

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

MAJORITY

MAJORITY

L.D. 1811

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

Date: 6/19/19

MAJORITY

(Filing No. S-357)

JUDICIARY

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

**STATE OF MAINE
SENATE
129TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 612, L.D. 1811, Bill, "An Act To Enhance Personal and Public Safety by Requiring Evaluations of and Judicial Hearings for Persons in Protective Custody Regarding Risk of Harm and Restricting Access to Dangerous Weapons"

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

'PART A

Sec. A-1. 34-B MRSA §3862-A is enacted to read:

§3862-A. Protection from substantial threats

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Dangerous weapon" or "weapon" has the same meaning as in Title 17-A, section 2, subsection 9, paragraph C, including a firearm as defined in Title 17-A, section 2, subsection 12-A.

B. "Extended restrictions" means the continued threat-based restrictions imposed by the court pursuant to subsection 6, paragraph D.

C. "Initial restrictions" means the immediate and temporary 14-day threat-based restrictions pursuant to subsection 4.

D. "Judicial hearing" means a court hearing under subsection 6.

E. "Law enforcement agency" has the same meaning as in Title 25, section 3701, subsection 1.

F. "Law enforcement officer" means a person vested by law with the power to make arrests for crimes or serve criminal process, whether that power extends to all crimes or is limited to specific crimes, and who possesses a current and valid certificate issued pursuant to Title 25, section 2803-A.

COMMITTEE AMENDMENT

- 1 G. "Likelihood of foreseeable harm" means a substantial risk in the foreseeable
- 2 future of serious physical harm to the person as manifested by recent behaviors or
- 3 threats of, or attempts at, suicide or serious self-inflicted harm; or a substantial risk in
- 4 the foreseeable future of serious physical harm to other persons as manifested by
- 5 recent homicidal or violent behavior or by recent conduct or statements placing
- 6 others in reasonable fear of serious physical harm.

- 7 H. "Medical practitioner" has the same meaning as in section 3801, subsection 4-B.

- 8 I. "Prohibited person" means a person subject to Title 15, section 393, subsection 1,
- 9 paragraph E-1 or E-2.

- 10 J. "Protective custody" means protective custody under section 3862.

- 11 K. "Restricted person" means a person taken into protective custody by a law
- 12 enforcement officer who the officer has probable cause to believe possesses or
- 13 controls or may acquire a dangerous weapon and who is found by a medical
- 14 practitioner to present a likelihood of foreseeable harm.

- 15 L. "Threat-based restriction" means a prohibition on a restricted person from
- 16 purchasing, possessing or controlling or attempting to purchase, possess or control a
- 17 dangerous weapon during the period of the restriction.

- 18 **2. Assessment by a medical practitioner; security; immunity. This subsection**
- 19 **applies when a law enforcement officer has taken a person into protective custody.**

- 20 A. Notwithstanding any provision of law to the contrary, the law enforcement officer
- 21 shall provide to the medical practitioner the information that led to the protective
- 22 custody including, but not limited to, the information that gave rise to the probable
- 23 cause determination, the person's pertinent criminal history record information and
- 24 other known history and recent or recurring actions and behaviors.

- 25 B. The medical practitioner under paragraph A shall assess whether the person
- 26 presents a likelihood of foreseeable harm. In assessing the person, a medical
- 27 practitioner may consult with other medical professionals as the medical practitioner
- 28 determines advisable. If the medical practitioner finds that the person can benefit
- 29 from treatment and services, the medical practitioner shall refer the person to
- 30 treatment and services.

- 31 C. Notwithstanding any provision of law to the contrary, an assessment pursuant to
- 32 this section may be performed at a health care facility but, when available and as
- 33 appropriate, must be performed at an alternative location. If the assessment is
- 34 provided at a health care facility, law enforcement shall, upon request of the facility
- 35 and consistent with section 3863, subsection 2-A, absent compelling circumstances,
- 36 assist the facility with the security of the person awaiting the assessment under this
- 37 section.

- 38 D. A juvenile, as defined in Title 15, section 3003, subsection 14, who is subject to
- 39 this section may be accompanied at the assessment by a parent, guardian,
- 40 grandparent, aunt or uncle or a sibling who has attained the age of 18, whose
- 41 company is requested by the juvenile, who is timely available and whose
- 42 accompaniment is practicable.

