

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1312

S.P. 408

In Senate, March 19, 2019

An Act Regarding Access to Firearms by Extremely Dangerous and Suicidal Individuals

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator MILLETT of Cumberland.

Cosponsored by Representative CARDONE of Bangor, Speaker GIDEON of Freeport and Senators: CARSON of Cumberland, GRATWICK of Penobscot, MIRAMANT of Knox, Representatives: BAILEY of Saco, HARNETT of Gardiner, HYMANSON of York, McCREIGHT of Harpswell, RECKITT of South Portland.

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 **EXTREME RISK 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. Court.** "Court" means a District Court.

11 **2. Extreme risk protection order.** "Extreme risk protection order" means a written
12 order signed by the court that prohibits and enjoins a restrained individual from
13 purchasing, possessing or controlling a firearm and from attempting to purchase, possess
14 or control a firearm. An extreme risk protection order may be a temporary extreme risk
15 protection order issued pursuant to subchapter 2 or an extended extreme risk protection
16 order issued pursuant to subchapter 3.

17 **3. Family or household member.** "Family or household member" means a spouse
18 or domestic partner of the respondent, a former spouse or former domestic partner of the
19 respondent, an individual presently or formerly living as a spouse of the respondent, a
20 parent of a child of the respondent or an adult related by consanguinity or affinity to the
21 respondent.

22 **4. Law enforcement agency.** "Law enforcement agency" means the State Police, a
23 sheriff's department or a municipal police department.

24 **5. Law enforcement officer.** "Law enforcement officer" means a person who by
25 virtue of public employment is vested by law with the power to make arrests for crimes or
26 serve criminal process, whether that power extends to all crimes or is limited to specific
27 crimes, and who possesses a current and valid certificate issued by the Board of Trustees
28 of the Maine Criminal Justice Academy pursuant to Title 25, section 2803-A. As used in
29 this chapter, "law enforcement officer" does not include federal law enforcement officers
30 or attorneys prosecuting for the State.

31 **6. Petition.** "Petition" means a petition for an extreme risk protection order filed
32 under this chapter.

33 **7. Petitioner.** "Petitioner" means a law enforcement agency, law enforcement
34 officer or family or household member who files a petition for an extreme risk protection
35 order under this chapter.

1 danger of causing bodily injury to the respondent or others, the court shall issue a
2 temporary extreme risk protection order.

3 **2. Testimony under oath or sworn affidavit.** The court, before issuing a temporary
4 extreme risk protection order, shall examine under oath the petitioner and any witness the
5 petitioner may produce after informing the petitioner and any witness that offering false
6 testimony made under oath is perjury, as defined in Title 17-A, section 451, and is a Class
7 C crime. In lieu of examining the petitioner and any witness, the court may accept sworn
8 affidavits of the petitioner and any witness. An affidavit supporting a petition for the
9 issuance of a temporary extreme risk protection order must set forth the facts tending to
10 establish the grounds of the petition or the reason for believing that the grounds exist. A
11 false material statement under oath on an affidavit supporting issuance of an extreme risk
12 protection order is perjury, as defined in Title 17-A, section 451, and is a Class C crime.

13 **3. Determination on same day.** If the court finds probable cause to believe that the
14 respondent poses an immediate and present danger of causing bodily injury to the
15 respondent or others, the court shall issue a temporary extreme risk protection order on
16 the day that the petition is submitted to the court. If the court does not find probable cause
17 to believe that the respondent poses an immediate and present danger of causing bodily
18 injury to the respondent or others, the court may not issue a temporary extreme risk
19 protection order and shall set a date for a hearing on the petition, pursuant to subchapter
20 3, to determine whether an extended extreme risk protection order should be issued.

21 **4. Ex parte order.** The court may issue a temporary extreme risk protection order
22 on an ex parte basis.

23 **§413. Contents of temporary extreme risk protection order**

24 A temporary extreme risk protection order issued pursuant to this subchapter must
25 include a notice informing the restrained individual:

26 **1. Prohibition regarding firearms.** That the restrained individual is prohibited
27 from purchasing, possessing or controlling any firearm or attempting to purchase, possess
28 or control any firearm;

29 **2. Surrender of firearms.** That the restrained individual is required to surrender all
30 firearms the restrained individual owns, possesses or controls to a law enforcement
31 agency or law enforcement officer;

32 **3. Hearing.** The time, date and location of the hearing, if any, pursuant to
33 subchapter 3;

34 **4. Right to counsel.** The restrained individual's right to counsel, including the right
35 for an indigent restrained individual to be appointed counsel;

36 **5. Right to review petition and findings.** The restrained individual's right to access
37 and review the petition and findings of fact; and

38 **6. Duration.** The duration of the temporary extreme risk protection order.

