purchasing, possessing or receiving or attempting to purchase or
12 receive a firearm.

13 **2. Surrender order.** Upon issuance of a temporary community protection order, the
14 court shall order the restrained individual to surrender to a local law enforcement agency
15 all firearms in the restrained individual's custody or control or that the restrained
16 individual possesses or owns.

17 **3. Surrender of firearm; warrantless search or seizure prohibited.** A restrained
18 individual subject to a surrender order issued pursuant to subsection 2, after having been
19 served with a temporary community protection order and upon request of a law
20 enforcement officer, shall immediately surrender all firearms in a safe manner to the
21 control of the officer. This subsection does not authorize a law enforcement officer to
22 perform a warrantless search or seizure if a warrant would otherwise be required.

23 **§415. Term of order**

24 A temporary community protection order expires 21 days from the date the order is
25 issued.

26 **§416. Law enforcement officer responsibilities**

27 Following the issuance of a temporary community protection order and a surrender
28 order by a court pursuant to this subchapter, a law enforcement officer must be directed to
29 serve the community protection order. The law enforcement officer shall:

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

33 **2. File with court.** File with the court a copy of the temporary community
34 protection order and an inventory of all firearms surrendered as a result of the service of
35 the temporary community protection order as soon as practicable after the surrender of
36 the firearms; and

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

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§417. Retention and return of firearm

1. Firearms retained by law enforcement agency. A law enforcement agency shall retain any firearm surrendered to a law enforcement officer or law enforcement agency pursuant to section 414 until the expiration of the temporary community protection order that has been issued against the restrained individual, unless an extended order is issued pursuant to section 421.

2. Return of firearm. Upon the later of the expiration of a temporary community protection order and the expiration of an extended community protection order, the law enforcement agency shall return any firearm surrendered by the restrained individual to the restrained individual. The law enforcement agency may dispose of an unclaimed firearm in accordance with Title 25, section 3503-A.

3. Law enforcement agency held harmless for damage to firearm. A law enforcement agency must be held harmless for any unintentional damage to a firearm surrendered pursuant to section 414 arising from the prudent and reasonable transportation and storage of the surrendered firearm.

4. Return to other claimant. If a person other than the restrained individual claims title to a firearm surrendered pursuant to section 414 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 other person.

SUBCHAPTER 5

ISSUE OF EXTENDED COMMUNITY PROTECTION ORDERS

§421. Hearing

Within 21 days after the date upon which the restrained individual was served a temporary community protection order, the District Court shall hold a hearing to determine if an extended community protection order should issue. At a hearing under this section, the petitioner has the burden of proving by clear and convincing evidence that both of the following are true:

1. Significant danger to self or others. The restrained individual poses a significant and continuing danger of causing serious bodily injury or death to the restrained individual or presents a continuing substantial risk of injury to another individual by having a firearm in that restrained individual's custody or control or owning, purchasing, possessing or receiving a firearm; and

2. Necessary to prevent harm to self or others. A community protection order is necessary to reduce the probability of substantial bodily injury to the restrained individual or another individual.

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

1 **§422. Issuance of extended community protection order; term of order**

2 **1. Issue.** If the court finds that the petitioner has met the burden of proof under
3 section 421, the court shall issue an extended community protection order prohibiting the
4 restrained individual from having in that individual's custody or control or owning,
5 purchasing, possessing or receiving or attempting to purchase or receive a firearm.

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

8 **§423. Dissolution of community protection order**

9 If the court finds at a hearing under section 421 that there is not clear and convincing
10 evidence to support the issuance of an extended community protection order, the court
11 shall dissolve any temporary community protection order in effect and may not issue an
12 extended community protection order.

13 **§424. Return of firearm**

14 Upon the expiration of an extended community protection order pursuant to section
15 422, subsection 2 or the dissolution of a community protection order pursuant to section
16 423, any firearm surrendered by the individual who was the subject of the community
17 protection order must be returned to that individual in accordance with section 417,
18 subsection 2.

19 **SUBCHAPTER 7**

20 **OFFENSE**

21 **§431. Offense**

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

29 **Sec. 2. 19-A MRSA §4002, sub-§4,** as amended by PL 2015, c. 296, Pt. C, §24
30 and affected by Pt. D, §1, is further amended to read:

31 **4. Family or household members.** "Family or household members" means spouses
32 or domestic partners or former spouses or former domestic partners, individuals presently
33 or formerly living together as spouses, parents of the same child, adult household
34 members related by consanguinity or affinity or minor children of a household member
35 when the defendant is an adult household member and, for the purposes of Title 15,
36 chapter 16, Title 15, section 1023, subsection 4, paragraph B-1 and Title 15, section
37 1094-B, this chapter and Title 17-A, sections 15, 207-A, 209-A, 210-B, 210-C, 211-A,
38 1201, 1202 and 1253 only, includes individuals presently or formerly living together and

1 individuals who are or were sexual partners. Holding oneself out to be a spouse is not
2 necessary to constitute "living as spouses." For purposes of this subsection, "domestic
3 partners" means 2 unmarried adults who are domiciled together under long-term
4 arrangements that evidence a commitment to remain responsible indefinitely for each
5 other's welfare.

6 **SUMMARY**

7 This bill creates a community protection order to authorize a court to order a person
8 to surrender that person's firearms temporarily for 21 days or on an extended basis for
9 180 days when it has been proved that the person poses a danger of causing personal
10 injury to that person or another person. The bill provides that:

11 1. A law enforcement officer or a family or household member may file a petition for
12 a temporary community protection order, which expires in 21 days. A temporary
13 community protection order may be issued on an ex parte basis. The court is required to
14 hold a hearing to determine if the temporary community protection order should be
15 extended for an additional 180 days;

16 2. A person who is the subject of a community protection order is required to
17 surrender all firearms in the person's possession to a law enforcement officer. The
18 firearms must be returned to the person at the expiration of the community protection
19 order; and

20 3. A person who possesses firearms in violation of a community protection order
21 commits a Class D crime. Part of the sentence must include a prohibition on possession of
22 firearms for an additional 2 years.