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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

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

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 one-year 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.

G. "Likelihood of serious harm" means a substantial risk of physical harm to the person as manifested by recent threats of, or attempts at, suicide or serious self-inflicted harm; a substantial risk of 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; a reasonable certainty that the person will suffer severe physical or mental harm as manifested by recent behavior demonstrating an inability to avoid risk or to protect the person adequately from impairment or injury; or, in view of the person's current behavior, a reasonable likelihood that the person will in the foreseeable future pose a likelihood of serious harm.

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

I. "Prohibited person" means a person who may not own, possess or have under that person's control a firearm under Title 15, section 393, subsection 1, paragraph E or E-1.

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

K. "Restricted person" means a person taken into protective custody by a law enforcement officer the officer has probable cause to believe possesses or controls a dangerous weapon, and who is found by a medical practitioner pursuant to that custody to present a greater likelihood of serious harm because of access to that weapon.

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

2. Evaluation and certification by a medical practitioner. A law enforcement officer who takes a person into protective custody pursuant to section 3862 shall present that person to a medical practitioner for evaluation in accordance with this subsection. A medical practitioner shall evaluate the person's history, recent actions and behaviors; whether there is a reasonable likelihood that the person's mental health will deteriorate; whether the person will in the foreseeable future pose a likelihood of serious harm; and whether any such likelihood of harm is exacerbated by the person's immediate access to a dangerous weapon. A medical practitioner shall certify the evaluation and, if the evaluation is certified in the affirmative, the person evaluated at the time of notice by law enforcement under subsection 4, paragraph B becomes a restricted person subject to initial restrictions and subject to the prohibitions in Title 15, section 393, subsection 1, paragraphs E and E-1 pending a judicial hearing. In conducting the evaluation, a medical practitioner may consult with other medical or mental health professionals as the medical practitioner determines advisable.

3. Notice by medical practitioner. The medical practitioner shall at the time of certification under subsection 2 inform the restricted person of the treatment resources that may be available to the restricted person. The medical practitioner shall also notify the law enforcement agency whose officer presented the person of the restricted person's certification.

4. Initial restrictions; notice by law enforcement. Upon notice from the medical practitioner of a restricted person's affirmative certification under subsection 2:

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 14 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 affirmative certification:

(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 14 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 of the person's restricted status; and

(3) Report the person's restricted status to the Department of Public Safety database for protection orders.

5. Temporary surrender to law enforcement. A law enforcement agency shall store and care for the weapons surrendered by a restricted person in the manner provided in subsection 7. A restricted person who makes all practical, immediate efforts to comply with a surrender notice under subsection 4 is not subject to arrest or prosecution as a prohibited person under Title 15, section 393, subsection 1, paragraph E or E-1. 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.

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

A. Within 5 days of the date of the notice given to a restricted person under subsection 4, paragraph B, the district attorney 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 to the restricted person 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.

B. Within 14 days of the notice given under subsection 4, the court shall hold a hearing to determine whether to dissolve or extend the initial restrictions. 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 will in the foreseeable future pose a likelihood of serious harm, and that such likelihood is exacerbated by the person's immediate access to a dangerous weapon.

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; prior involuntary confinement of the restricted person in a hospital for persons with psychiatric disabilities; prior violations of protection or harassment orders 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; or evidence of alcohol or drug abuse by the restricted person. The court shall also consider whether the restricted person is receiving treatment responsive to that person's mental health or substance use needs.

D. This paragraph governs court orders.

(1) If the court finds after hearing that there is not clear and convincing evidence to continue or extend the initial restrictions, the court shall dissolve the initial restrictions and order the return of any weapons surrendered or seized. The court shall direct the Department of Public Safety to remove the record of restrictions from the department's database for protection orders.

(2) If the court finds after hearing that there is clear and convincing evidence to continue or extend the initial restrictions, the court shall inform the restricted person that the restricted person is prohibited for one year from purchasing, possessing or controlling any dangerous weapon, or attempting to purchase, possess or control any dangerous weapon. The court shall further order the person to immediately surrender dangerous weapons possessed or controlled by that person to a law enforcement officer and order a law enforcement agency to ensure that the record of the restrictions is entered in the Department of Public Safety database for protection orders.

(3) Extended restrictions imposed under this paragraph expire one year from the date the restrictions were ordered by the court. The court shall schedule a hearing within 45 days prior to the expiration of that one-year period to determine if the order should be extended. The district attorney has the burden of proving that the restricted person continues to pose a likelihood of

serious harm to the restricted person or others and that such likelihood is exacerbated by the restricted person's immediate access to a firearm or other dangerous weapon. If, after a hearing, the court finds by clear and convincing evidence that the restricted person continues to pose a likelihood of serious harm, the court shall renew the extended restrictions for one year. If the court does not so find, the court shall deny the petition and order the return of any weapons surrendered or seized. Upon motion by the State, the court may for cause shown order that the restricted person be examined for evaluation of whether the restricted person continues to pose a likelihood of serious harm to the restricted person or others and that such likelihood is exacerbated by the restricted person's immediate access to a dangerous weapon. The fees or expenses for an examination or evaluation pursuant to this subparagraph may be paid from the Extradition and Prosecution Expenses Account established by Title 15, section 224-A.

(4) A restricted person may file one motion for dissolution during a one-year period of extended restrictions. For that motion, the restricted person has the burden of proving by clear and convincing evidence that the restricted person no longer poses a likelihood of serious harm to the restricted person or others or, if such likelihood exists, that such likelihood is not exacerbated by the person's immediate access to a dangerous weapon.

