

MAINE STATE LEGISLATURE

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CORRECTED FRONT PAGE

February 21, 2024

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131st MAINE LEGISLATURE

SECOND REGULAR SESSION-2024

Legislative Document

No. 2224

S.P. 953

In Senate, February 22, 2024

**An Act to Strengthen Public Safety by Improving Maine's Firearm
Laws and Mental Health System**

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 ROTUNDO of Androscoggin. (GOVERNOR'S BILL)
Cosponsored by Representative CLOUTIER of Lewiston and
Senators: DAUGHTRY of Cumberland, President JACKSON of Aroostook, VITELLI of
Sagadahoc, Representatives: Speaker TALBOT ROSS of Portland, TERRY of Gorham.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 15 MRSA §393, sub-§1, ¶E-1**, as enacted by PL 2019, c. 411, Pt. C, §2
3 and affected by Pt. D, §3, is amended to read:

4 E-1. Is currently a restricted person ~~under~~ pursuant to Title 34-B, section 3862-A,
5 subsection 2 or Title 34-B, section 3862-A, subsection 6, paragraph D or a similar order
6 issued by another jurisdiction, except that the prohibition applies to possession and
7 control, and not ownership. A permit issued pursuant to subsection 2 is not a defense
8 to a violation of this paragraph. Violation of this paragraph is a Class D crime;

9 **Sec. 2. 15 MRSA §394, sub-§2**, as enacted by PL 2023, c. 305, §1, is amended to
10 read:

11 **2. Sale or transfer prohibited.** A person may not recklessly, knowingly or
12 intentionally sell or transfer a firearm to a person who is prohibited from owning,
13 possessing or having under that person's control a firearm pursuant to section 393 and who
14 does not have a permit issued under section 393. This subsection does not apply to the sale
15 or transfer of an antique firearm.

16 Violation of this subsection is a Class ~~D~~ C crime.

17 **Sec. 3. 15 MRSA §395** is enacted to read:

18 **§395. Background checks of firearms buyers**

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

21 A. "Buy" means to acquire ownership for monetary or other consideration.

22 B. "Buyer" means a person who buys from a seller.

23 C. "Family member" means a spouse, domestic partner, parent, stepparent, foster
24 parent, child, stepchild, foster child or person related by consanguinity within the 2nd
25 degree.

26 D. "Federally licensed firearms dealer" or "dealer" means a person who is licensed or
27 is required to be licensed as a dealer under 18 United States Code, Section 923(a)(3).

28 E. "Firearm" has the same meaning as in Title 17-A, section 2, subsection 12-A.

29 F. "Gun show" means any gathering or exhibition at which any firearm is displayed
30 that is:

31 (1) Open to the public;

32 (2) Not occurring on the permanent premises of a federally licensed firearms
33 dealer; and

34 (3) Conducted principally for the purposes of transactions.

35 G. "Sell" means to transfer ownership for monetary or other consideration.

36 H. "Seller" means a person who sells to a buyer.

37 I. "Transaction" means the transfer of ownership of a firearm from a seller to a buyer.

38 **2. Transactions covered by this section.** This section applies only to transactions in
39 which:

- 1 A. A seller sells to a buyer at a gun show; or
2 B. A seller sells to a buyer as a result of an advertisement, posting, display or other
3 listing on the Internet or in a publication.

4 **3. Transactions not covered by this section.** This section does not apply to
5 transactions in which:

- 6 A. The buyer and seller are family members; or
7 B. The transaction is for a firearm that is:
8 (1) A curio or relic, as defined in 27 Code of Federal Regulations, Section 478.11,
9 as in effect on November 19, 2019, and the sale, transfer or exchange is between
10 collectors as defined in 18 United States Code, Section 921(a)(13), as in effect on
11 June 25, 2022, who each have in their possession a valid collector of curios and
12 relics license issued by the United States Department of Justice, Bureau of Alcohol,
13 Tobacco, Firearms and Explosives; or
14 (2) An antique firearm, as defined in 18 United States Code, Section 921(a)(16),
15 as in effect on June 25, 2022.

