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5	STATE OF MAINE
6	SENATE
7	129TH LEGISLATURE
8	FIRST REGULAR SESSION
9 10 11 12	COMMITTEE AMENDMENT "" to S.P. 612, L.D. 1811, Bill, "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"
13 14	Amend the bill by striking out everything after the enacting clause and inserting the following:
15	'PART A
16	Sec. A-1. 34-B MRSA §3862-A is enacted to read:
17	§3862-A. Protection from substantial threats
18 19	<u>1. Definitions.</u> As used in this section, unless the context otherwise indicates, the following terms have the following meanings.
20 21 22	<u>A.</u> "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.
23 24	<u>B.</u> "Extended restrictions" means the continued threat-based restrictions imposed by the court pursuant to subsection 6, paragraph D.
25 26	<u>C.</u> "Initial restrictions" means the immediate and temporary 14-day threat-based restrictions pursuant to subsection 4.
27	D. "Judicial hearing" means a court hearing under subsection 6.
28 29	E. "Law enforcement agency" has the same meaning as in Title 25, section 3701, subsection 1.
30 31 32 33	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.

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1 2 3 4 5	G. "Likelihood of foreseeable harm" means a substantial risk in the foreseeable future of serious physical harm to the person as manifested by recent behaviors or threats of, or attempts at, suicide or serious self-inflicted harm; or a substantial risk in the foreseeable future of serious physical harm to other persons as manifested by recent homicidal or violent behavior or by recent conduct or statements placing
6	others in reasonable fear of serious physical harm.
7	H. "Medical practitioner" has the same meaning as in section 3801, subsection 4-B.
8 9	I. "Prohibited person" means a person subject to Title 15, section 393, subsection 1, paragraph E-1 or E-2.
10	J. "Protective custody" means protective custody under section 3862.
11 12 13 14	K. "Restricted person" means a person taken into protective custody by a law enforcement officer who the officer has probable cause to believe possesses or controls or may acquire a dangerous weapon and who is found by a medical practitioner to present a likelihood of foreseeable harm.
15 16 17	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.
18 19	2. Assessment by a medical practitioner; security; immunity. This subsection applies when a law enforcement officer has taken a person into protective custody.
20 21 22 23 24	A. Notwithstanding any provision of law to the contrary, the law enforcement officer shall provide to the medical practitioner the information that led to the protective custody including, but not limited to, the information that gave rise to the probable cause determination, the person's pertinent criminal history record information and other known history and recent or recurring actions and behaviors.
25 26 27 28 29 30	B. The medical practitioner under paragraph A 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.
31 32 33 34 35 36 37	C. Notwithstanding any provision of law to the contrary, an assessment pursuant to this section may be performed at a health care facility but, when available and as appropriate, must be performed at an alternative location. 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.
38 39 40 41 42	D. A juvenile, as defined in Title 15, section 3003, subsection 14, who is subject to this section may be accompanied at the assessment by a parent, guardian, grandparent, aunt or uncle or a sibling who has attained the age of 18, whose company is requested by the juvenile, who is timely available and whose accompaniment is practicable.

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E. A medical practitioner and any other medical or mental health professional consulted by the medical practitioner are not liable in a civil action brought by any person for any act performed in good faith in execution of the obligations imposed on medical practitioners by this section, including any decision regarding the affirmative or negative assessment of the likelihood of foreseeable harm. The immunity provided in this paragraph also applies to a principal if the medical practitioner or professional is acting as an agent or employee of the principal.

3. Notification by medical practitioner and judicial endorsement. A medical 8 9 practitioner shall notify in writing the law enforcement officer or law enforcement agency that, based on the assessment under subsection 2, paragraph B, the person is found to 10 present a likelihood of foreseeable harm. If so notified, the law enforcement officer or 11 12 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 of the medical 13 14 practitioner's assessment and law enforcement's declarations that the person was taken 15 into protective custody and that the law enforcement officer has probable cause that the person possesses, controls or may acquire a dangerous weapon. The judge or justice shall 16 17 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 18 signed original. An endorsement must authorize law enforcement to execute the 19 20 authority in subsection 4. This section may not be construed to prevent law enforcement from accepting a voluntary surrender of dangerous weapons. 21

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
 <u>E-2 as follows:</u>

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;
- 30 (2) Shall immediately and temporarily surrender any weapons possessed,
 31 controlled or acquired by the restricted person to a law enforcement officer who
 32 has authority in the jurisdiction in which the weapons are located pending the
 33 outcome of a judicial hearing; and
- 34 (3) Has a right to a judicial hearing within 14 days of notice under paragraph B;
 35 and
- 36 <u>B. A law enforcement officer shall, as soon as practicable, but no later than 24 hours</u>
 37 <u>after the judicial endorsement:</u>
- 38 (1) Notify the restricted person that the restricted person:
- 39(a) Is prohibited from possessing, controlling, acquiring or attempting to40possess, control or acquire a dangerous weapon pending the outcome of a41judicial hearing;