(5) A court shall transmit to the Department of Public Safety, Bureau of State Police, State Bureau of Identification an abstract of the order issued by the court pursuant to this section that includes a prohibition on the possession of a dangerous weapon. 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, a copy of the abstract may be provided by the State Bureau of Identification 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 State Bureau of Identification shall 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.

7. Weapons storage and return. A law enforcement agency shall store any weapon surrendered to or seized by law enforcement under this section for as long as the threat-based restrictions are in effect. The duties and liability of a law enforcement agency with respect to handling and storage

of a weapon surrendered or seized are governed by Title 25, section 2804-C, subsection 2-C. A weapon surrendered to or seized by a law enforcement agency must be returned to the restricted person when the threat-based restrictions expire. If a seized or surrendered weapon remains unclaimed for 6 months after the expiration or dissolution of threat-based restrictions, the law enforcement agency may dispose of the weapon consistent with Title 25, section 3503-A.

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

PART B

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

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

Sec. B-2. 34-B MRSA §3873-A, sub-§§7-A and 7-B are enacted to read:

7-A. Dangerous weapons. If the court directs a patient to follow an individualized treatment plan pursuant to subsection 6, the court shall prohibit the patient from possessing a dangerous weapon as described in Title 17-A, section 2, subsection 9, paragraph A, including a firearm as defined in Title 17-A, section 2, subsection 12-A, for the duration of the treatment plan. If the court prohibits the patient from possessing a dangerous weapon, the court shall specify the type of weapon the patient is prohibited from possessing; notify the patient that possession of such a weapon by the person is prohibited pursuant to Title 15, section 393; and direct the patient to relinquish, within 24 hours after service of the order on the patient or such earlier time as the court specifies in the order, such weapons in the possession of the patient to a law enforcement officer for the duration of the order. The duties and liability of a law enforcement agency with respect to dangerous weapons surrendered pursuant to this subsection are governed by Title 25, section 2804-C, subsection 2-C.

7-B. Transmission of abstract of court ruling to State Bureau of Identification.

Notwithstanding any other provision of this section or section 1207, a court shall transmit to the Department of Public Safety, Bureau of State Police, State Bureau of Identification an abstract of the order issued by the court pursuant to this section that includes a prohibition on the possession of a dangerous weapon pursuant to subsection 7-A. Implementation of this requirement is governed by section 3862-A, subsection 6, paragraph D, subparagraph (5).

PART C

Sec. C-1. 15 MRSA §224-A, sub-§1, as amended by PL 2013, c. 566, §3, is further amended to read:

1. Establishment; use. Notwithstanding any other provision of law, there is established an Extradition and Prosecution Expenses Account in each prosecutorial district in an amount not to exceed \$30,000, to be administered by the district attorney and to be used solely for the purposes of paying the

expenses of extraditing persons charged with or convicted of a crime in this State and who are fugitives from justice, as defined in section 201, subsection 4, paying fees or expenses of prosecution pursuant to section 1319 ~~and~~, paying witness fees pursuant to section 1320 and paying for examination fees or expenses pursuant to Title 34-B, section 3862-A, subsection 6, paragraph D, subparagraph (3).

Sec. C-2. 15 MRSA §393, sub-§1, ¶E, as amended by PL 2015, c. 470, §1, is further amended to read:

E. Has been:

(1) Committed involuntarily to a hospital pursuant to an order of the District Court under Title 34-B, section 3864 because the person was found to present a likelihood of serious harm, as defined under Title 34-B, section 3801, subsection 4-A, paragraphs A to C;

(2) Found not criminally responsible by reason of insanity with respect to a criminal charge; ~~or~~

(3) Found not competent to stand trial with respect to a criminal charge; or

(4) Ordered to participate in a progressive treatment program pursuant to Title 34-B, section 3873-A and, as part of that order, directed not to possess a dangerous weapon pursuant to Title 34-B, section 3873-A, subsection 7-A.

Violation of this paragraph is a Class D crime;

Sec. C-3. 15 MRSA §393, sub-§1, ¶E-1 is enacted to read:

E-1. Is currently a restricted person under Title 34-B, section 3862-A, subsection 2 or subsection 6, paragraph D. Violation of this paragraph is a Class D crime;

Sec. C-4. 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 for protection from substantial threats by a restricted person pursuant to Title 34-B, section 3862-A; and

Sec. C-5. 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 a certification 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.

SUMMARY

Current law authorizes law enforcement to take a person into protective custody for evaluation by a medical practitioner as protection from imminent threats of substantial self-inflicted harm or substantial harm to others. Part A of this bill requires that a medical practitioner evaluate the history, recent actions and behaviors of a person taken into protective custody and determine whether there is a reasonable likelihood that the person's mental health will deteriorate; whether the person will in the foreseeable future pose a likelihood of serious harm; and whether any such likelihood of harm is exacerbated by the person's immediate access to a firearm or other dangerous weapon. A medical practitioner must certify this evaluation and, if the evaluation is certified in the affirmative, the person is required to surrender any dangerous weapons possessed or controlled by that person to a law enforcement officer pending a judicial review hearing to be held within 14 days. A court then determines whether to dissolve or continue those restrictions for one year. When the person is determined by a court to no longer present a substantial threat, the restrictions end and the weapons are returned. Part B of this bill requires that a court make similar determinations for a person enrolled in the progressive treatment program. When a person in that program is no longer determined by a court to present a substantial threat, the restrictions end and the weapons are returned. Part C makes related changes to the laws governing the Extradition and Prosecution Expenses Account; possession of firearms by prohibited persons; law enforcement agency written policy requirements; and law enforcement agency training requirements.