COMMITTEE AMENDMENT

1 E. A medical practitioner and any other medical or mental health professional
 2 consulted by the medical practitioner are not liable in a civil action brought by any
 3 person for any act performed in good faith in execution of the obligations imposed on
 4 medical practitioners by this section, including any decision regarding the affirmative
 5 or negative assessment of the likelihood of foreseeable harm. The immunity
 6 provided in this paragraph also applies to a principal if the medical practitioner or
 7 professional is acting as an agent or employee of the principal.

8 **3. Notification by medical practitioner and judicial endorsement.** A medical
 9 practitioner shall notify in writing the law enforcement officer or law enforcement agency
 10 that, based on the assessment under subsection 2, paragraph B, the person is found to
 11 present a likelihood of foreseeable harm. If so notified, the law enforcement officer or
 12 law enforcement agency shall as soon as practicable seek endorsement by a Superior
 13 Court Justice, District Court Judge, judge of probate or justice of the peace of the medical
 14 practitioner's assessment and law enforcement's declarations that the person was taken
 15 into protective custody and that the law enforcement officer has probable cause that the
 16 person possesses, controls or may acquire a dangerous weapon. The judge or justice shall
 17 promptly transmit to the law enforcement officer or agency the decision to endorse or not
 18 endorse. A decision transmitted electronically has the same legal effect and validity as a
 19 signed original. An endorsement must authorize law enforcement to execute the
 20 authority in subsection 4. This section may not be construed to prevent law enforcement
 21 from accepting a voluntary surrender of dangerous weapons.

22 **4. Initial restrictions; notice by law enforcement.** A person whose assessment is
 23 endorsed by a judicial officer under subsection 3 becomes, at the time of notice by a law
 24 enforcement officer under paragraph B, a restricted person subject to initial restrictions
 25 and subject to the prohibitions in Title 15, section 393, subsection 1, paragraphs E-1 and
 26 E-2 as follows:

27 **A. The restricted person, after notice under paragraph B:**

28 (1) Is prohibited from possessing, controlling, acquiring or attempting to possess,
 29 control or acquire a dangerous weapon pending the outcome of a judicial hearing;

30 (2) Shall immediately and temporarily surrender any weapons possessed,
 31 controlled or acquired by the restricted person to a law enforcement officer who
 32 has authority in the jurisdiction in which the weapons are located pending the
 33 outcome of a judicial hearing; and

34 (3) Has a right to a judicial hearing within 14 days of notice under paragraph B;
 35 and

36 **B. A law enforcement officer shall, as soon as practicable, but no later than 24 hours**
 37 **after the judicial endorsement:**

38 **(1) Notify the restricted person that the restricted person:**

39 (a) Is prohibited from possessing, controlling, acquiring or attempting to
 40 possess, control or acquire a dangerous weapon pending the outcome of a
 41 judicial hearing;

1 (b) Is required to immediately and temporarily surrender any weapons
2 possessed, controlled or acquired by the restricted person to a law
3 enforcement officer who has authority in the jurisdiction in which the
4 weapons are located pending the outcome of a judicial hearing; and

5 (c) Has a right to a judicial hearing within 14 days of the notice under this
6 paragraph;

7 (2) Notify the contact person, if any, disclosed by the restricted person to the
8 medical practitioner and the district attorney in the district of the restricted
9 person's residence of the person's restricted status; and

10 (3) Report the person's restricted status to the Department of Public Safety.

11 **5. Temporary surrender to law enforcement.** A law enforcement agency may
12 store, or make arrangements with another law enforcement agency or federally licensed
13 firearms dealer to store, and care for the weapons surrendered by a restricted person in the
14 manner provided in subsection 7. A restricted person who makes all practical, immediate
15 efforts to comply with a surrender notice under subsection 4 is not subject to arrest or
16 prosecution as a prohibited person under Title 15, section 393, subsection 1, paragraph
17 E-1 or E-2. If a law enforcement agency has probable cause to believe the restricted
18 person possesses or controls but has not surrendered a weapon, law enforcement may,
19 prior to or as part of a judicial hearing, search for and seize such a weapon when
20 authorized by a judicially issued warrant or other circumstances approved by law.

21 **6. Judicial hearing.** A judicial hearing under this section is governed by this
22 subsection.

