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**JUDICIARY**

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**STATE OF MAINE  
SENATE  
129TH LEGISLATURE  
FIRST REGULAR SESSION**

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”

Amend the bill by striking out everything after the enacting clause and inserting the following:

**'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 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.

**COMMITTEE AMENDMENT**

1           G. "Likelihood of foreseeable harm" means a substantial risk in the foreseeable  
2           future of serious physical harm to the person as manifested by recent behaviors or  
3           threats of, or attempts at, suicide or serious self-inflicted harm; or a substantial risk in  
4           the foreseeable future of serious physical harm to other persons as manifested by  
5           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           I. "Prohibited person" means a person subject to Title 15, section 393, subsection 1,  
9           paragraph E-1 or E-2.

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

11          K. "Restricted person" means a person taken into protective custody by a law  
12          enforcement officer who the officer has probable cause to believe possesses or  
13          controls or may acquire a dangerous weapon and who is found by a medical  
14          practitioner to present a likelihood of foreseeable harm.

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

18          **2. Protective custody; assessment by a medical practitioner; security; immunity.**  
19          Law enforcement may take a person into protective custody on probable cause to believe  
20          that the person presents a likelihood of foreseeable harm.

21           A. Notwithstanding any provision of law to the contrary, the law enforcement officer  
22           shall provide to the medical practitioner the information that led to the protective  
23           custody including, but not limited to, the information that gave rise to the probable  
24           cause determination, the person's pertinent criminal history record information and  
25           other known history and recent or recurring actions and behaviors.

26           B. The medical practitioner under paragraph A shall assess whether the person  
27           presents a likelihood of foreseeable harm. In assessing the person, a medical  
28           practitioner may consult with other medical professionals as the medical practitioner  
29           determines advisable. If the medical practitioner finds that the person can benefit  
30           from treatment and services, the medical practitioner shall refer the person to  
31           treatment and services.

32           C. Notwithstanding any provision of law to the contrary, an assessment pursuant to  
33           this section may be performed at a health care facility but, when available and as  
34           appropriate, must be performed at an alternative location. If the assessment is  
35           provided at a health care facility, law enforcement shall, upon request of the facility  
36           and consistent with section 3863, subsection 2-A, absent compelling circumstances,  
37           assist the facility with the security of the person awaiting the assessment under this  
38           section.

39           D. A juvenile, as defined in Title 15, section 3003, subsection 14, who is subject to  
40           this section may be accompanied at the assessment by a parent, guardian,  
41           grandparent, aunt or uncle or a sibling who has attained the age of 18, whose  
42           company is requested by the juvenile, who is timely available and whose  
43           accompaniment is practicable.

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

8           F. Assessments under this section qualify for the same payment of private or public  
9           insurance applicable to section 3863 assessments.

10           **3. Notification by medical practitioner and judicial endorsement.** A medical  
11           practitioner shall notify in writing the law enforcement officer or law enforcement agency  
12           that, based on the assessment under subsection 2, paragraph B, the person is found to  
13           present a likelihood of foreseeable harm. If so notified, the law enforcement officer or  
14           law enforcement agency shall as soon as practicable seek endorsement by a Superior  
15           Court Justice, District Court Judge, judge of probate or justice of the peace of the medical  
16           practitioner's assessment and law enforcement's declarations that the person was taken  
17           into protective custody and that the law enforcement officer has probable cause that the  
18           person possesses, controls or may acquire a dangerous weapon. The judge or justice shall  
19           promptly transmit to the law enforcement officer or agency the decision to endorse or not  
20           endorse. A decision transmitted electronically has the same legal effect and validity as a  
21           signed original. An endorsement must authorize law enforcement to execute the  
22           authority in subsection 4. This section may not be construed to prevent law enforcement  
23           from accepting a voluntary surrender of dangerous weapons.

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

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

30                   (1) Is prohibited from possessing, controlling, acquiring or attempting to possess,  
31                   control or acquire a dangerous weapon pending the outcome of a judicial hearing;

32                   (2) Shall immediately and temporarily surrender any weapons possessed,  
33                   controlled or acquired by the restricted person to a law enforcement officer who  
34                   has authority in the jurisdiction in which the weapons are located pending the  
35                   outcome of a judicial hearing; and

36                   (3) Has a right to a judicial hearing within 14 days of notice under paragraph B;  
37                   and

38           B. A law enforcement officer shall, as soon as practicable, but no later than 24 hours  
39           after the judicial endorsement:

40                   (1) Notify the restricted person that the restricted person:

1                    (a) Is prohibited from possessing, controlling, acquiring or attempting to  
2                    possess, control or acquire a dangerous weapon pending the outcome of a  
3                    judicial hearing;

4                    (b) Is required to immediately and temporarily surrender any weapons  
5                    possessed, controlled or acquired by the restricted person to a law  
6                    enforcement officer who has authority in the jurisdiction in which the  
7                    weapons are located pending the outcome of a judicial hearing; and

8                    (c) Has a right to a judicial hearing within 14 days of the notice under this  
9                    paragraph;

10                  (2) Notify the contact person, if any, disclosed by the restricted person to the  
11                  medical practitioner and the district attorney in the district of the restricted  
12                  person's residence of the person's restricted status; and

13                  (3) Report the person's restricted status to the Department of Public Safety.

14                  **5. Temporary surrender to law enforcement.** A law enforcement agency may  
15                  store, or make arrangements with another law enforcement agency or federally licensed  
16                  firearms dealer to store, and care for the weapons surrendered by a restricted person in the  
17                  manner provided in subsection 7. A restricted person who makes all practical, immediate  
18                  efforts to comply with a surrender notice under subsection 4 is not subject to arrest or  
19                  prosecution as a prohibited person under Title 15, section 393, subsection 1, paragraph  
20                  E-1 or E-2. If a law enforcement agency has probable cause to believe the restricted  
21                  person possesses or controls but has not surrendered a weapon, law enforcement may,  
22                  prior to or as part of a judicial hearing, search for and seize such a weapon when  
23                  authorized by a judicially issued warrant or other circumstances approved by law.

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

26                  A. Within 5 days of the date of the notice given to a restricted person under  
27                  subsection 4, paragraph B, the district attorney in the district of the restricted person's  
28                  residence shall file a petition for judicial review of the initial restrictions by the  
29                  district court. The district attorney shall provide to the restricted person written  
30                  notice of the petition and hearing at least 7 days prior to the hearing. The restricted  
31                  person has the right to be represented by counsel at the hearing, and the court may  
32                  appoint counsel for an indigent party. Upon a showing of good cause, the court may  
33                  extend the time to hold the hearing.

34                  B. Within 14 days of the notice given under subsection 4, the court shall hold a  
35                  hearing to determine whether to dissolve or extend the initial restrictions. In the  
36                  hearing determining whether to dissolve or extend the initial restrictions, the district  
37                  attorney has the burden to prove by clear and convincing evidence that the restricted  
38                  person presents a likelihood of foreseeable harm.

39                  C. In determining whether there are grounds to extend the initial restrictions, the  
40                  court shall consider all relevant evidence, including, but not limited to, recent threats  
41                  or acts of violence by the restricted person directed toward other persons; recent  
42                  threats or acts of violence by the restricted person directed toward the restricted

1 person; recent acts of unlawful abuse of animals by the restricted person; the reckless  
2 use or threatening display of a dangerous weapon by the restricted person; a history  
3 of the use, attempted use or threatened use of physical force by the restricted person  
4 against other persons; a record of prior custodial events or restrictions under this  
5 section; prior involuntary confinement of the restricted person in a hospital for  
6 persons with psychiatric disabilities; prior protection from abuse and protection from  
7 harassment orders against the restricted person or violations regarding protection  
8 from abuse or protection from harassment by the restricted person; evidence of  
9 stalking behavior, severe obsession or sexual violence by the restricted person; the  
10 illegal use of controlled substances by the restricted person; and evidence of alcohol  
11 or drug abuse by the restricted person. The court shall also consider whether the  
12 restricted person is receiving treatment responsive to that person's mental health or  
13 substance use needs.

14 D. This paragraph governs court orders.

15 (1) If the court finds after hearing that there is not clear and convincing evidence  
16 to continue or extend the initial restrictions, the court shall dissolve the initial  
17 restrictions and order the return of any weapons surrendered or seized. The court  
18 shall direct the Department of Public Safety to remove the record of restrictions  
19 from the department's pertinent database when developed by the department.

