

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Implement the Recommendations of the Working Group Concerning Domestic Violence and Firearms

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

Sec. 1. 15 MRSA §1023, sub-§4-A is enacted to read:

4-A. Firearms; bail condition upon arrest for certain crimes of domestic violence.

If a law enforcement officer has seized firearms pursuant to this subchapter; Title 17-A, section 15, subsection 1, paragraph A, subparagraphs (1), (5-A) or (5-B); or Title 19-A, section 4012, subsection 5, the bail commissioner shall require, as a condition of bail, that all firearms in the possession of the person arrested be relinquished to a law enforcement officer and that the person refrain from possessing a firearm or other specified dangerous weapons until further order of a court. Upon request of the defendant, a bail condition imposed pursuant to this subsection must be heard by the court as expeditiously as possible.

Sec. 2. 15 MRSA §1026, sub-§3, ¶A, as repealed and replaced by PL 2007, c. 518, §3, is amended to read:

A. If, after consideration of the factors listed in subsection 4, the judicial officer determines that the release described in subsection 2-A will not reasonably ensure the appearance of the defendant at the time and place required, will not reasonably ensure that the defendant will refrain from any new criminal conduct, will not reasonably ensure the integrity of the judicial process or will not reasonably ensure the safety of others in the community, the judicial officer shall order the pretrial release of the defendant subject to the least restrictive further condition or combination of conditions that the judicial officer determines will reasonably ensure the appearance of the defendant at the time and place required, will reasonably ensure that the defendant will refrain from any new criminal conduct, will reasonably ensure the integrity of the judicial process and will reasonably ensure the safety of others in the community. These conditions may include that the defendant:

(1) Remain in the custody of a designated person or organization agreeing to supervise the defendant, including a public official, public agency or publicly funded organization, if the designated person or organization is able to reasonably ensure the appearance of the defendant at the time and place required, that the defendant will refrain from any new criminal conduct, the integrity of the judicial process and the safety of others in the community. When it is feasible to do so, the judicial officer shall impose the responsibility upon the defendant to produce the designated person or organization. The judicial officer may interview the designated person or organization to ensure satisfaction of both the willingness and ability required. The designated person or organization shall agree to notify immediately the judicial officer of any violation of release by the defendant;

(2) Maintain employment or, if unemployed, actively seek employment;

- (3) Maintain or commence an educational program;
- (4) Abide by specified restrictions on personal associations, place of abode or travel;
- (5) Avoid all contact with a victim of the alleged crime, a potential witness regarding the alleged crime or with any other family or household members of the victim or the defendant or to contact those individuals only at certain times or under certain conditions;
- (6) Report on a regular basis to a designated law enforcement agency or other governmental agency;
- (7) Comply with a specified curfew;
- (8) Refrain from possessing a firearm and relinquish all firearms or other dangerous weaponweapons as specified in section 1023, subsection 4-A;
- (9) Refrain from use or excessive use of alcohol and from any use of drugs;
- (10) Undergo, as an outpatient, available medical or psychiatric treatment, or enter and remain, as a voluntary patient, in a specified institution when required for that purpose;
- (10-A) Enter and remain in a long-term residential facility for the treatment of substance abuse;
- (11) Execute an agreement to forfeit, in the event of noncompliance, such designated property, including money, as is reasonably necessary to ensure the appearance of the defendant at the time and place required, to ensure that the defendant will refrain from any new criminal conduct, to ensure the integrity of the judicial process and to ensure the safety of others in the community and post with an appropriate court such evidence of ownership of the property or such percentage of the money as the judicial officer specifies;
- (12) Execute a bail bond with sureties in such amount as is reasonably necessary to ensure the appearance of the defendant at the time and place required, to ensure that the defendant will refrain from any new criminal conduct, to ensure the integrity of the judicial process and to ensure the safety of others in the community;
- (13) Return to custody for specified hours following release for employment, schooling or other limited purposes;

- (14) Report on a regular basis to the defendant's attorney;
- (15) Notify the court of any changes of address or employment;
- (16) Provide to the court the name, address and telephone number of a designated person or organization that will know the defendant's whereabouts at all times;
- (17) Inform any law enforcement officer of the defendant's condition of release if the defendant is subsequently arrested or summonsed for new criminal conduct; and
- (18) Satisfy any other condition that is reasonably necessary to ensure the appearance of the defendant at the time and place required, to ensure that the defendant will refrain from any new criminal conduct, to ensure the integrity of the judicial process and to ensure the safety of others in the community.