23 A. Within 5 days of the date of the notice given to a restricted person under
24 subsection 4, paragraph B, the district attorney in the district of the restricted person's
25 residence shall file a petition for judicial review of the initial restrictions by the
26 district court. The district attorney shall provide to the restricted person written
27 notice of the petition and hearing at least 7 days prior to the hearing. The restricted
28 person has the right to be represented by counsel at the hearing, and the court may
29 appoint counsel for an indigent party. Upon a showing of good cause, the court may
30 extend the time to hold the hearing.

31 B. Within 14 days of the notice given under subsection 4, the court shall hold a
32 hearing to determine whether to dissolve or extend the initial restrictions. In the
33 hearing determining whether to dissolve or extend the initial restrictions, the district
34 attorney has the burden to prove by clear and convincing evidence that the restricted
35 person presents a likelihood of foreseeable harm.

36 C. In determining whether there are grounds to extend the initial restrictions, the
37 court shall consider all relevant evidence, including, but not limited to, recent threats
38 or acts of violence by the restricted person directed toward other persons; recent
39 threats or acts of violence by the restricted person directed toward the restricted
40 person; recent acts of unlawful abuse of animals by the restricted person; the reckless
41 use or threatening display of a dangerous weapon by the restricted person; a history
42 of the use, attempted use or threatened use of physical force by the restricted person
43 against other persons; a record of prior custodial events or restrictions under this

1 section; prior involuntary confinement of the restricted person in a hospital for
2 persons with psychiatric disabilities; prior protection from abuse and protection from
3 harassment orders against the restricted person or violations regarding protection
4 from abuse or protection from harassment by the restricted person; evidence of
5 stalking behavior, severe obsession or sexual violence by the restricted person; the
6 illegal use of controlled substances by the restricted person; and evidence of alcohol
7 or drug abuse by the restricted person. The court shall also consider whether the
8 restricted person is receiving treatment responsive to that person's mental health or
9 substance use needs.

10 D. This paragraph governs court orders.

11 (1) If the court finds after hearing that there is not clear and convincing evidence
12 to continue or extend the initial restrictions, the court shall dissolve the initial
13 restrictions and order the return of any weapons surrendered or seized. The court
14 shall direct the Department of Public Safety to remove the record of restrictions
15 from the department's pertinent database when developed by the department.

16 (2) If the court finds after hearing that there is clear and convincing evidence to
17 continue or extend the initial restrictions, the court shall inform the restricted
18 person that the restricted person is prohibited for up to one year from purchasing,
19 possessing or controlling any dangerous weapon or attempting to purchase,
20 possess or control any dangerous weapon. The court shall further order the
21 person to immediately surrender dangerous weapons possessed or controlled by
22 that person to a law enforcement officer and notify the Department of Public
23 Safety for entry in the pertinent database when developed by the department.

24 (3) Extended restrictions imposed under this paragraph expire according to the
25 terms of the court's order. The court shall schedule a hearing within 45 days prior
26 to the expiration of the order to determine if the order should be extended. The
27 district attorney has the burden of proving that the restricted person continues to
28 pose a likelihood of foreseeable harm. If, after a hearing, the court finds by clear
29 and convincing evidence that the restricted person continues to pose a likelihood
30 of foreseeable harm, the court shall renew the extended restrictions for up to one
31 year. If the court does not so find, the court shall deny the petition and order the
32 return of any weapons surrendered or seized. Upon motion by the State, the court
33 may for cause shown order that the restricted person be examined for assessment
34 of whether the restricted person continues to pose a likelihood of foreseeable
35 harm. The fees or expenses for an assessment pursuant to this subparagraph may
36 be paid from the Extradition and Prosecution Expenses Account established by
37 Title 15, section 224-A.

38 (4) A restricted person may file one motion for dissolution during an extended
39 restriction. For that motion, the restricted person has the burden of proving by
40 clear and convincing evidence that the restricted person no longer poses a
41 likelihood of foreseeable harm.

42 (5) A court shall electronically update or transmit to the Department of Public
43 Safety, Bureau of State Police an abstract of the order issued by the court
44 pursuant to this section that includes a prohibition on the possession of a

1 dangerous weapon. The abstract must include the name, date of birth and gender
2 of the person who is the subject of the order; the court's order and the expiration
3 date of that order; and a notation that the person has been notified by the court.