1 **§414. Effect of temporary extreme risk protection order; surrender of firearm**

2 **1. Effect.** A temporary extreme risk protection order prohibits and enjoins the
3 restrained individual from purchasing, possessing or controlling or attempting to
4 purchase, possess or control any firearm while the order is in effect. The temporary
5 extreme risk protection order also must direct the restrained individual to surrender to a
6 law enforcement agency or law enforcement officer all firearms the restrained individual
7 owns, possesses or controls.

8 **2. Search warrant.** The court shall subsequently issue a search warrant authorizing
9 a law enforcement officer to search for and seize any firearms if the court finds there is
10 probable cause to believe the restrained individual owns, possesses or controls any
11 firearms. This subsection does not authorize a law enforcement officer to perform a
12 warrantless search or seizure if a warrant would otherwise be required.

13 **3. Surrender of firearm.** Upon request of the law enforcement officer serving a
14 temporary extreme risk protection order, a restrained individual subject to a temporary
15 extreme risk protection order shall immediately surrender all firearms the restrained
16 individual owns, possesses or controls in a safe manner to the control of the law
17 enforcement officer. Any firearm not surrendered to a law enforcement officer at the
18 time of service of the temporary extreme risk protection order or removed pursuant to a
19 search warrant must be surrendered to a law enforcement agency within 24 hours of
20 service of a temporary extreme risk protection order.

21 **§415. Term of temporary extreme risk protection order**

22 A temporary extreme risk protection order expires either 14 days from the date the
23 order is issued or when a hearing is held pursuant to subchapter 3 to determine whether
24 an extended extreme risk protection order should be issued, whichever occurs first.

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

26 Following the issuance of a temporary extreme risk protection order by a court
27 pursuant to this subchapter, the court shall order a law enforcement officer to serve the
28 temporary extreme risk protection order. The law enforcement officer shall:

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

32 **2. File with court.** File with the court a copy of the temporary extreme risk
33 protection order and an inventory of any firearms surrendered at the time of the service of
34 the temporary extreme risk protection order, any firearms surrendered by the restrained
35 individual following service of the temporary extreme risk protection order and any
36 firearms seized during the execution of a search warrant issued pursuant to section 414,
37 subsection 2 as soon as practicable after the surrender or seizure of the firearms; and

38 **3. Database.** Enter the record of the temporary extreme risk protection order into
39 the database for protection orders maintained by the Department of Public Safety.

1 SUBCHAPTER 3

2 EXTENDED EXTREME RISK PROTECTION ORDERS

3 §421. Procedure for issuance of extended extreme risk protection orders

4 1. Time of hearing. Within 14 days of the filing of a petition under section 411, the
5 court shall hold a hearing to determine if an extended extreme risk protection order
6 should be issued.

7 2. Evidence; burden of proof. In determining whether grounds for issuance of an
8 extended extreme risk protection order exist, the court shall consider all relevant
9 evidence. At a hearing for an extended extreme risk protection order, a petitioner has the
10 burden of proof.

11 3. Right to counsel. All parties have the right to be represented by counsel at the
12 hearing. If any party is indigent and requests counsel, the court shall appoint an attorney
13 to represent that party.

14 4. Standard of proof for issue of order. At the conclusion of a hearing for an
15 extended extreme risk protection order, if the court finds by clear and convincing
16 evidence that the respondent poses a danger of causing bodily injury to the respondent or
17 others, the court shall issue an extended extreme risk protection order.

18 §422. Contents of extended extreme risk protection order

19 An extended extreme risk protection order issued pursuant to this subchapter must
20 include a notice informing the restrained individual:

21 1. Prohibition regarding firearms. That the restrained individual is prohibited
22 from purchasing, possessing or controlling any firearm or attempting to purchase, possess
23 or control any firearm;

24 2. Surrender of firearms. That the restrained individual is required to surrender all
25 firearms owned, possessed or controlled by that restrained individual to a law
26 enforcement agency or law enforcement officer;

27 3. Duration of order. Of the duration of the extended extreme risk protection order;

28 4. Right to motion for dissolution. That the restrained individual has the right to
29 file one motion for dissolution during the duration of the extended extreme risk protection
30 order; and

31 5. Right to counsel. That the restrained individual has the right to counsel,
32 including the right, if indigent, to be appointed counsel.

33 §423. Effect of extended extreme risk protection order; surrender of firearms

34 1. Effect. An extended extreme risk protection order prohibits a restrained
35 individual from purchasing, possessing or controlling or attempting to purchase, possess
36 or control any firearm.

