

# **128th MAINE LEGISLATURE**

### **SECOND REGULAR SESSION-2018**

**Legislative Document** 

No. 1884

S.P. 719

In Senate, March 27, 2018

An Act To Create a Community Protection Order To Allow Courts To Prevent High-risk Individuals from Possessing Firearms

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Judiciary suggested and ordered printed.

Heath & Print

HEATHER J.R. PRIEST Secretary of the Senate

Presented by Senator DION of Cumberland. Cosponsored by Speaker GIDEON of Freeport and Senators: HILL of York, KEIM of Oxford, VOLK of Cumberland, Representatives: BICKFORD of Auburn, MALABY of Hancock, O'CONNOR of Berwick, TALBOT ROSS of Portland, VACHON of Scarborough.

1	Be it enacted by the People of the State of Maine as follows:
2	Sec. 1. 15 MRSA c. 16 is enacted to read:
3	<u>CHAPTER 16</u>
4	<b>COMMUNITY PROTECTION ORDERS</b>
5	SUBCHAPTER 1
6	GENERAL PROVISIONS
7	§401. Definitions
8 9	As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.
10 11 12 13 14	<b>1. Community protection order.</b> "Community protection order" means a written order signed by the court that prohibits and enjoins temporarily, if issued pursuant to subchapter 2, or on an extended basis, if issued pursuant to subchapter 3, a named individual from having a firearm in that individual's custody or control or owning, purchasing, possessing or receiving or attempting to purchase or receive a firearm.
15 16	<b>2. Family or household member.</b> "Family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4.
17 18 19	<b>3. High-risk individual.</b> "High-risk individual" means an individual who presents an imminent and substantial risk of serious bodily injury or death to the individual or to another individual and:
20 21 22	A. Has a mental illness that may be controlled by medication but has not demonstrated a pattern of voluntarily and consistently taking the individual's medication while not under supervision; or
23 24	B. Is the subject of documented evidence that would give rise to a reasonable belief that the individual has a propensity for violent or emotionally unstable conduct.
25 26 27 28 29 30	The fact that an individual has been released from a mental health facility or has a mental illness that is currently controlled by medication does not establish that the individual presents an imminent and substantial risk of serious bodily injury or death to the individual or to another individual for the purposes of this chapter. As used in this subsection, "mental illness" has the same meaning as in section 3318-A, subsection 1, paragraph B.
31 32	<b><u>4. Restrained individual.</u></b> "Restrained individual" means an individual who is the subject of a community protection order.
33	SUBCHAPTER 3
34	<b>ISSUE OF TEMPORARY COMMUNITY PROTECTION ORDERS</b>

#### 1 <u>§411. Petition</u>

A law enforcement officer or a family or household member of a high-risk individual may file a petition requesting that the court issue a temporary community protection order prohibiting and enjoining the high-risk individual who is the subject of the petition from having in that individual's custody or control or owning, purchasing, possessing or receiving a firearm or attempting to purchase or receive a firearm. A petition for a temporary community protection order must describe any firearm that the petitioner reasonably believes the high-risk individual possesses or controls.

#### 9 <u>§412. Procedure for issuance of temporary community protection order</u>

- 10 1. Required findings by court. Following review of the petition filed pursuant to
   11 section 411, a court may issue a temporary community protection order only if the court
   12 finds by clear and convincing evidence that there is cause to believe both of the
   13 following:
- 14 <u>A. The subject of the petition is a high-risk individual; and</u>
- 15B. A temporary community protection order is necessary to prevent serious bodily16injury or death to the subject of the petition or to another person.

2. Testimony or affidavit under oath. The court, before issuing a temporary 17 community protection order, shall examine under oath the petitioner and any witness the 18 19 petitioner may produce after informing the petitioner and any witness that false testimony 20 made under oath is perjury, as defined in Title 17-A, section 451, and is a Class C crime. 21 In lieu of examining the petitioner and witness, the court may require the petitioner and 22 witness to submit a written affidavit signed under oath. An affidavit supporting a petition 23 for the issuance of a temporary community protection order must set forth the facts 24 tending to establish the grounds of the petition or the reason for believing that the 25 grounds exist.