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1 (b) Is required to immediately and temporarily surrender any weapons 2 possessed, controlled or acquired by the restricted person to a law 3 enforcement officer who has authority in the jurisdiction in which the weapons are located pending the outcome of a judicial hearing; and 4 5 (c) Has a right to a judicial hearing within 14 days of the notice under this 6 paragraph; 7 (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 8 9 person's residence of the person's restricted status; and (3) Report the person's restricted status to the Department of Public Safety. 10 5. Temporary surrender to law enforcement. A law enforcement agency may 11 12 store, or make arrangements with another law enforcement agency or federally licensed 13 firearms dealer to store, and care for the weapons surrendered by a restricted person in the 14 manner provided in subsection 7. A restricted person who makes all practical, immediate 15 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 16 17 E-1 or E-2. 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, 18 19 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. 20 21 **6.** Judicial hearing. A judicial hearing under this section is governed by this 22 subsection. 23 Within 5 days of the date of the notice given to a restricted person under 24 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 25 district court. The district attorney shall provide to the restricted person written 26 notice of the petition and hearing at least 7 days prior to the hearing. The restricted 27 person has the right to be represented by counsel at the hearing, and the court may 28 appoint counsel for an indigent party. Upon a showing of good cause, the court may 29 extend the time to hold the hearing. 30 31 B. Within 14 days of the notice given under subsection 4, the court shall hold a 32 hearing to determine whether to dissolve or extend the initial restrictions. In the 33 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 34 person presents a likelihood of foreseeable harm. 35 C. In determining whether there are grounds to extend the initial restrictions, the 36 37 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 38 threats or acts of violence by the restricted person directed toward the restricted 39 person; recent acts of unlawful abuse of animals by the restricted person; the reckless 40 use or threatening display of a dangerous weapon by the restricted person; a history 41 42 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 43

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section; prior involuntary confinement of the restricted person in a hospital for 1 2 persons with psychiatric disabilities; prior protection from abuse and protection from 3 harassment orders against the restricted person or violations regarding protection from abuse or protection from harassment by the restricted person; evidence of 4 5 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 6 or drug abuse by the restricted person. The court shall also consider whether the 7 8 restricted person is receiving treatment responsive to that person's mental health or 9 substance use needs.

- 10 D. This paragraph governs court orders.
- 11(1) If the court finds after hearing that there is not clear and convincing evidence12to continue or extend the initial restrictions, the court shall dissolve the initial13restrictions and order the return of any weapons surrendered or seized. The court14shall direct the Department of Public Safety to remove the record of restrictions15from the department's pertinent database when developed by the department.

(2) If the court finds after hearing that there is clear and convincing evidence to 16 17 continue or extend the initial restrictions, the court shall inform the restricted 18 person that the restricted person is prohibited for up to one year from purchasing, 19 possessing or controlling any dangerous weapon or attempting to purchase, possess or control any dangerous weapon. The court shall further order the 20 21 person to immediately surrender dangerous weapons possessed or controlled by 22 that person to a law enforcement officer and notify the Department of Public 23 Safety for entry in the pertinent database when developed by the department.

- 24 (3) Extended restrictions imposed under this paragraph expire according to the terms of the court's order. The court shall schedule a hearing within 45 days prior 25 26 to the expiration of the order to determine if the order should be extended. The 27 district attorney has the burden of proving that the restricted person continues to pose a likelihood of foreseeable harm. If, after a hearing, the court finds by clear 28 29 and convincing evidence that the restricted person continues to pose a likelihood of foreseeable harm, the court shall renew the extended restrictions for up to one 30 year. If the court does not so find, the court shall deny the petition and order the 31 return of any weapons surrendered or seized. Upon motion by the State, the court 32 may for cause shown order that the restricted person be examined for assessment 33 34 of whether the restricted person continues to pose a likelihood of foreseeable harm. The fees or expenses for an assessment pursuant to this subparagraph may 35 be paid from the Extradition and Prosecution Expenses Account established by 36 37 Title 15. section 224-A.
- 38(4) A restricted person may file one motion for dissolution during an extended39restriction. For that motion, the restricted person has the burden of proving by40clear and convincing evidence that the restricted person no longer poses a41likelihood of foreseeable harm.
- 42 (5) A court shall electronically update or transmit to the Department of Public
 43 Safety, Bureau of State Police an abstract of the order issued by the court
 44 pursuant to this section that includes a prohibition on the possession of a