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

28 (3) Extended restrictions imposed under this paragraph expire according to the  
29 terms of the court's order. The court shall schedule a hearing within 45 days prior  
30 to the expiration of the order to determine if the order should be extended. The  
31 district attorney has the burden of proving that the restricted person continues to  
32 pose a likelihood of foreseeable harm. If, after a hearing, the court finds by clear  
33 and convincing evidence that the restricted person continues to pose a likelihood  
34 of foreseeable harm, the court shall renew the extended restrictions for up to one  
35 year. If the court does not so find, the court shall deny the petition and order the  
36 return of any weapons surrendered or seized. Upon motion by the State, the court  
37 may for cause shown order that the restricted person be examined for assessment  
38 of whether the restricted person continues to pose a likelihood of foreseeable  
39 harm. The fees or expenses for an assessment pursuant to this subparagraph may  
40 be paid from the Extradition and Prosecution Expenses Account established by  
41 Title 15, section 224-A.

42 (4) A restricted person may file one motion for dissolution during an extended  
43 restriction. For that motion, the restricted person has the burden of proving by  
44 clear and convincing evidence that the restricted person no longer poses a  
45 likelihood of foreseeable harm.



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

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

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

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

25 **PART C**

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

28 **1. Establishment; use.** Notwithstanding any other provision of law to the contrary,  
29 there is established an Extradition and Prosecution Expenses Account in each  
30 prosecutorial district in an amount not to exceed \$30,000, to be administered by the  
31 district attorney and to be used solely for the purposes of paying the expenses of  
32 extraditing persons charged with or convicted of a crime in this State and who are  
33 fugitives from justice, as defined in section 201, subsection 4, paying fees or expenses of  
34 prosecution pursuant to section 1319 and, paying witness fees pursuant to section 1320  
35 and paying for examination fees or expenses pursuant to Title 34-B, section 3862-A,  
36 subsection 6, paragraph D, subparagraph (3).

37 **Sec. C-2. 15 MRSA §393, sub-§1, ¶¶E-1 and E-2** are enacted to read:

38 E-1. Is currently a restricted person under Title 34-B, section 3862-A, subsection 2  
39 or subsection 6, paragraph D except that the prohibition applies to possession and  
40 control, and not ownership. Violation of this paragraph is a Class D crime;

41 E-2. Has been ordered to participate in a progressive treatment program pursuant to  
42 Title 34-B, section 3873-A and, as part of that order, directed not to possess a

1 dangerous weapon pursuant to Title 34-B, section 3873-A, subsection 7-A for the  
2 duration of the treatment program, except that the prohibition applies to possession  
3 and control, and not ownership. Violation of this paragraph is a Class D crime;

4 **Sec. C-3. 25 MRSA §2803-B, sub-§1, ¶L**, as amended by PL 2013, c. 147, §19,  
5 is further amended to read:

6 L. Mental illness and the process for involuntary commitment, and the process  
7 pursuant to Title 34-B, section 3862-A; and

8 **Sec. C-4. 25 MRSA §2804-C, sub-§2-E** is enacted to read:

9 **2-E. Receipt of certain dangerous weapons; training; procedure; liability.**  
10 Beginning in 2020, the Maine Criminal Justice Academy Board of Trustees shall require  
11 training as part of its mandated training schedule for municipal, county and state law  
12 enforcement officers regarding the process for protection from substantial threats by a  
13 restricted person and the proper handling, storage, safekeeping and return of dangerous  
14 weapons received pursuant to an endorsement or court order under Title 34-B, section  
15 3862-A or 3873-A. The training must include education concerning the prohibitions on  
16 the purchase, control or possession of dangerous weapons. A law enforcement officer  
17 who receives custody of a dangerous weapon pursuant to Title 34-B, section 3862-A or  
18 3873-A shall exercise reasonable care to avoid loss, damage or reduction in value of the  
19 weapon and may not permanently mark or fire the weapon unless there is reasonable  
20 suspicion that the weapon has been used in the commission of a crime. Any liability for  
21 damage or reduction in value to such a weapon is governed by Title 14, chapter 741.

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

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

## 31 PART D

32 **Sec. D-1. Assessments at alternative locations.** The executive branch shall  
33 work with medical practitioners and law enforcement to develop and release, by January  
34 1, 2020, a request for proposals for the development and acquisition of the technology  
35 necessary to enable assessments under the Maine Revised Statutes, Title 34-B, section  
36 3862-A at locations other than health care facilities.

37 **Sec. D-2. Database of restrictions.** By February 1, 2020, the Department of  
38 Public Safety shall develop a plan, including any cost estimates, to implement a database  
39 system to support this Act.



1 convincing evidence that the restricted person presents a likelihood of foreseeable harm.  
2 The court may dissolve the initial restrictions or extend them for up to one year.

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

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

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

11 **FISCAL NOTE REQUIRED**  
12 **(See attached)**