16 **4. Requirement for transactions covered by this section.** A seller who is not a
17 federally licensed firearms dealer may not complete a transaction to which this section
18 applies unless the seller facilitates the transaction through a federally licensed firearms
19 dealer. The dealer shall perform a background check of the putative buyer by using the
20 Federal Bureau of Investigation, National Instant Criminal Background Check System in
21 the same manner as if the dealer were the seller of the firearm that is the subject of the
22 transaction. If the background check reveals that the putative buyer is prohibited from
23 purchasing a firearm, the dealer shall notify the seller of that fact and of the fact that the
24 transaction may not proceed. The dealer may charge a reasonable fee for serving as the
25 facilitator.

26 **5. Violations.** A person who sells a firearm in violation of this section commits a
27 Class C crime.

28 **Sec. 4. 22-A MRSA §203, sub-§2,** as enacted by PL 2003, c. 689, Pt. A, §1, is
29 amended to read:

30 **2. Additional programs and services for children and families.** The department
31 shall provide children and families with additional programs and services to assist them in
32 meeting their needs, including, but not limited to:

- 33 A. Child welfare services;
34 B. Head Start and child care services;
35 C. Maternal and child health services, including home visiting programs;
36 D. Paternity establishment and child support enforcement services; ~~and~~
37 E. Residential and long-term care services for children with disabilities; and
38 F. Injury and violence prevention programs, including data collection, synthesis and
39 evaluation.

40 **Sec. 5. 25 MRSA §2804-C, sub-§2-E,** as enacted by PL 2019, c. 411, Pt. C, §4
41 and affected by Pt. D, §3, is amended to read:

1 **2-E. Receipt of certain dangerous weapons; training; procedure; liability.**
2 Beginning in 2020, the Maine Criminal Justice Academy Board of Trustees shall require
3 training as part of its mandated training schedule for municipal, county and state law
4 enforcement officers regarding the process for ~~protection from substantial threats by a~~
5 ~~restricted person~~ extreme risk protection orders and the proper handling, storage,
6 safekeeping and return of dangerous weapons received pursuant to an endorsement or court
7 order under Title 34-B, section 3862-A or 3873-A. The training must include education
8 concerning the prohibitions on the purchase, control or possession of dangerous weapons.
9 A law enforcement officer who receives custody of a dangerous weapon pursuant to Title
10 34-B, section 3862-A or 3873-A shall exercise reasonable care to avoid loss, damage or
11 reduction in value of the weapon and may not permanently mark or fire the weapon unless
12 there is reasonable suspicion that the weapon has been used in the commission of a crime.
13 Any liability for damage or reduction in value to such a weapon is governed by Title 14,
14 chapter 741.

15 **Sec. 6. 34-B MRSA §3613** is enacted to read:

16 **§3613. Crisis receiving centers**

17 **1. Definition.** As used in this section, unless the context otherwise indicates, "crisis
18 receiving center" means a center that provides immediate and short-term walk-in access to
19 an array of both clinical and nonclinical mental health and substance use disorder crisis
20 stabilization services to all individuals seeking care regardless of severity or insurance
21 coverage and within bounds of licensing.

22 **2. Department to develop plan and serve as coordinator.** The department shall
23 develop a plan for a network of community-based crisis receiving centers across the State
24 to support both clinical and nonclinical mental health and substance use disorder crisis
25 stabilization services. The department shall also coordinate meetings, technical assistance
26 and training and provide other assistance to help create, maintain and, as necessary, expand
27 the network.

