



HOUSE OF REPRESENTATIVES

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7 May 23

MEMORANDUM FOR RECORD

SUBJECT: LD 1560, An Act to Restore Firearm Rights and Hunting Privileges to Persons Previously Convicted of Certain Nonviolent Felony Crimes

Committee Chair Senator Beebe-Center, Committee Chair Representative Salisbury and distinguished members of the Joint Standing Committee on Criminal Justice and Public Safety,

Thank you for allowing me to bring forth my bill, An Act to Restore Firearm Rights and Hunting Privileges to Persons Previously Convicted of Certain Nonviolent Felony Crimes.

The purpose of this bill is to restore full Civil Rights to persons previously convicted of certain non-violent felony offenses, including the right to possess or own firearms by certain individuals that are specifically prohibited under Title 15 §393-1-A-1 under certain circumstances.

I was working a patrol shift one day in a small Piscataquis County town when I was accosted by two violent individuals who were going around town raising trouble and threatening people. The two individuals had a long history of police involvement and one was known for his violent behavior. My nearest backup was 15 minutes away. As I struggled to get both of them under control, getting kicked in the jaw in the process, a member of the community came out of his home to assist me. With his help I was able to get both suspects into cuffs and loaded into my cruiser safely. That day, that member of the community was my hero. I knew the gentleman, he was well known and well liked in town. Later that day, after delivering the two individuals to the county jail I returned to his home to thank him. As we talked for a few minutes he explained to me that at one time he was "on the wrong side of the law", he was a convicted felon. He explained that when he was 18 years old he and two of his friends broke into a camp in the woods and were convicted of felony burglary. In the almost 40 years since then, he had never been in trouble with the law again. He also lamented that he had never been able to go shoot a deer with his son. As I listened to him I thought to myself, he would not have been able to defend

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himself or his family if it ever came it.

Since I have moved to my current residence, I have become close friends with another young man who fits this category. He too committed a burglary when he was 18. I remember him at that age because he was a student at the academy where I worked and I remember the details of his crime at the time. Yet, since then he had gained a skilled career in the healthcare field, trusted with patient care and their private medical information and most recently worked for the State of Maine during the pandemic working on the COVID response. Yet, despite the fact that he is now a convicted felon, I trust him more than some people I have known for decades. He is a trustworthy, honest and honorable man and he has not been in trouble since his first, and only, non-violent felony crime.

In the past twenty years or so, I have met scores of people that fall into a similar category. These are people who made a stupid mistake when they were young, a crime for which they have adequately paid their debt to society, yet were still disenfranchised from one of their basic Civil Rights, a right enumerated in the Bill of Rights and protected by the constitution. These are not the 'frequent fliers' I have consistent contact with while working in my role as a law enforcement officer. These are not people that consistently and continuously show blatant disregard for the law or lack of respect for the rights of others. These are people that committed a crime when young, learned from their mistakes, and did not make committing crimes a pattern of behavior. Universally, these people committed non-violent or property crimes, did not use a weapon in the commission of their crime and are understand the gravity of their actions for which they have remorse.

Yet these people are cannot fully enjoy the great outdoor heritage of the great state in which they live. They cannot hunt a moose like your I can, or go hunting for grouse with their grandkids. Nor can they obtain the means to adequately defend their home and family if needed.

Currently, a person who is convicted of a felony or equivalent crime, with a crime punishable by imprisonment for a term of one year or more, under Maine law loses their right to own or possess a firearm. Similarly, anyone who is convicted of a federal felony crime or a crime from another jurisdiction that is a felony or is substantially similar is likewise prohibited from owning or possessing a firearm. There are other persons who are not allowed to own or possess firearms in the State of Maine. Such disallowed persons include fugitives from justice, domestic violence offenders, those involuntarily committed by a court for being a danger to themselves or others, is an unlawful user of illicit substances, those that have been discharged under dishonorable conditions from the Armed Forces, those in the United States unlawfully and those that have renounced their US citizenship.

While various courts have upheld rulings in the past that the government has an interest in keeping guns out of the hands of people who are a danger to the public and more recently those that have committed serious crimes, the Third Circuit Court is currently hearing a case on the constitutionality of withholding Second Amendment rights from

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persons who have committed non-violent felonies. This is especially relevant now that the Supreme Court has put the focus back on “history and tradition” in Second Amendment cases with *Bruen* (of note, there were no statutory restrictions on convicted criminals owning firearms in this country until 1938, and then only for specific crimes designed to target organized crime). It is on the focus of these ‘villainous persons’, as described by the court, that such bans were originally designed and why many states have carve-outs to certain felony crimes that exempt them from the class of crimes that cause a person to lose their Second Amendment rights. These are often referred to as ‘white collar’ crimes such as business related and certain financial fraud crimes. While the severity of many crimes demonstrate the willingness of the actor to disregard public safety, that is not necessarily so for all crimes, not even all felony crimes. Certainly, it cannot be argued that someone who crossed the state line between New York and New Jersey in a pickup truck with a shovel in the back should be denied their Civil Rights for life (such an action was a felony for years, and probably still is).