4 The abstract required by this subparagraph is confidential and is not a public
5 record as defined in Title 1, chapter 13; however, the information contained in
6 the abstract or a copy of the abstract may be provided by the Department of
7 Public Safety to a criminal justice agency for law enforcement purposes, to the
8 Federal Bureau of Investigation, National Instant Criminal Background Check
9 System or to an issuing authority for the purpose of processing concealed firearm
10 permit applications. The Department of Public Safety shall, when the pertinent
11 database is developed, request that the Federal Bureau of Investigation ensure
12 that, immediately after the order expires, the National Instant Criminal
13 Background Check System no longer reflects that expired order as a ground for
14 prohibiting the subject of the order from possessing or acquiring a firearm. For
15 the purposes of this subsection, "criminal justice agency" means a federal, state,
16 tribal, district, county or local government agency or any subunit of those entities
17 that performs the administration of criminal justice under a statute or executive
18 order and that allocates a substantial part of its annual budget to the
19 administration of criminal justice. Courts and the Department of the Attorney
20 General are considered criminal justice agencies, as is any equivalent agency at
21 any level of Canadian government.

22 (6) Nothing in this subsection may be construed to prevent the restricted person,
23 district attorney and court from accepting a court-ordered disposition to which
24 each agrees.

25 **7. Weapons storage and return.** A law enforcement agency may store, or make
26 arrangements with another law enforcement agency or federally licensed firearms dealer
27 to store, any weapon surrendered to or seized by law enforcement under this section for
28 as long as the threat-based restrictions are in effect. The duties and liability of a law
29 enforcement agency with respect to handling and storage of a weapon surrendered or
30 seized are governed by Title 25, section 2804-C, subsection 2-C. A weapon surrendered
31 to or seized by a law enforcement agency must be returned to the restricted person when
32 the threat-based restrictions expire. If a seized or surrendered weapon remains unclaimed
33 for 6 months after the expiration or dissolution of threat-based restrictions, the law
34 enforcement agency may dispose of the weapon consistent with Title 25, section 3503-A.

35 **8. Offense.** Possession of a dangerous weapon by a restricted person is a Class D
36 crime.

37 **PART B**

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

39 A-1. Prior to the commencement of the hearing, the court shall inform the patient
40 that, if an order is entered that includes a prohibition on the possession of dangerous
41 weapons, that patient is a prohibited person and may not possess or have under that
42 patient's control a firearm pursuant to Title 15, section 393, subsection 1.

R. S.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

Sec. C-3. 25 MRSA §2803-B, sub-§1, ¶L, as amended by PL 2013, c. 147, §19, is further amended to read:

L. Mental illness and the process for involuntary commitment, and the process pursuant to Title 34-B, section 3862-A; and

Sec. C-4. 25 MRSA §2804-C, sub-§2-E is enacted to read:

2-E. Receipt of certain dangerous weapons; training; procedure; liability. Beginning in 2020, the Maine Criminal Justice Academy Board of Trustees shall require training as part of its mandated training schedule for municipal, county and state law enforcement officers regarding the process for protection from substantial threats by a restricted person and the proper handling, storage, safekeeping and return of dangerous weapons received pursuant to an endorsement or court order under Title 34-B, section 3862-A or 3873-A. The training must include education concerning the prohibitions on the purchase, control or possession of dangerous weapons. A law enforcement officer who receives custody of a dangerous weapon pursuant to Title 34-B, section 3862-A or 3873-A shall exercise reasonable care to avoid loss, damage or reduction in value of the weapon and may not permanently mark or fire the weapon unless there is reasonable suspicion that the weapon has been used in the commission of a crime. Any liability for damage or reduction in value to such a weapon is governed by Title 14, chapter 741.

Sec. C-5. 34-B MRSA §3862, sub-§1, ¶B, as amended by PL 2017, c. 402, Pt. C, §97 and affected by Pt. F, §1, is further amended to read:

B. If the law enforcement officer does take the person into protective custody, shall deliver the person immediately for examination by a medical practitioner as provided in section 3862-A or 3863 or, for a person taken into protective custody who has an advance health care directive authorizing mental health treatment, for examination as provided in Title 18-C, section 5-803, subsection 4 to determine the individual's capacity and the existence of conditions specified in the advance health care directive for the directive to be effective.

