

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

Governor's Office Proposed Amendments to LD 2224

3/26/2024

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

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

E-1. Is currently a restricted person ~~under~~ pursuant to Title 34-B, section 3862-A, subsection 24 or Title 34-B, section 3862-A, subsection 6, paragraph D or a similar order issued by another jurisdiction, except that the prohibition applies to possession and control, and not ownership. A permit issued pursuant to subsection 2 is not a defense to a violation of this paragraph. Violation of this paragraph is a Class D crime;

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

2. Sale or transfer prohibited. A person may not ~~recklessly, knowingly or~~ intentionally, knowingly or recklessly, sell or transfer a firearm to a person who is prohibited from owning, possessing or having under that person's control a firearm pursuant to section 393 and who does not have a permit issued under section 393. As used in this section, the culpable mental states of "intentionally, knowingly, or recklessly" have the same meanings as in Title 17-A, section 35. This subsection does not apply to the sale or transfer of an antique firearm.

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

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

§395. Background checks of firearms buyers

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

A. "Advertisement" means the presentation to the general public of a message regarding a firearm for sale by a seller that is:

- a. Broadcast on television or radio; or
- b. Broadcast over the Internet; or
- c. Printed in magazines or newspapers; or
- d. Displayed on a handbill, poster, sign, or placard.

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

CB. "Buyer" means a person who buys from a seller.

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

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

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

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

- (1) Open to the public;
- (2) Not occurring on the permanent premises of a federally licensed firearms dealer; and
- (3) Conducted principally for the purposes of transactions.

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

IH. "Seller" means a person who sells to a buyer.

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

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

A. A seller sells to a buyer at a gun show; or

B. A seller sells to a buyer as a result of an advertisement, ~~posting, display or other listing on the Internet or in a publication.~~

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

A. The buyer and seller are family members; or

B. The transaction is for a firearm that is:

(1) A curio or relic, as defined in 27 Code of Federal Regulations, Section 478.11, as in effect on November 19, 2019, and the sale, transfer or exchange is between collectors as defined in 18 United States Code, Section 921(a)(13), as in effect on June 25, 2022, who each have in their possession a valid collector of curios and relics license issued by the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives; or

(2) An antique firearm, as defined in 18 United States Code, Section 921(a)(16), as in effect on June 25, 2022.

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

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

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

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

- A. Child welfare services;
- B. Head Start and child care services;
- C. Maternal and child health services, including home visiting programs;

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

- D. Paternity establishment and child support enforcement services; ~~and~~
- E. Residential and long-term care services for children with disabilities; ~~and~~
- F. Injury and violence prevention programs, including data collection, synthesis and evaluation.

Sec. 5. 25 MRSA §2804-C, sub-§2-E, as enacted by PL 2019, c. 411, Pt. C, §4 and affected by Pt. D, §3, is amended 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~~ extreme risk protection orders 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. 6. 34-B MRSA §3613 is enacted to read:

§3613. Crisis receiving centers

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

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

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

- A. Consult with law enforcement agencies, municipalities, public health experts, behavioral health care providers, other states and others as appropriate;
- B. Assess geographical locations for maximization of community impact;
- C. Provide technical assistance to persons and entities across the State and providers interested in joining the network;
- D. Coordinate regular meetings with crisis receiving centers and provide technical assistance to crisis receiving centers; and
- E. Engage in continual process improvement and planning updates.

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

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

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

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

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

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

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

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

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

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

- (1) The protective custody stemmed from a law enforcement officer's probable cause to believe the person ~~was~~ may be mentally ill and presented a likelihood of serious harm because the person possesses, controls or may acquire a dangerous weapon; and
- (2) An ~~assessment examination~~ assessment examination under section 3863 has occurred.

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

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

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

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

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

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

A warrant transmitted by facsimile machine or an electronic warrant transmitted by secure electronic means has the same legal effect and validity as an original endorsement signed by the justice, ~~or judge or justice of the peace~~. The electronic ~~arrest-protective custody~~ warrant or paper ~~arrest-protective custody~~ warrant may be executed by a law enforcement officer authorized to take the person into protective custody as provided in ~~subsection 2 section 3862(1)(B)~~.

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

3. Notification by medical practitioner and judicial endorsement. A medical practitioner shall notify in writing the law enforcement officer or law enforcement agency that took the person into protective custody under ~~subsection 2 section 3862(1)(B)~~ that, based on the assessment under ~~subsection 2, paragraph B~~, the person is found to present a likelihood of foreseeable harm. If so notified, the law enforcement officer or law enforcement agency shall as soon as practicable seek endorsement by a ~~Superior Court Justice, District Court Judge, judge of probate or justice of the peace~~ Justice of the Superior Court, ~~or a Judge of the District Court, or a justice of the peace~~ of the medical practitioner's assessment and law enforcement's declarations that the person was taken into protective custody and that the law enforcement officer has probable cause to believe that the person possesses, controls or may acquire a dangerous weapon. ~~If a Judge of the District Court is not available in the division in which a complaint requesting an endorsement is to be filed, the complaint may be presented to another Judge of the District Court or to any Justice of the Superior Court. A Justice of the Superior Court has the same authority as a Judge of the District Court to grant or deny the endorsement.~~ The judge justice or justice judge shall promptly transmit to the law enforcement officer or agency the decision to endorse or not endorse. A decision transmitted electronically has the same legal effect and validity as a signed original. An endorsement must authorize law enforcement to execute the authority in subsection 4. This section may not be construed to prevent law enforcement from accepting a voluntary surrender of dangerous weapons.