28 **3. Guidelines.** In carrying out its duties under subsection 2, the department shall:

29 A. Consult with law enforcement agencies, municipalities, public health experts,
30 behavioral health care providers, other states and others as appropriate;

31 B. Assess geographical locations for maximization of community impact;

32 C. Provide technical assistance to persons and entities across the State and providers
33 interested in joining the network;

34 D. Coordinate regular meetings with crisis receiving centers and provide technical
35 assistance to crisis receiving centers; and

36 E. Engage in continual process improvement and planning updates.

37 **Sec. 7. 34-B MRSA §3862-A**, as enacted by PL 2019, c. 411, Pt. A, §1 and affected
38 by Pt. D, §3, is amended by amending the section headnote to read:

39 ~~§3862-A. Protection from substantial threats~~ **Extreme risk protection orders**

40 **Sec. 8. 34-B MRSA §3862-A, sub-§1, ¶C**, as enacted by PL 2019, c. 411, Pt. A,
41 §1 and affected by Pt. D, §3, is amended to read:

1 C. "Initial restrictions" means the immediate and temporary ~~14-day~~ 30-day
2 threat-based restrictions pursuant to subsection 4.

3 **Sec. 9. 34-B MRSA §3862-A, sub-§2, ¶B**, as enacted by PL 2019, c. 411, Pt. A,
4 §1 and affected by Pt. D, §3, is amended to read:

5 B. The medical practitioner under ~~paragraph A~~ this subsection shall assess whether the
6 person presents a likelihood of foreseeable harm. In assessing the person, a medical
7 practitioner may consult with other medical professionals as the medical practitioner
8 determines advisable. If the medical practitioner finds that the person can benefit from
9 treatment and services, the medical practitioner shall refer the person to treatment and
10 services. The medical practitioner may rely on information provided by a 3rd party if
11 it reasonably appears that the 3rd party has had recent personal observations of or
12 conversations with the person being assessed.

13 **Sec. 10. 34-B MRSA §3862-A, sub-§2, ¶C**, as enacted by PL 2019, c. 411, Pt. A,
14 §1 and affected by Pt. D, §3, is amended to read:

15 C. Notwithstanding any provision of law to the contrary, an assessment pursuant to
16 this section may be performed at a health care facility ~~but or~~, when available and as
17 appropriate, must may be performed at an alternative location. The assessment may be
18 facilitated using telehealth technology. If the assessment is provided at a health care
19 facility, law enforcement shall, upon request of the facility and consistent with section
20 3863, subsection 2-A, absent compelling circumstances, assist the facility with the
21 security of the person awaiting the assessment under this section.

22 **Sec. 11. 34-B MRSA §3862-A, sub-§2, ¶C-1** is enacted to read:

23 C-1. The assessment required by this subsection must be performed while the person
24 being assessed remains in protective custody, except that the assessment may be
25 performed within 24 hours after the person is released from protective custody if:

26 (1) The protective custody stemmed from a law enforcement officer's probable
27 cause to believe the person was mentally ill and presented a likelihood of serious
28 harm because the person possesses, controls or may acquire a dangerous weapon;
29 and

30 (2) An assessment under section 3863 has occurred.

31 **Sec. 12. 34-B MRSA §3862-A, sub-§2-A** is enacted to read:

32 **2-A. Protective custody warrant for purposes of conducting an assessment.** If a
33 law enforcement officer is unable to take a person into protective custody to conduct an
34 assessment under this section, the law enforcement officer may apply for a protective
35 custody warrant. The officer must submit an affidavit of probable cause for a protective
36 custody warrant to a Justice of the Superior Court or a Judge of the District Court.

37 The justice or judge shall issue a protective custody warrant and promptly transmit that
38 warrant to the officer for execution upon finding the affidavit under this subsection is
39 sufficient to establish:

40 A. Probable cause to believe that the person is mentally ill and due to that condition
41 presents a likelihood of serious harm;

1 B. Probable cause to believe that the person possesses, controls or may acquire a
2 dangerous weapon; and

3 C. That the officer has made reasonable attempts to take the person into custody
4 without a warrant.

5 A warrant transmitted by facsimile machine or an electronic warrant transmitted by secure
6 electronic means has the same legal effect and validity as an original endorsement signed
7 by the justice or judge. The electronic arrest warrant or paper arrest warrant may be
8 executed by a law enforcement officer authorized to take the person into protective custody
9 as provided in subsection 2.