- 26 3. Determination on same day. The court shall issue or deny a temporary
   27 community protection order on the day that the petition is submitted to the court.
- 28 <u>4. Ex parte order.</u> The court may issue a temporary community protection order on
   29 an ex parte basis.

#### 30 §413. Contents of order

A temporary community protection order issued pursuant to this subchapter must
 include all of the following:

## 33 <u>1. Grounds.</u> The finding of facts by the court supporting the issuance of the 34 temporary community protection order;

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   2. Hearing. The date, time and place at which a hearing on the temporary
   36 community protection order will be held pursuant to section 421; and
- 37 **<u>3. Notice.</u>** The following notice:

1 "To (name of restrained individual): A hearing will be held, in the District Court, on the 2 question as to whether an extended community protection order is issued against you. 3 You are required to surrender all firearms that you own or possess in accordance with the 4 Maine Revised Statutes, Title 15, section 414 and you may not have a firearm in your 5 custody or control or own, purchase, possess or receive or attempt to purchase or receive 6 a firearm while this order is in effect. You may seek the advice of an attorney as to any 7 matter connected with the order."

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#### §414. Effect of temporary community protection order; surrender of firearm

9 **<u>1. Effect.</u>** A temporary community protection order prohibits and enjoins the 10 restrained individual from having a firearm in the restrained individual's custody or 11 control or owning, purchasing, possessing or receiving or attempting to purchase or 12 receive a firearm.

2. Surrender order. Upon issuance of a temporary community protection order, the
 court shall order the restrained individual to surrender to a local law enforcement agency
 all firearms in the restrained individual's custody or control or that the restrained
 individual possesses or owns.

3. Surrender of firearm; warrantless search or seizure prohibited. A restrained
 individual subject to a surrender order issued pursuant to subsection 2, after having been
 served with a temporary community protection order and upon request of a law
 enforcement officer, shall immediately surrender all firearms in a safe manner to the
 control of the officer. This subsection does not authorize a law enforcement officer to
 perform a warrantless search or seizure if a warrant would otherwise be required.

#### 23 **§415.** Term of order

24 <u>A temporary community protection order expires 21 days from the date the order is</u> 25 <u>issued.</u>

#### 26 §416. Law enforcement officer responsibilities

Following the issuance of a temporary community protection order and a surrender
 order by a court pursuant to this subchapter, a law enforcement officer must be directed to
 serve the community protection order. The law enforcement officer shall:

30 <u>1. Serve order.</u> Serve the temporary community protection order on the restrained
 31 individual as soon as practicable after issuance if the restrained individual can reasonably
 32 be located;

2. File with court. File with the court a copy of the temporary community
 protection order and an inventory of all firearms surrendered as a result of the service of
 the temporary community protection order as soon as practicable after the surrender of
 the firearms; and

 <sup>37 3.</sup> Database. Have the temporary community protection order entered into the
 38 database for protection orders maintained by the Department of Public Safety.

#### 1 §417. Retention and return of firearm

1. Firearms retained by law enforcement agency. A law enforcement agency
 shall retain any firearm surrendered to a law enforcement officer or law enforcement
 agency pursuant to section 414 until the expiration of the temporary community
 protection order that has been issued against the restrained individual, unless an extended
 order is issued pursuant to section 421.

Return of firearm. Upon the later of the expiration of a temporary community
 protection order and the expiration of an extended community protection order, the law
 enforcement agency shall return any firearm surrendered by the restrained individual to
 the restrained individual. The law enforcement agency may dispose of an unclaimed
 firearm in accordance with Title 25, section 3503-A.

12 3. Law enforcement agency held harmless for damage to firearm. A law
 13 enforcement agency must be held harmless for any unintentional damage to a firearm
 14 surrendered pursuant to section 414 arising from the prudent and reasonable
 15 transportation and storage of the surrendered firearm.

A. Return to other claimant. If a person other than the restrained individual claims
 title to a firearm surrendered pursuant to section 414 and the person is determined by the
 law enforcement agency that has custody of the firearm to be the lawful owner of the
 firearm, the law enforcement agency shall return the firearm to that other person.