Currently, while every state allows for the restoration of Civil Rights through a pardon, there are 22 states that have some sort of additional process for restoring Second Amendment rights of citizens who have been previously convicted of felony crimes (Alaska, Georgia, Indiana, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont). Most have a time limit that must have passed after the fulfillment of sentencing requirements before a person can get their Second Amendment rights returned from 5-20 years; though some states allow for those rights to be restored immediately (I prefer 10 years as the State of Florida conducted a study on the restoration of voting rights and found that a convicted felon who went a period of 8 years without committing another felony crime had an almost zero statistical chance of re-offending). Some of these states restore full Civil Rights while others only restore Second Amendment rights in their state which can run afoul of federal law and can be problematic. In some of these states the process is automatic and in others a hearing before a judge or panel is required to show need or character. In some states it applies only to first time offenders, in others only for persons convicted of certain crimes and in one state only long gun rights are restored.

This bill, narrowly crafted, would restore the right for some of these convicted persons to own, possess and have a firearm under their control. In order to accomplish this, 10 years must have passed since the completion of any sentence imposed on them, to include imprisonment, probation and the final settlement of any restitution.

Eligibility for the restoration of full Civil Rights is excluded for certain categories of crimes, including murder; any Class A, B or C felony crime in violation of Title 17-A, chapters 9 (Offenses Against the person), 11 (Sexual Assaults), 12 (Sexual Exploitation of Minors), 13 (Kidnapping and Criminal Restraint), 45 (Drugs); robbery; assault on an officer; assault on an emergency medical care provider; assault on a firefighter; aggravated sex trafficking; and sex trafficking. (While the bill text also states that excluded crimes include all crimes under chapter 33, my intent was to only include §802 Arson and §803-A Causing a Catastrophe from that section. Additionally as there are

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now felony classes to §506-B Violation of a Protection Order I hereby suggest it be amended with both changes.)

As a matter of procedure, when a person who is eligible to get their Civil Rights restored under this legislation, they could make application to the Department of Public Safety who would conduct a criminal background check to ensure that the person had not been convicted or was not under indictment for any additional crimes in the 10 year period since the discharge of their sentencing requirements. If the person was found to be clear of additional convictions they would be presumed eligible and DPS would notify the court that convicted the person of the underlying felony crimes of their eligibility. The court would then make notice and issue an order restoring the Full Civil rights of the person. As the legislation is tied to the court of the record for the conviction, only persons convicted of crimes in the State of Maine of State would be eligible for relief under the law, which is consistent with other similar state's statutes and practices that have been previously deemed as acceptable by the Attorney General of the United States.

When submitted, I had allowed for a reasonable administrative fee to cover the cost to the court, but this language was not included on the draft from the Revisor's Office.

If a person has their Civil Rights restored under this statute and later loses their Second Amendment rights from a subsequent felony conviction, that person would not be eligible to regain their Civil Rights again under this statute.

Currently, according to Title 15 §393-2, the Office of the Governor can restore the right to own or possess a firearm to persons convicted of a felony crime under §393-1-A-1 five years after that person has discharged all of the obligations imposed upon them at the sentencing of their crime. Additionally, the statute allows for technical rules to be adopted to facilitate this process IAW §393-11 and administered by the Commissioner of the Department of Public Safety. Currently, the Department of Inland Fisheries and Wildlife processes requests for permits to carry a black powder weapon.

Incidentally, according the Maine Department of Public Safety web site, the Commissioner is not currently accepting applications IAW Title 15 §393-2 because, according to the website, §393-2 does not comply with federal law, specifically 18 USC §922-g-4, which states it is unlawful for any person to possess a firearm for any person "(4) who has been adjudicated as a mental defective or who has been committed to a mental institution". The disclaimer on the web site includes a reference to a "specific prohibition is based on involuntary commitment to a hospital". However, §393-2 does not deal with §393-1-E, which is the portion of the Maine statute that deals with those that have been committed to a hospital or found not mentally competent for any reason. Section §393-2 specifically deals the restoration of rights with those that have been previously convicted of felony crimes. Additionally the process for black powder weapons is also stymied by the IFW using the ATF to process background checks before issuing permits, a process not normally used when purchasing a black powder weapon as black powder weapons do not qualify as firearms under federal law.

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If passed, this bill would change the requirements for these processes for those that qualify to have their civil rights restored under 18 USC §921-a-21 and effectively transfers the discretionary authority from the Office of the Executive to statutory rule with the Judiciary. Of course, the Governor can still exercise the power to restore Civil Rights with a pardon. Also, as the bill would restore full civil rights under 18 USC §921, that person would have no limitations on their right to own, possess or purchase a firearm and would remove any roadblocks that DPS is currently experiencing, but only for those that qualify under this legislation.

I thank the committee for their time and ask that they support this bill with a vote of 'Ought To Pass' with the amended changes in regard to §802, §803-A and §506-B. I will gladly answer any questions to my ability.

Respectfully,



Rep. Chad R. Perkins
District 31

ATT:

CF:

Committee Chair Senator Beebe-Center
Committee Chair Representative Salisbury
Criminal Justice and Public Safety Committee Members

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