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

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

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

- (1) Is prohibited from possessing, controlling, acquiring or attempting to possess, control or acquire a dangerous weapon pending the outcome of a judicial hearing;
- (2) Shall immediately and temporarily surrender any weapons possessed, controlled or acquired by the restricted person to a law enforcement officer who has authority in the jurisdiction in which the weapons are located pending the outcome of a judicial hearing; and
- (3) Has a right to a judicial hearing within 44 30 days of notice under paragraph B; and

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

131st Maine Legislature
An Act to Strengthen Public Safety by Improving Maine's Firearm Laws and Mental Health System
L.D.

- (1) Notify the restricted person that the restricted person:
 - (a) Is prohibited from possessing, controlling, acquiring or attempting to possess, control or acquire a dangerous weapon pending the outcome of a judicial hearing;
 - (b) Is required to immediately and temporarily surrender any weapons possessed, controlled or acquired by the restricted person to a law enforcement officer who has authority in the jurisdiction in which the weapons are located pending the outcome of a judicial hearing; and
 - (c) Has a right to a judicial hearing within 44 30 days of the notice under this paragraph;
- (2) Notify the contact person, if any, disclosed by the restricted person to the medical practitioner and the district attorney in the district ~~of the restricted person's residence~~ where the person was taken into protective custody of the person's restricted status; and
- (3) Report the person's restricted status to the Department of Public Safety as soon as practicable.

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

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

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

B. Within 44 30 days of the notice given under subsection 4, the court shall hold a hearing to determine whether to dissolve or extend the initial restrictions. Upon a showing of good cause, the court may extend the time to hold the hearing. In the hearing determining whether to dissolve or extend the initial restrictions, the district attorney has the burden to prove by clear and convincing evidence that the restricted person presents a likelihood of foreseeable harm. Upon a showing of good cause, the court may extend the time to hold the hearing.

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

C. In determining whether there are grounds to extend the initial restrictions, the court shall consider all relevant evidence, including, but not limited to, recent threats or acts of violence by the restricted person directed toward other persons; recent threats or acts of violence by the restricted person directed toward the restricted person; recent acts of unlawful abuse of animals by the restricted person; the reckless use or threatening display of a dangerous weapon by the restricted person; a history of the use, attempted use or threatened use of physical force by the restricted person against other persons; a record of prior custodial events or restrictions under this section; prior involuntary confinement of the restricted person in a hospital for persons with psychiatric disabilities; prior protection from abuse and protection from harassment orders against the restricted person or violations regarding protection from abuse or protection from harassment by the restricted person; evidence of stalking behavior, severe obsession or sexual violence by the restricted person; the illegal use of controlled substances by the restricted person; and evidence of alcohol or drug abuse by the restricted person. The court may consider affidavits and

other reliable hearsay in making this determination. The court shall also consider whether the restricted person is receiving treatment responsive to that person's mental health or substance use needs.

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

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

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

~~**Sec. 19. 34-B MRSA §3862-A, sub-§8**, as enacted by PL 2019, c. 411, Pt. A, §1 and affected by Pt. D, §3, is amended to read:~~

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

SUMMARY

This proposal changes the printed bill in the following ways:

Amends Section 1 of the bill: to correct a cross reference.

Amends Section 2 to conform with Legislative drafting conventions

Amends Section 3 to ad definition of "Advertisement"

Amends Section 11 of the bill: Changes "was" to "may be" to be consistent with existing language in § 3862 and changes "assessment" to "examination" to be consistent with the term referred to in § 3863

Amends Section 12 of the bill: Adds in "justice of the peace", changes "is" to "may be" to be consistent with language elsewhere in the chapter, corrects a cross reference and changes "arrest" to "protective custody".

Amends Section 13 of the bill: Corrects a cross reference and adds in justice of the peace and removes language about when a judge is not available because of changes in the notification process in Section 15.

Amends Section 15 of the bill: ensures the court will notify the District Attorney of the hearing.

131st Maine Legislature
An Act to Strengthen Public Safety by Improving Maine's Firearm Laws and Mental Health System
L.D.

Amends Section 16 of the bill: Reorders when a continuance may be requested to make clear it can be requested before the hearing begins.

Amends Section 19 of the bill by eliminating that section of the bill to avoid creating a conflict between that section and Title 15.