10 **Sec. 13. 34-B MRSA §3862-A, sub-§3**, as enacted by PL 2019, c. 411, Pt. A, §1
11 and affected by Pt. D, §3, is amended to read:

12 **3. Notification by medical practitioner and judicial endorsement.** A medical
13 practitioner shall notify in writing the law enforcement officer or law enforcement agency
14 that took the person into protective custody under subsection 2 that, based on the
15 assessment under subsection 2, paragraph B, the person is found to present a likelihood of
16 foreseeable harm. If so notified, the law enforcement officer or law enforcement agency
17 shall as soon as practicable seek endorsement by a ~~Superior Court Justice, District Court~~
18 ~~Judge, judge of probate or justice of the peace~~ Justice of the Superior Court or a Judge of
19 the District Court of the medical practitioner's assessment and law enforcement's
20 declarations that the person was taken into protective custody and that the law enforcement
21 officer has probable cause to believe that the person possesses, controls or may acquire a
22 dangerous weapon. If a Judge of the District Court is not available in the division in which
23 a complaint requesting an endorsement is to be filed, the complaint may be presented to
24 another Judge of the District Court or to any Justice of the Superior Court. A Justice of the
25 Superior Court has the same authority as a Judge of the District Court to grant or deny the
26 endorsement. The judge justice or justice judge shall promptly transmit to the law
27 enforcement officer or agency the decision to endorse or not endorse. A decision
28 transmitted electronically has the same legal effect and validity as a signed original. An
29 endorsement must authorize law enforcement to execute the authority in subsection 4. This
30 section may not be construed to prevent law enforcement from accepting a voluntary
31 surrender of dangerous weapons.

32 **Sec. 14. 34-B MRSA §3862-A, sub-§4**, as enacted by PL 2019, c. 411, Pt. A, §1
33 and affected by Pt. D, §3, is amended to read:

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

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

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

42 (2) Shall immediately and temporarily surrender any weapons possessed,
43 controlled or acquired by the restricted person to a law enforcement officer who

1 has authority in the jurisdiction in which the weapons are located pending the
2 outcome of a judicial hearing; and

3 (3) Has a right to a judicial hearing within ~~14~~ 30 days of notice under paragraph
4 B; and

5 B. A law enforcement officer shall, as soon as practicable, ~~but no later than 24 hours~~
6 after the judicial endorsement, unless the restricted person is medically incapacitated,
7 in which case within 48 hours after the law enforcement officer has been notified that
8 the person is no longer medically incapacitated:

9 (1) Notify the restricted person that the restricted person:

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

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

17 (c) Has a right to a judicial hearing within ~~14~~ 30 days of the notice under this
18 paragraph;

19 (2) Notify the contact person, if any, disclosed by the restricted person to the
20 medical practitioner and the district attorney in the district ~~of the restricted person's~~
21 residence where the person was taken into protective custody of the person's
22 restricted status; and

23 (3) Report the person's restricted status to the Department of Public Safety as soon
24 as practicable.

25 **Sec. 15. 34-B MRSA §3862-A, sub-§6, ¶A,** as enacted by PL 2019, c. 411, Pt. A,
26 §1 and affected by Pt. D, §3, is amended to read:

27 A. Within ~~5~~ 14 days of the date of the notice given to a restricted person under
28 subsection 4, paragraph B, ~~the district attorney~~ the court shall schedule a hearing in the
29 ~~district of the restricted person's residence shall file a petition for judicial review of the~~
30 ~~initial restrictions by the district court. The district attorney shall provide where the~~
31 person was taken into protective custody and provide notice of the hearing to the
32 restricted person ~~written notice of the petition and hearing~~ at least 7 days prior to the
33 hearing. The restricted person has the right to be represented by counsel at the hearing,
34 and the court may appoint counsel for an indigent party. Upon a showing of good
35 cause, the court may extend the time to hold the hearing.

