

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 electronic originals
(may include minor formatting differences from printed original)

STATE OF MAINE
128TH LEGISLATURE
FIRST SPECIAL, SECOND REGULAR AND SECOND SPECIAL SESSIONS



Summaries of bills, adopted amendments and laws enacted or finally passed

JOINT STANDING COMMITTEE ON JUDICIARY

October 2018

STAFF:

MARGARET J. REINSCH, SENIOR LEGISLATIVE ANALYST
JANET STOCCO, LEGISLATIVE ANALYST
OFFICE OF POLICY AND LEGAL ANALYSIS
13 STATE HOUSE STATION
AUGUSTA, ME 04333
(207) 287-1670
<http://legislature.maine.gov/opla/>

MEMBERS:

SEN. LISA KEIM, CHAIR
SEN. RODNEY L. WHITTEMORE
SEN. DAWN HILL

REP. MATTHEW W. MOONEN, CHAIR
REP. JOYCE MCCREIGHT
REP. CHRISTOPHER W. BABBIDGE
REP. DONNA BAILEY
REP. BARBARA A. CARDONE
REP. LOIS GALGAY RECKITT
REP. STACEY K. GUERIN
REP. ROGER L. SHERMAN
REP. RICHARD T. BRADSTREET
REP. CHRIS A. JOHANSEN

STATE OF MAINE

128TH LEGISLATURE

FIRST SPECIAL, SECOND REGULAR AND SECOND SPECIAL SESSIONS



LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* contain summaries of all LDs and adopted amendments and all laws enacted or finally passed during the First Special, Second Regular and Second Special Sessions of the 128th Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by Legislative Document (LD) number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each LD title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. An appendix provides a summary of relevant session statistics.

Final action on each LD is noted to the right of the LD title. The following describes the various final actions.

CARRIED OVER..... carried over to a subsequent session of the Legislature
CON RES XXX..... chapter # of constitutional resolution passed by both houses
CONF CMTE UNABLE TO AGREE..... Committee of Conference unable to agree; legislation died
DIED BETWEEN HOUSES..... House & Senate disagreed; legislation died
DIED IN CONCURRENCE..... defeated in each house, but on different motions; legislation died
DIED ON ADJOURNMENT..... action incomplete when session ended; legislation died
EMERGENCY..... enacted law takes effect sooner than 90 days after session adjournment
FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE..... emergency failed to receive required 2/3 vote
FAILED, ENACTMENT or FINAL PASSAGE..... failed to receive final majority vote
FAILED, MANDATE ENACTMENT..... legislation proposing local mandate failed required 2/3 vote
HELD BY GOVERNOR..... Governor has not signed; final disposition to be determined at subsequent session
LEAVE TO WITHDRAW..... sponsor's request to withdraw legislation granted
NOT PROPERLY BEFORE THE BODY..... ruled out of order by the presiding officer; legislation died
INDEF PP..... indefinitely postponed; legislation died
ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X... ought-not-to-pass report accepted; legislation died
P&S XXX..... chapter # of enacted private & special law
PUBLIC XXX..... chapter # of enacted public law
RESOLVE XXX..... chapter # of finally passed resolve
VETO SUSTAINED..... Legislature failed to override Governor's veto

The effective dates for non-emergency legislation enacted in the First Special, Second Regular or Second Special Sessions of the 128th Legislature are: Monday, February 5, 2018; Wednesday, August 1, 2018; and Thursday, December 13, 2018, respectively. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

Joint Standing Committee on Judiciary

This amendment is the majority report of the committee. It replaces the bill. It removes the current requirement that the Governor approve salaries set by the Attorney General for the Deputy Chief Medical Examiner, staff attorneys, assistant attorneys general and secretary to the Attorney General. Compensations continue to be limited by the total amount appropriated for those positions and cannot result in increases in requests in future budgets.

The amendment gives the Attorney General the same authority within the Office of the Attorney General to approve financial orders as the Chief Justice has within the judicial branch. The Attorney General must provide a copy of each approved financial order to the Department of Administrative and Financial Services, Bureau of the Budget and the Office of Fiscal and Program Review.

LD 1884

An Act To Specify the Procedures Regarding the Court-ordered Surrender of Dangerous Weapons

Veto Sustained

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
DION M	OTP-AM	S-489
GIDEON S	OTP-AM	

This bill was reported out of committee during the Second Regular Session of the 128th Legislature. The bill was then carried over to the next special session by joint order S.P. 748.

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

1. A law enforcement officer or a family or household member of a high risk individual may file a petition for a temporary community protection order, which expires in 21 days. A temporary community protection order may be issued on an ex parte basis. The court is required to hold a hearing to determine if the temporary community protection order should be extended for an additional 180 days;
2. A person who is the subject of a community protection order is required to surrender all firearms in the person's possession to a law enforcement officer. The firearms must be returned to the person at the expiration of the community protection order; and
3. A person who possesses firearms in violation of a community protection order commits a Class D crime. Part of the sentence must include a prohibition on possession of firearms for an additional two years.