Sec. 3. 17-A MRSA §15, sub-§1, ¶A, as amended by PL 2009, c. 142, §3, is further amended to read:

A. Any person who the officer has probable cause to believe has committed or is committing:

- (1) Murder. A law enforcement officer who arrests a person pursuant to this subparagraph shall seize all firearms in the person's possession. A person subject to firearm seizure pursuant to this subparagraph is subject to a bail condition as specified in Title 15, section 1023, subsection 4-A;
- (2) Any Class A, Class B or Class C crime;
- (3) Assault while hunting;
- (4) Any offense defined in chapter 45;
- (5) Assault, criminal threatening, terrorizing or stalking, if the officer reasonably believes that the person may cause injury to others unless immediately arrested;
- (5-A) Assault, criminal threatening, terrorizing, stalking, criminal mischief, obstructing the report of a crime or injury or reckless conduct if the officer reasonably believes that the person and the victim are family or household members, as defined in Title 19-A, section 4002,

subsection 4. A law enforcement officer who arrests a person pursuant to this subparagraph shall seize all firearms in the person's possession. A person subject to firearm seizure pursuant to this subparagraph is subject to a bail condition as specified in Title 15, section 1023, subsection 4-A;

(5-B) Domestic violence assault, domestic violence criminal threatening, domestic violence terrorizing, domestic violence stalking or domestic violence reckless conduct. A law enforcement officer who arrests a person pursuant to this subparagraph shall seize all firearms in the person's possession. A person subject to firearm seizure pursuant to this subparagraph is subject to a bail condition as specified in Title 15, section 1023, subsection 4-A;

(6) Theft as defined in section 357, when the value of the services is \$1,000 or less if the officer reasonably believes that the person will not be apprehended unless immediately arrested;

(7) Forgery, if the officer reasonably believes that the person will not be apprehended unless immediately arrested;

(8) Negotiating a worthless instrument if the officer reasonably believes that the person will not be apprehended unless immediately arrested;

(9) A violation of a condition of probation when requested by a probation officer or juvenile community corrections officer;

(10) Violation of a condition of release in violation of Title 15, section 1026, subsection 3; Title 15, section 1027, subsection 3; Title 15, section 1051, subsection 2; and Title 15, section 1092;

(11) Theft involving a detention under Title 17, section 3521;

(12) Harassment, as set forth in section 506-A;

(13) Violation of a protection order, as specified in Title 5, section 4659, subsection 2; Title 15, section 321, subsection 6; former Title 19, section 769, subsection 2; former Title 19, section 770, subsection 5; Title 19-A, section 4011, subsection 3; and Title 19-A, section 4012, subsection 5;

(14) A violation of a sex offender registration provision under Title 34-A, chapter 15;

(15) A violation of a requirement of administrative release when requested by the attorney for the State;

(16) A violation of a condition of supervised release for sex offenders when requested by a probation officer;

(17) A violation of a court-imposed deferment requirement of a deferred disposition when requested by the attorney for the State;

(18) A violation of a condition of release as provided in Title 15, section 3203-A, subsection 9;

(19) A violation of a condition of supervised community confinement granted pursuant to Title 34-A, section 3036-A when requested by a probation officer;

(20) A violation of a condition of placement on community reintegration status granted pursuant to Title 34-A, sections 3810 and 4112 when requested by a juvenile community corrections officer; or

(21) A violation of a condition of furlough or other rehabilitative program authorized under Title 34-A, section 3035 when requested by a probation officer or juvenile community corrections officer; and

Sec. 4. 19-A MRSA §4012, sub-§5, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

5. Arrest in certain situations. When a law enforcement officer has probable cause to believe that there has been a criminal violation under section 4011 of a court-approved consent agreement or a protection order issued pursuant to this chapter or Title 15, chapter 12-A, or that a violation of Title 17-A, section 208 has occurred between members of the same family or household, that enforcement officer shall arrest and take into custody the alleged offender. A law enforcement officer who arrests a person pursuant to this subsection shall seize all firearms in the person's possession. A person subject to firearm seizure pursuant to this subsection is subject to a bail condition as specified in Title 15, section 1023, subsection 4-A.

Sec. 5. 25 MRSA §2803-B, sub-§1, ¶D, as amended by PL 2003, c. 361, §1, is further amended to read:

D. Domestic violence, which must include, at a minimum, the following:

(1) A process to ensure that a victim receives notification of the defendant's release from jail;

(2) A process for the collection of information regarding the defendant that includes the defendant's previous history, the parties' relationship, the name of the victim and a process to relay this information to a bail commissioner before a bail determination is made; ~~and~~

(3) A process for the safe retrieval of personal property belonging to the victim or the defendant that includes identification of a possible neutral location for retrieval, the presence of at least one law enforcement officer during the retrieval and giving the victim the option of at least 24 hours notice to each party prior to the retrieval; and

(4) A process for the seizure of firearms and safe storage of firearms seized by a law enforcement officer in a domestic violence arrest;

Sec. 6. 25 MRSA §2803-B, sub-§2, as repealed and replaced by PL 2009, c. 652, Pt. A, §37, is amended to read:

2. Minimum policy standards. The board shall establish minimum standards for each law enforcement policy no later than June 1, 1995, except that policies for expanded requirements for domestic violence under subsection 1, paragraph D, subparagraphs (1) to (3) must be established no later than January 1, 2003; policies for death investigations under subsection 1, paragraph I must be established no later than January 1, 2004; policies for public notification regarding persons in the community required to register under Title 34-A, chapter 15 under subsection 1, paragraph J must be established no later than January 1, 2006; policies for the recording and preservation of interviews of suspects in serious crimes under subsection 1, paragraph K must be established no later than January 1, 2005; policies for the expanded use of physical force, including the use of electronic weapons and less-than-lethal munitions under subsection 1, paragraph A, must be established no later than January 1, 2010; ~~and~~ policies for mental illness and the process for involuntary commitment under subsection 1, paragraph L must be established no later than January 1, 2010; and policies for expanded requirements for domestic violence under subsection 1, paragraph D, subparagraph (4) for the seizure of firearms and safe storage of firearms seized by a law enforcement officer in a domestic violence arrest must be established no later than January 1, 2013.

Sec. 7. 25 MRSA §2803-B, sub-§3, as repealed and replaced by PL 2009, c. 652, Pt. A, §38, is amended to read:

3. Agency compliance. The chief administrative officer of each law enforcement agency shall certify to the board no later than January 1, 1996 that the agency has adopted written policies consistent with the minimum standards established by the board pursuant to subsection 2, except that certification to the board for expanded policies for domestic violence under subsection 1, paragraph D, subparagraphs (1) to (3) must be made to the board no later than June 1, 2003; certification to the board for adoption of a death investigation policy under subsection 1, paragraph I must be made to the board no later than June 1, 2004; certification to the board for adoption of a public notification policy under subsection 1, paragraph J must be made to the board no later than June 1, 2006; certification to the board for adoption of a policy for the recording and preservation of interviews of suspects in serious crimes under subsection 1, paragraph K must be made to the board no later than June 1, 2005; certification to the

board for adoption of an expanded use of physical force policy under subsection 1, paragraph A must be made to the board no later than June 1, 2010; and certification to the board for adoption of a policy regarding mental illness and the process for involuntary commitment under subsection 1, paragraph L must be made to the board no later than June 1, 2010. The certification must be accompanied by copies of the agency policies. The chief administrative officer of each agency shall certify to the board no later than June 1, 1996 that the agency has provided orientation and training for its members with respect to the policies, except that certification for orientation and training with respect to expanded policies for domestic violence under subsection 1, paragraph D, subparagraphs (1) and (3) must be made to the board no later than January 1, 2004; certification for orientation and training with respect to policies regarding death investigations under subsection 1, paragraph I must be made to the board no later than January 1, 2005; certification for orientation and training with respect to policies regarding public notification under subsection 1, paragraph J must be made to the board no later than January 1, 2007; certification for orientation and training with respect to policies regarding the recording and preservation of interviews of suspects in serious crimes under subsection 1, paragraph K must be made to the board no later than January 1, 2006; certification for orientation and training with respect to policies regarding expanded use of physical force under subsection 1, paragraph A must be made to the board no later than January 1, 2011; and certification for orientation and training with respect to policies regarding mental illness and the process for involuntary commitment under subsection 1, paragraph L must be made to the board no later than January 1, 2011; and certification to the board for expanded policies for domestic violence under subsection 1, paragraph D, subparagraph (4) for the seizure of firearms and safe storage of firearms seized by a law enforcement officer in a domestic violence arrest must be made to the board no later than June 1, 2013.

SUMMARY

This bill implements the recommendations of the working group concerning domestic violence and firearms established under Resolve 2009, chapter 86.

Specifically, the bill authorizes a law enforcement officer to seize firearms from a person upon arrest for certain crimes of domestic violence, including: murder; assault, criminal threatening, terrorizing, stalking, criminal mischief, obstructing the report of a crime or injury or reckless conduct if the officer reasonably believes that the person and the victim are family or household members; domestic violence assault, domestic violence criminal threatening, domestic violence terrorizing, domestic violence stalking or domestic violence reckless conduct; violating a court-ordered consent agreement or protection from abuse order; or aggravated assault on a family or household member. A person subject to firearm seizure pursuant to this authority is subject to a new bail condition established in the Maine Revised Statutes, Title 15, section 1023, subsection 4-A. The new provision requires, as a condition of bail, that all firearms in the possession of the person arrested be relinquished to a law enforcement officer and that the person refrain from possessing a firearm or other specified dangerous weapons until further order of a court. Upon request of the defendant, such a bail condition must be heard by the court as expeditiously as possible.

The bill also amends Title 25, section 2803-B to expand policies regarding domestic violence by requiring that all law enforcement agencies adopt a written policy for the seizure of firearms and safe storage of firearms seized by a law enforcement officer in a domestic violence arrest.