36 **Sec. 16. 34-B MRSA §3862-A, sub-§6, ¶B,** as enacted by PL 2019, c. 411, Pt. A,
37 §1 and affected by Pt. D, §3, is amended to read:

38 B. Within ~~14~~ 30 days of the notice given under subsection 4, the court shall hold a
39 hearing to determine whether to dissolve or extend the initial restrictions. In the
40 hearing determining whether to dissolve or extend the initial restrictions, the district
41 attorney has the burden to prove by clear and convincing evidence that the restricted
42 person presents a likelihood of foreseeable harm. Upon a showing of good cause, the
43 court may extend the time to hold the hearing.

1 **Sec. 17. 34-B MRSA §3862-A, sub-§6, ¶C**, as enacted by PL 2019, c. 411, Pt. A,
2 §1 and affected by Pt. D, §3, is amended to read:

3 C. In determining whether there are grounds to extend the initial restrictions, the court
4 shall consider all relevant evidence, including, but not limited to, recent threats or acts
5 of violence by the restricted person directed toward other persons; recent threats or acts
6 of violence by the restricted person directed toward the restricted person; recent acts of
7 unlawful abuse of animals by the restricted person; the reckless use or threatening
8 display of a dangerous weapon by the restricted person; a history of the use, attempted
9 use or threatened use of physical force by the restricted person against other persons; a
10 record of prior custodial events or restrictions under this section; prior involuntary
11 confinement of the restricted person in a hospital for persons with psychiatric
12 disabilities; prior protection from abuse and protection from harassment orders against
13 the restricted person or violations regarding protection from abuse or protection from
14 harassment by the restricted person; evidence of stalking behavior, severe obsession or
15 sexual violence by the restricted person; the illegal use of controlled substances by the
16 restricted person; and evidence of alcohol or drug abuse by the restricted person. The
17 court may consider affidavits and other reliable hearsay in making this determination.
18 The court shall also consider whether the restricted person is receiving treatment
19 responsive to that person's mental health or substance use needs.

20 **Sec. 18. 34-B MRSA §3862-A, sub-§6, ¶D**, as enacted by PL 2019, c. 411, Pt. A,
21 §1 and affected by Pt. D, §3, is amended by amending subparagraph (5) to read:

22 (5) A court shall electronically update or transmit to the Department of Public
23 Safety, Bureau of State Police an abstract of the order issued by the court pursuant
24 to this section that includes a prohibition on the possession of a dangerous weapon
25 within 72 hours of the order's being issued. The abstract must include the name,
26 date of birth and gender of the person who is the subject of the order; the court's
27 order and the expiration date of that order; and a notation that the person has been
28 notified by the court.

29 The abstract required by this subparagraph is confidential and is not a public record
30 as defined in Title 1, chapter 13; however, the information contained in the abstract
31 or a copy of the abstract may be provided by the Department of Public Safety to a
32 criminal justice agency for law enforcement purposes, to the Federal Bureau of
33 Investigation, National Instant Criminal Background Check System or to an
34 issuing authority for the purpose of processing concealed firearm permit
35 applications. The Department of Public Safety shall, when the pertinent database
36 is developed, request that the Federal Bureau of Investigation ensure that,
37 immediately after the order expires, the National Instant Criminal Background
38 Check System no longer reflects that expired order as a ground for prohibiting the
39 subject of the order from possessing or acquiring a firearm. For the purposes of
40 this subsection, "criminal justice agency" means a federal, state, tribal, district,
41 county or local government agency or any subunit of those entities that performs
42 the administration of criminal justice under a statute or executive order and that
43 allocates a substantial part of its annual budget to the administration of criminal
44 justice. Courts and the Department of the Attorney General are considered
45 criminal justice agencies, as is any equivalent agency at any level of Canadian
46 government.

1 the crime of possession of a dangerous weapon by a restricted person from a Class D to a
2 Class C crime.

3 6. It requires the Department of Health and Human Services to provide injury and
4 violence prevention programs, including data collection, synthesis and evaluation.

5 7. It requires the Department of Health and Human Services to plan for and assist a
6 statewide network of crisis receiving centers to provide immediate and short-term mental
7 health and substance use disorder crisis stabilization services.