PART D

Sec. D-1. Assessments at alternative locations. The executive branch shall work with medical practitioners and law enforcement to develop and release, by January 1, 2020, a request for proposals for the development and acquisition of the technology necessary to enable assessments under the Maine Revised Statutes, Title 34-B, section 3862-A at locations other than health care facilities.

Sec. D-2. Database of restrictions. By February 1, 2020, the Department of Public Safety shall develop a plan, including any cost estimates, to implement a database system to support this Act.

Sec. D-3. Effective dates. Parts A to C of this Act take effect July 1, 2020. This Part takes effect 90 days after the adjournment of the First Regular Session of the 129th Legislature.'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment replaces the bill but retains the purpose of providing an alternative to law enforcement to take into protective custody and have assessed a person who presents a likelihood of foreseeable harm to the person or to others.

"Likelihood of foreseeable harm" is defined as a substantial risk in the foreseeable future of serious physical harm to the person as manifested by recent behaviors or threats of, or attempts at, suicide or serious self-inflicted harm; or a substantial risk in the foreseeable future of serious physical harm to other persons as manifested by recent homicidal or violent behavior or by recent conduct or statements placing others in reasonable fear of serious physical harm.

The law enforcement officer is directed to have the person in protective custody assessed by a medical practitioner. If the assessment finds that the person presents a likelihood of foreseeable harm, the law enforcement officer must seek an endorsement from a judicial officer that the person presents a likelihood of foreseeable harm, which authorizes law enforcement to notify the person that the person is a restricted person and is prohibited from possessing, controlling, acquiring or attempting to possess, control or acquire a dangerous weapon pending the outcome of a judicial hearing. The restricted person must immediately and temporarily surrender any weapon possessed, controlled or acquired by the restricted person to a law enforcement officer.

A restricted person who makes all practical and immediate efforts to comply with a surrender notice is not subject to arrest or prosecution as a prohibited person under the Maine Revised Statutes, Title 15, section 393, subsection 1, paragraph E-1 or E-2. If a law enforcement agency has probable cause to believe the restricted person possesses or controls but has not surrendered a weapon, law enforcement may, prior to or as part of a judicial hearing, search for and seize such a weapon when authorized by a judicially issued warrant or other circumstances approved by law.

The district attorney is required to file a petition for judicial review of the initial restrictions by the District Court. Within 14 days of the notice of restricted status given to the restricted person, the court is required to hold a hearing to determine whether to dissolve or extend the initial restrictions. The restricted person has the right to be represented by counsel. The district attorney has the burden of proving by clear and convincing evidence that the restricted person presents a likelihood of foreseeable harm. The court may dissolve the initial restrictions or extend them for up to one year.

This amendment directs the executive branch to work with medical practitioners and law enforcement to develop and release, by January 1, 2020, a request for proposals for the development and acquisition of the technology necessary to enable assessments under Title 34-B, section 3862-A at locations other than health care facilities.

By February 1, 2020, the Department of Public Safety must develop a plan, including any cost estimates, to implement a database system to support this legislation.

The provisions for assessments for likelihood of foreseeable harm and restricted person status take effect July 1, 2020.

FISCAL NOTE REQUIRED

(See attached)



129th MAINE LEGISLATURE

LD 1811

LR 2536(02)

An Act To Enhance Personal and Public Safety by Requiring Evaluations of and Judicial Hearings for Persons in Protective Custody Regarding Risk of Harm and Restricting Access to Dangerous Weapons

Fiscal Note for Bill as Amended by Committee Amendment "A" (S-351)

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Current biennium cost increase - General Fund

Current biennium cost increase - Highway Fund

Correctional and Judicial Impact Statements

This bill may increase the number of civil suits filed in the court system.

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 filing fees may increase General Fund and other dedicated revenue by minor amounts.

Fiscal Detail and Notes

The Department of Public Safety will require a General Fund appropriation and a Highway Fund allocation in fiscal year 2020-21 for programming changes and annual maintenance to create a database to record information related to persons in protective custody who are restricted from access to dangerous weapons. The department will need to work with the vendor to develop and implement the new system. The costs are unknown at this time and no estimate is made.