Committee Amendment "A" (S-488)

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

1. It limits the definition of "family or household member" to include only a former or current spouse or domestic partner of the subject of the petition, an individual who formerly was or currently is living with the subject of the petition as a spouse, the parent of a child of the subject of the petition and household members related by consanguinity or affinity to the subject of the petition.
2. It changes the definition of "high-risk individual" to remove references to mental illness.
3. It enumerates specific factors that a court must consider when deciding whether to issue a temporary or extended community protection order.
4. It reduces the duration of a temporary community protection order from 21 days to 14 days.

Joint Standing Committee on Judiciary

5. It removes the prohibition on ownership of a firearm by a restrained individual but continues to prohibit a restrained individual from having a firearm in the individual's custody or control or purchasing, possessing or receiving or attempting to purchase or receive a firearm.
6. It authorizes the court to issue a search warrant authorizing a law enforcement officer to seize any firearms that there is probable cause to believe the restrained individual possesses either concurrently with or subsequent to issuance of a temporary or extended community protection order.
7. It permits an individual restrained by an extended community protection order to submit one written request to dissolve the extended community protection order and requires law enforcement to update the Department of Public Safety database for protection orders when a community protection order is dissolved.
8. It requires, prior to the return of a firearm to an individual who was restrained by an expired or dissolved community protection order, that the law enforcement agency provide notice of the return of the firearm to the petitioner, if the petitioner is a family or household member of the restrained individual.
9. It requires law enforcement agencies to exercise reasonable care to avoid loss, damage or reduction in value of firearms surrendered by or seized from restrained individuals and provides that the Maine Tort Claims Act governs liability of law enforcement for damage to or reduction in value of such firearms.

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

Part C provides funds to the Judicial Department for programming and related information technology costs for case management system changes necessary to implement the community protection order process.

Committee Amendment "B" (S-489)

This amendment, which is the minority report of the committee, strikes and replaces the bill. The amendment authorizes a court to order a person admitted to a progressive treatment program not to possess firearms, muzzle-loading firearms, bows, crossbows or other specified dangerous weapons for the duration of the patient's court-ordered participation in the program. Possession of a firearm by a patient in violation of such an order is a Class D crime. A law enforcement officer to whom a patient surrenders a firearm must exercise reasonable care to avoid loss, damage or reduction in value of the surrendered firearm.

The amendment also directs a court of this State that enters an order dissolving, terminating or vacating an order or any portion of an order that constitutes grounds to prohibit a person from possessing a firearm pursuant to the Maine Revised Statutes, Title 15, section 393 to promptly notify the Department of Public Safety, Bureau of State Police, State Bureau of Identification of this information. The State Bureau of Identification is required to then promptly notify the Federal Bureau of Investigation and request that the National Instant Criminal Background Check System be promptly updated to reflect the dissolution, termination, vacation or modification of the underlying order.

House Amendment "A" To Committee Amendment "A" (H-784)

This amendment requires any orders issued by a court pursuant to the requirements of this legislation to be forwarded on the same business day by e-mail to the Department of Public Safety for entry into the electronic records management system maintained by the department. This requirement expires once a case management system for the judicial branch is fully operational. This amendment also provides funding to the Department of Public Safety for this entry of the orders.

Joint Standing Committee on Judiciary

This amendment was not adopted.

Senate Amendment "A" To Committee Amendment "A" (S-498)

This amendment provides that a restrained individual is entitled to legal counsel and authorizes restrained individuals to request the court to appoint legal counsel. Upon a finding of indigency, the court must appoint legal counsel at public expense. It adds representation of restrained individuals to the purposes of the Maine Commission on Indigent Legal Services. It authorizes a restrained individual to move for dissolution of a temporary community protection order. It clarifies subsection headnotes. It adds an appropriations and allocations section.

This amendment was not adopted.

LD 1885 An Act To Implement the Recommendations of the Task Force To Died On
Address the Opioid Crisis in the State Regarding Increased Access to Adjournment
Drug Courts

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP	

This bill was carried over from the Second Regular Session to the Second Special Session on the Special Appropriations Table by joint order S.P. 748.

This bill is reported out by the Joint Standing Committee on Judiciary to implement a recommendation in the report of the Task Force To Address the Opioid Crisis in the State. It provides additional funding for the Judicial Department to establish a new drug court in the State for up to 30 participants or to expand by up to 30 the number of participants served by existing drug courts in the State pursuant to the Maine Revised Statutes, Title 4, section 421. The bill also provides funding for the case management and ancillary services provided to drug court participants by the office of substance abuse and mental health services within the Department of Health and Human Services.

Public Law 2017, chapter 460, Part J provides the funding proposed by LD 1885.

LD 1889 Resolve, To Establish the Blue Ribbon Commission on Community Died On
Safety Adjournment

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
MALABY R	OTP-AM	H-776

This bill was reported out by the committee as a resolve. It was carried over from the Second Regular Session to the Second Special Session on the Special Study Table by joint order S.P. 748.

Under current law, for the purpose of admission to a progressive treatment program a determination that a person poses a likelihood of serious harm takes into consideration the likelihood that a person's mental health will deteriorate and that the person will in the foreseeable future pose a likelihood of serious harm. This bill expands the definition of "likelihood of serious harm" to apply those same considerations for purposes other than admission to a progressive treatment program.

Committee Amendment "A" (H-776)

This amendment replaces the bill with a resolve that establishes the Blue Ribbon Commission on Community Safety