**SUBCHAPTER 5** 

#### ISSUE OF EXTENDED COMMUNITY PROTECTION ORDERS

#### 22 §421. Hearing

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23 Within 21 days after the date upon which the restrained individual was served a 24 temporary community protection order, the District Court shall hold a hearing to 25 determine if an extended community protection order should issue. At a hearing under 26 this section, the petitioner has the burden of proving by clear and convincing evidence 27 that both of the following are true:

28 <u>1. Significant danger to self or others.</u> The restrained individual poses a significant and continuing danger of causing serious bodily injury or death to the restrained individual or presents a continuing substantial risk of injury to another individual by having a firearm in that restrained individual's custody or control or owning, purchasing, possessing or receiving a firearm; and

- 33 2. Necessary to prevent harm to self or others. A community protection order is
   34 necessary to reduce the probability of substantial bodily injury to the restrained individual
   35 or another individual.
- 36The prosecutor shall represent a petitioner at a hearing conducted pursuant to this37section.

#### 1 §422. Issuance of extended community protection order; term of order

1. Issue. If the court finds that the petitioner has met the burden of proof under
 section 421, the court shall issue an extended community protection order prohibiting the
 restrained individual from having in that individual's custody or control or owning,
 purchasing, possessing or receiving or attempting to purchase or receive a firearm.

6 **<u>2. Term.</u>** An extended community protection order issued pursuant to this 7 subchapter expires 180 days from the date the order is issued.

#### 8 §423. Dissolution of community protection order

9 If the court finds at a hearing under section 421 that there is not clear and convincing
 10 evidence to support the issuance of an extended community protection order, the court
 11 shall dissolve any temporary community protection order in effect and may not issue an
 12 extended community protection order.

#### 13 §424. Return of firearm

14 Upon the expiration of an extended community protection order pursuant to section 15 422, subsection 2 or the dissolution of a community protection order pursuant to section 16 423, any firearm surrendered by the individual who was the subject of the community 17 protection order must be returned to that individual in accordance with section 417, 18 subsection 2.

#### **SUBCHAPTER 7**

#### **OFFENSE**

#### 21 §431. Offense

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An individual who owns or possesses a firearm knowing that the individual is prohibited from doing so by a temporary community protection order issued pursuant to subchapter 3 or an extended community protection order issued after notice and a hearing pursuant to subchapter 5 commits a Class D crime. As part of any sentence, the court shall prohibit the individual from having in the individual's custody or control, owning, purchasing, possessing, receiving or attempting to purchase or receive a firearm for a 2year period to commence upon the expiration of the community protection order.

Sec. 2. 19-A MRSA §4002, sub-§4, as amended by PL 2015, c. 296, Pt. C, §24
 and affected by Pt. D, §1, is further amended to read:

31 4. Family or household members. "Family or household members" means spouses 32 or domestic partners or former spouses or former domestic partners, individuals presently 33 or formerly living together as spouses, parents of the same child, adult household members related by consanguinity or affinity or minor children of a household member 34 35 when the defendant is an adult household member and, for the purposes of Title 15, chapter 16, Title 15, section 1023, subsection 4, paragraph B-1 and Title 15, section 36 37 1094-B, this chapter and Title 17-A, sections 15, 207-A, 209-A, 210-B, 210-C, 211-A, 1201, 1202 and 1253 only, includes individuals presently or formerly living together and 38

individuals who are or were sexual partners. Holding oneself out to be a spouse is not
 necessary to constitute "living as spouses." For purposes of this subsection, "domestic
 partners" means 2 unmarried adults who are domiciled together under long-term
 arrangements that evidence a commitment to remain responsible indefinitely for each
 other's welfare.

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#### SUMMARY

This bill creates a community protection order to authorize a court to order a person
to surrender that person's firearms temporarily for 21 days or on an extended basis for
180 days when it has been proved that the person poses a danger of causing personal
injury to that person or another person. The bill provides that:

11 1. A law enforcement officer or a family or household member may file a petition for 12 a temporary community protection order, which expires in 21 days. A temporary 13 community protection order may be issued on an ex parte basis. The court is required to 14 hold a hearing to determine if the temporary community protection order should be 15 extended for an additional 180 days;

16 2. A person who is the subject of a community protection order is required to 17 surrender all firearms in the person's possession to a law enforcement officer. The 18 firearms must be returned to the person at the expiration of the community protection 19 order; and

A person who possesses firearms in violation of a community protection order
 commits a Class D crime. Part of the sentence must include a prohibition on possession of
 firearms for an additional 2 years.