1 **2. Search warrant.** Following the issuance of an extended extreme risk protection
2 order pursuant to this subchapter, the court shall issue a search warrant authorizing a law
3 enforcement officer to search for and seize any firearms if the court finds there is
4 probable cause to believe the restrained individual owns, possesses or controls any
5 firearms. This subsection does not authorize a law enforcement officer to perform a
6 warrantless search or seizure if a warrant would otherwise be required.

7 **3. Surrender of firearm.** A restrained individual subject to an extended extreme
8 risk protection order shall surrender all firearms that restrained individual owns,
9 possesses or controls in a safe manner to the control of a law enforcement agency. A
10 firearm not surrendered to a law enforcement officer at the time of service of the
11 temporary extreme risk protection order pursuant to section 414 or removed pursuant to a
12 search warrant must be surrendered to a law enforcement agency within 24 hours of
13 issuance of an extended extreme risk protection order.

14 **§424. Term of extended orders and renewal**

15 An extended extreme risk protection order expires one year from the date the order is
16 issued. Within 45 days prior to the expiration of an extended extreme risk protection
17 order, the petitioner may request that the court renew the order. The petitioner has the
18 burden of proving that the restrained individual continues to pose a danger of causing
19 bodily injury to the restrained individual or others. If, after a hearing, the court finds by
20 clear and convincing evidence that the restrained individual continues to pose a danger of
21 causing bodily injury to the restrained individual or others, then the court shall renew the
22 extended extreme risk protection order for one year from the date the court orders the
23 renewal. Pursuant to subchapter 4, the restrained individual may file a motion requesting
24 a hearing to dissolve the order once within the term of the extended extreme risk
25 protection order.

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

27 Following the issuance of an extended extreme risk protection order by a court
28 pursuant to this subchapter, the court shall order a law enforcement officer to serve the
29 extended extreme risk protection order. The law enforcement officer shall:

30 **1. Serve order.** Serve the extended extreme risk 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 extended extreme risk
34 protection order and an inventory of any firearms surrendered at the time of the service of
35 the extended extreme risk protection order, any firearms surrendered by the restrained
36 individual following service of the extended extreme risk protection order and any
37 firearms seized during the execution of a search warrant issued pursuant to section 423,
38 subsection 2 as soon as practicable after the surrender or seizure of the firearms; and

39 **3. Database.** Enter the record of the extended extreme risk protection order into the
40 database for protection orders maintained by the Department of Public Safety.

1 SUBCHAPTER 4

2 DISSOLUTION OF EXTREME RISK PROTECTION ORDERS; RETENTION
3 AND RETURN OF FIREARMS; PENALTY

4 §431. Dissolution of temporary and extended extreme risk protection orders

5 1. Dissolution of temporary extreme risk protection order after hearing. If the
6 court finds after a full hearing that there is not clear and convincing evidence to support
7 the issuance of an extended extreme risk protection order, the court shall dissolve any
8 temporary extreme risk protection order in effect and may not issue an extended extreme
9 risk protection order. If a temporary extreme risk protection order is dissolved pursuant
10 to this subsection, the court shall direct a law enforcement agency to ensure that the
11 record of the order is removed from the database for protection orders maintained by the
12 Department of Public Safety.

13 2. Dissolution of extended extreme risk protection order after hearing. A
14 restrained individual may submit one written request for a hearing to dissolve an
15 extended extreme risk protection order. At a hearing for the dissolution of an extended
16 extreme risk protection order, the restrained individual has the burden of proof. If the
17 court finds after the hearing that the restrained individual has demonstrated by clear and
18 convincing evidence that the restrained individual no longer poses a danger of causing
19 bodily injury to the restrained individual or others, the court shall dissolve the extended
20 extreme risk protection order. If an extended extreme risk protection order is dissolved
21 pursuant to this subsection, the court shall direct a law enforcement agency to enter the
22 fact that the order was dissolved into the database for protection orders maintained by the
23 Department of Public Safety.

24 §432. Retention and return of firearms

25 1. Firearms retained by law enforcement agency. A law enforcement agency
26 shall retain any firearm surrendered to or seized by a law enforcement officer or law
27 enforcement agency pursuant to this chapter for as long as an extreme risk protection
28 order remains in effect, in accordance with this section.

29 2. Return of firearms. If an extreme risk protection order is dissolved or expires
30 and is not renewed, the law enforcement agency shall return any firearm surrendered by
31 or seized from a restrained individual to the restrained individual. If a family or
32 household member of the restrained individual petitioned for the expired or dissolved
33 extreme risk protection order, the law enforcement agency must provide prior notice of
34 the return of any firearms to that family or household member.