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- 1dangerous weapon. The abstract must include the name, date of birth and gender2of the person who is the subject of the order; the court's order and the expiration3date of that order; and a notation that the person has been notified by the court.
- 4 The abstract required by this subparagraph is confidential and is not a public 5 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 6 Public Safety to a criminal justice agency for law enforcement purposes, to the 7 Federal Bureau of Investigation, National Instant Criminal Background Check 8 System or to an issuing authority for the purpose of processing concealed firearm 9 10 permit applications. The Department of Public Safety shall, when the pertinent database is developed, request that the Federal Bureau of Investigation ensure 11 12 that, immediately after the order expires, the National Instant Criminal Background Check System no longer reflects that expired order as a ground for 13 14 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, 15 tribal, district, county or local government agency or any subunit of those entities 16 17 that performs the administration of criminal justice under a statute or executive 18 order and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney 19 20 General are considered criminal justice agencies, as is any equivalent agency at 21 any level of Canadian government.
- (6) Nothing in this subsection may be construed to prevent the restricted person,
 district attorney and court from accepting a court-ordered disposition to which
 each agrees.

25 7. Weapons storage and return. A law enforcement agency may store, or make arrangements with another law enforcement agency or federally licensed firearms dealer 26 27 to store, any weapon surrendered to or seized by law enforcement under this section for 28 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 29 seized are governed by Title 25, section 2804-C, subsection 2-C. A weapon surrendered 30 to or seized by a law enforcement agency must be returned to the restricted person when 31 the threat-based restrictions expire. If a seized or surrendered weapon remains unclaimed 32 33 for 6 months after the expiration or dissolution of threat-based restrictions, the law 34 enforcement agency may dispose of the weapon consistent with Title 25, section 3503-A.

- 35 8. Offense. Possession of a dangerous weapon by a restricted person is a Class D
 36 crime.
- 37 **PART B**
- 38 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 includes a prohibition on the possession of dangerous
 weapons, that patient is a prohibited person and may not possess or have under that
- 41 weapons, that patient is a prohibited person and may not possess or have un 42 patient's control a firearm pursuant to Title 15, section 393, subsection 1.

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

2 7-A. Dangerous weapons. If the court directs a patient to follow an individualized treatment plan pursuant to subsection 6, the court may prohibit the patient from 3 possessing a dangerous weapon as described in Title 17-A, section 2, subsection 9, 4 paragraph C, including a firearm as defined in Title 17-A, section 2, subsection 12-A, for 5 the duration of the treatment plan. If the court prohibits the patient from possessing a 6 dangerous weapon, the court shall specify the type of weapon the patient is prohibited 7 from possessing; notify the patient that possession of such a weapon by the person is 8 prohibited pursuant to Title 15, section 393; and direct the patient to relinquish, within 24 9 hours after service of the order on the patient or such earlier time as the court specifies in 10 11 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 12 respect to dangerous weapons surrendered pursuant to this subsection are governed by 13 Title 25, section 2804-C, subsection 2-C. 14

15 **7-B. Transmission of abstract of court ruling to Department of Public Safety.**16 Notwithstanding any other provision of this section or section 1207, a court shall
17 electronically update or transmit to the Department of Public Safety an abstract of the
18 order issued by the court pursuant to this section that includes a prohibition on the
19 possession of a dangerous weapon pursuant to subsection 7-A. Implementation of this
20 requirement is governed by section 3862-A, subsection 6, paragraph D, subparagraph (5).

PART C

22 Sec. C-1. 15 MRSA §224-A, sub-§1, as amended by PL 2013, c. 566, §3, is 23 further amended to read:

1. Establishment; use. Notwithstanding any other provision of law to the contrary, 24 25 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 26 district attorney and to be used solely for the purposes of paying the expenses of 27 28 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 29 prosecution pursuant to section 1319 and, paying witness fees pursuant to section 1320 30 and paying for examination fees or expenses pursuant to Title 34-B, section 3862-A, 31 subsection 6, paragraph D, subparagraph (3). 32

- 33 Sec. C-2. 15 MRSA §393, sub-§1, ¶¶E-1 and E-2 are enacted to read:
- 34 <u>E-1. Is currently a restricted person under Title 34-B, section 3862-A, subsection 2</u>
 35 <u>or subsection 6, paragraph D except that the prohibition applies to possession and</u>
 36 control, and not ownership. Violation of this paragraph is a Class D crime;
- E-2. Has been 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 for the duration of the treatment program, except that the prohibition applies to possession and control, and not ownership. Violation of this paragraph is a Class D crime;

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Sec. C-3. 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 pursuant to Title 34-B, section 3862-A; and
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Sec. C-4. 25 MRSA §2804-C, sub-§2-E is enacted to read:

6 2-E. Receipt of certain dangerous weapons; training; procedure; liability. Beginning in 2020, the Maine Criminal Justice Academy Board of Trustees shall require 7 training as part of its mandated training schedule for municipal, county and state law 8 enforcement officers regarding the process for protection from substantial threats by a 9 10 restricted person and the proper handling, storage, safekeeping and return of dangerous weapons received pursuant to an endorsement or court order under Title 34-B, section 11 3862-A or 3873-A. The training must include education concerning the prohibitions on 12 the purchase, control or possession of dangerous weapons. A law enforcement officer 13 who receives custody of a dangerous weapon pursuant to Title 34-B, section 3862-A or 14 15 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 16 suspicion that the weapon has been used in the commission of a crime. Any liability for 17 damage or reduction in value to such a weapon is governed by Title 14, chapter 741. 18

Sec. C-5. 34-B MRSA §3862, sub-§1, ¶B, as amended by PL 2017, c. 402, Pt.
 C, §97 and affected by Pt. F, §1, is further amended to read:

B. If the law enforcement officer does take the person into protective custody, shall deliver the person immediately for examination by a medical practitioner as provided in section <u>3862-A or</u> 3863 or, for a person taken into protective custody who has an advance health care directive authorizing mental health treatment, for examination as provided in Title 18-C, section 5-803, subsection 4 to determine the individual's capacity and the existence of conditions specified in the advance health care directive for the directive to be effective.

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PART D

Sec. D-1. Assessments at alternative locations. The executive branch shall work with medical practitioners and law enforcement to develop and release, by January 1, 2020, a request for proposals for the development and acquisition of the technology necessary to enable assessments under the Maine Revised Statutes, Title 34-B, section 3862-A at locations other than health care facilities.

- 34 **Sec. D-2. Database of restrictions.** By February 1, 2020, the Department of 35 Public Safety shall develop a plan, including any cost estimates, to implement a database 36 system to support this Act.
- Sec. D-3. Effective dates. Parts A to C of this Act take effect July 1, 2020. This
 Part takes effect 90 days after the adjournment of the First Regular Session of the 129th
 Legislature.'
- 40 Amend the bill by relettering or renumbering any nonconsecutive Part letter or 41 section number to read consecutively.

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SUMMARY

This amendment replaces the bill but retains the purpose of providing an alternative to law enforcement to take into protective custody and have assessed a person who presents a likelihood of foreseeable harm to the person or to others.

5 "Likelihood of foreseeable harm" is defined as a substantial risk in the foreseeable 6 future of serious physical harm to the person as manifested by recent behaviors or threats 7 of, or attempts at, suicide or serious self-inflicted harm; or a substantial risk in the 8 foreseeable future of serious physical harm to other persons as manifested by recent 9 homicidal or violent behavior or by recent conduct or statements placing others in 10 reasonable fear of serious physical harm.

The law enforcement officer is directed to have the person in protective custody 11 assessed by a medical practitioner. If the assessment finds that the person presents a 12 likelihood of foreseeable harm, the law enforcement officer must seek an endorsement 13 from a judicial officer that the person presents a likelihood of foreseeable harm, which 14 authorizes law enforcement to notify the person that the person is a restricted person and 15 is prohibited from possessing, controlling, acquiring or attempting to possess, control or 16 acquire a dangerous weapon pending the outcome of a judicial hearing. The restricted 17 person must immediately and temporarily surrender any weapon possessed, controlled or 18 acquired by the restricted person to a law enforcement officer. 19

A restricted person who makes all practical and immediate efforts to comply with a surrender notice is not subject to arrest or prosecution as a prohibited person under the Maine Revised Statutes, Title 15, section 393, subsection 1, paragraph E-1 or E-2. 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.

The district attorney is required to file a petition for judicial review of the initial restrictions by the District Court. Within 14 days of the notice of restricted status given to the restricted person, the court is required to hold a hearing to determine whether to dissolve or extend the initial restrictions. The restricted person has the right to be represented by counsel. The district attorney has the burden of proving by clear and convincing evidence that the restricted person presents a likelihood of foreseeable harm. The court may dissolve the initial restrictions or extend them for up to one year.

This amendment directs the executive branch to work with medical practitioners and law enforcement to develop and release, by January 1, 2020, a request for proposals for the development and acquisition of the technology necessary to enable assessments under Title 34-B, section 3862-A at locations other than health care facilities.

By February 1, 2020, the Department of Public Safety must develop a plan, including any cost estimates, to implement a database system to support this legislation.

40 The provisions for assessments for likelihood of foreseeable harm and restricted 41 person status take effect July 1, 2020.

42 FISCAL NOTE REQUIRED 43 (See attached)

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COMMITTEE AMENDMENT

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