35 If a formerly restrained individual does not wish to reclaim any firearm previously
36 surrendered or is otherwise prohibited under state or federal law from possessing
37 firearms, the formerly restrained individual may request that the law enforcement agency
38 transfer title of the firearm to a licensed dealer. The law enforcement agency may transfer
39 the firearm to the dealer only after the dealer gives the agency written proof of the
40 proposed sale or transfer.

1 If a seized or surrendered firearm remains unclaimed 6 months after the expiration or
2 dissolution of an extreme risk protection order, the law enforcement agency may dispose
3 of the unclaimed firearm in accordance with Title 25, section 3503-A.

4 **3. Law enforcement agency duties; liability.** The duties and liability of a law
5 enforcement agency with respect to the safe handling and storage of firearms surrendered
6 or seized pursuant to this chapter are governed by Title 25, section 2804-C, subsection
7 2-C.

8 **4. Return to another claimant.** If a person other than a restrained individual claims
9 title to a firearm surrendered or seized pursuant to this chapter and the person is
10 determined by the law enforcement agency that has custody of the firearm to be the
11 lawful owner of the firearm, the law enforcement agency shall return the firearm to that
12 person only after determining, through a background check, that that person is not
13 prohibited from possessing firearms under state or federal law. A person seeking the
14 return of a firearm under this subsection shall attest in writing that a firearm returned to
15 that person will be securely stored in a manner that ensures that the firearm cannot be
16 accessed by the restrained individual.

17 **§433. Offense**

18 Possession of a firearm by a restrained individual is a Class D crime when the
19 restrained individual has prior actual notice, which may be notice by means other than
20 service in hand, of the existence of an extreme risk protection order issued against that
21 restrained individual.

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

24 **2-C. Receipt of firearms; training; procedure; liability.** The Maine Criminal
25 Justice Academy shall provide training for municipal, county and state law enforcement
26 officers regarding the proper handling, storage, safekeeping and return of firearms and
27 firearm accessories received pursuant to a court order under Title 15, chapter 16, Title
28 19-A, section 4006, subsection 2-A or Title 19-A, section 4007, subsection 1, paragraph
29 A-1. Such training must include education concerning the prohibitions on the purchase or
30 possession of a firearm when a protection order has been obtained and communication
31 with parties to protection orders concerning such prohibitions.

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

36 A law enforcement officer who receives custody of a firearm pursuant to Title 15, chapter
37 16, Title 19-A, section 4006, subsection 2-A or Title 19-A, section 4007, subsection 1,
38 paragraph A-1 shall exercise reasonable care to avoid loss, damage or reduction in value
39 of the firearm and may not permanently mark the firearm or fire the firearm unless there
40 is reasonable suspicion that the firearm has been used in the commission of a crime. Any
41 liability for damage or reduction in value to such a firearm is governed by Title 14,
42 chapter 741.

1

SUMMARY

2 This bill creates an extreme risk protection order to authorize a court to order a
3 person to surrender that person's firearms temporarily for 14 days or on an extended basis
4 for 365 days when it has been proved that the person poses a danger of causing personal
5 injury to that person or another person. The bill provides that:

6 1. A law enforcement officer, a law enforcement agency or a family or household
7 member may file a petition for a temporary extreme risk protection order, which may be
8 granted if the court finds probable cause exists to issue the order. The temporary extreme
9 risk protection order expires in 14 days or when a hearing to determine whether to issue
10 an extended extreme risk protection order is held, whichever occurs sooner. A temporary
11 extreme risk protection order may be issued on an ex parte basis;

12 2. Whether or not the court issues a temporary extreme risk protection order, the
13 court is required to hold a hearing within 14 days to determine whether the person poses a
14 danger of causing personal injury to that person or another person. If the court, based on
15 clear and convincing evidence, finds that an extended extreme risk protection order
16 should be issued, the extended extreme risk protection order must be issued, and it
17 expires 365 days after the issuance of the order unless extended after another hearing;

18 3. Following the issuance of a temporary or extended extreme risk protection order,
19 the court is required to order law enforcement to serve the order and is required to issue a
20 search warrant if the court finds probable cause that the person who is the subject of the
21 order is in possession of a firearm;

22 4. A person who is the subject of a temporary or extended extreme risk protection
23 order is required to surrender all firearms in the person's possession to a law enforcement
24 officer or law enforcement agency. The firearms must be returned to the person at the
25 expiration of the extreme risk protection order unless an extended extreme risk protection
26 order is issued;

27 5. A person against whom an extended extreme risk protection order is issued may
28 request that the order be dissolved and be granted a hearing once during the term of the
29 extended extreme risk protection order; and

30 6. A person who possesses firearms in violation of an extreme risk protection order
31 commits a Class D crime.