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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. Assessment by a medical practitioner; security; immunity.** This subsection  
19 applies when a law enforcement officer has taken a person into protective custody.

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

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

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

38 D. A juvenile, as defined in Title 15, section 3003, subsection 14, who is subject to  
39 this section may be accompanied at the assessment by a parent, guardian,  
40 grandparent, aunt or uncle or a sibling who has attained the age of 18, whose  
41 company is requested by the juvenile, who is timely available and whose  
42 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           **3. Notification by medical practitioner and judicial endorsement.** A medical  
9           practitioner shall notify in writing the law enforcement officer or law enforcement agency  
10           that, based on the assessment under subsection 2, paragraph B, the person is found to  
11           present a likelihood of foreseeable harm. If so notified, the law enforcement officer or  
12           law enforcement agency shall as soon as practicable seek endorsement by a Superior  
13           Court Justice, District Court Judge, judge of probate or justice of the peace of the medical  
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  
16           person possesses, controls or may acquire a dangerous weapon. The judge or justice shall  
17           promptly transmit to the law enforcement officer or agency the decision to endorse or not  
18           endorse. A decision transmitted electronically has the same legal effect and validity as a  
19           signed original. An endorsement must authorize law enforcement to execute the  
20           authority in subsection 4. This section may not be construed to prevent law enforcement  
21           from accepting a voluntary surrender of dangerous weapons.

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

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

28                   (1) Is prohibited from possessing, controlling, acquiring or attempting to possess,  
29                   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           B. A law enforcement officer shall, as soon as practicable, but no later than 24 hours  
37           after the judicial endorsement:

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

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

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  
4                    weapons are located pending the outcome of a judicial hearing; and

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  
8                    medical practitioner and the district attorney in the district of the restricted  
9                    person's residence of the person's restricted status; and

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

11                   **5. Temporary surrender to law enforcement.** A law enforcement agency may  
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  
16                   prosecution as a prohibited person under Title 15, section 393, subsection 1, paragraph  
17                   E-1 or E-2. If a law enforcement agency has probable cause to believe the restricted  
18                   person possesses or controls but has not surrendered a weapon, law enforcement may,  
19                   prior to or as part of a judicial hearing, search for and seize such a weapon when  
20                   authorized by a judicially issued warrant or other circumstances approved by law.

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

23                   A. 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  
25                   residence shall file a petition for judicial review of the initial restrictions by the  
26                   district court. The district attorney shall provide to the restricted person written  
27                   notice of the petition and hearing at least 7 days prior to the hearing. The restricted  
28                   person has the right to be represented by counsel at the hearing, and the court may  
29                   appoint counsel for an indigent party. Upon a showing of good cause, the court may  
30                   extend the time to hold the hearing.

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  
34                   attorney has the burden to prove by clear and convincing evidence that the restricted  
35                   person presents a likelihood of foreseeable harm.

36                   C. In determining whether there are grounds to extend the initial restrictions, the  
37                   court shall consider all relevant evidence, including, but not limited to, recent threats  
38                   or acts of violence by the restricted person directed toward other persons; recent  
39                   threats or acts of violence by the restricted person directed toward the restricted  
40                   person; recent acts of unlawful abuse of animals by the restricted person; the reckless  
41                   use or threatening display of a dangerous weapon by the restricted person; a history  
42                   of the use, attempted use or threatened use of physical force by the restricted person  
43                   against other persons; a record of prior custodial events or restrictions under this

1 section; prior involuntary confinement of the restricted person in a hospital for  
2 persons with psychiatric disabilities; prior protection from abuse and protection from  
3 harassment orders against the restricted person or violations regarding protection  
4 from abuse or protection from harassment by the restricted person; evidence of  
5 stalking behavior, severe obsession or sexual violence by the restricted person; the  
6 illegal use of controlled substances by the restricted person; and evidence of alcohol  
7 or drug abuse by the restricted person. The court shall also consider whether the  
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 evidence  
12 to continue or extend the initial restrictions, the court shall dissolve the initial  
13 restrictions and order the return of any weapons surrendered or seized. The court  
14 shall direct the Department of Public Safety to remove the record of restrictions  
15 from the department's pertinent database when developed by the department.

16 (2) If the court finds after hearing that there is clear and convincing evidence to  
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,  
20 possess or control any dangerous weapon. The court shall further order the  
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  
25 terms of the court's order. The court shall schedule a hearing within 45 days prior  
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  
28 pose a likelihood of foreseeable harm. If, after a hearing, the court finds by clear  
29 and convincing evidence that the restricted person continues to pose a likelihood  
30 of foreseeable harm, the court shall renew the extended restrictions for up to one  
31 year. If the court does not so find, the court shall deny the petition and order the  
32 return of any weapons surrendered or seized. Upon motion by the State, the court  
33 may for cause shown order that the restricted person be examined for assessment  
34 of whether the restricted person continues to pose a likelihood of foreseeable  
35 harm. The fees or expenses for an assessment pursuant to this subparagraph may  
36 be paid from the Extradition and Prosecution Expenses Account established by  
37 Title 15, section 224-A.

38 (4) A restricted person may file one motion for dissolution during an extended  
39 restriction. For that motion, the restricted person has the burden of proving by  
40 clear and convincing evidence that the restricted person no longer poses a  
41 likelihood 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

1 dangerous weapon. The abstract must include the name, date of birth and gender  
2 of the person who is the subject of the order; the court's order and the expiration  
3 date 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  
6 the abstract or a copy of the abstract may be provided by the Department of  
7 Public Safety to a criminal justice agency for law enforcement purposes, to the  
8 Federal Bureau of Investigation, National Instant Criminal Background Check  
9 System or to an issuing authority for the purpose of processing concealed firearm  
10 permit applications. The Department of Public Safety shall, when the pertinent  
11 database is developed, request that the Federal Bureau of Investigation ensure  
12 that, immediately after the order expires, the National Instant Criminal  
13 Background Check System no longer reflects that expired order as a ground for  
14 prohibiting the subject of the order from possessing or acquiring a firearm. For  
15 the purposes of this subsection, "criminal justice agency" means a federal, state,  
16 tribal, district, county or local government agency or any subunit of those entities  
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  
19 administration of criminal justice. Courts and the Department of the Attorney  
20 General are considered criminal justice agencies, as is any equivalent agency at  
21 any level of Canadian government.

22 (6) Nothing in this subsection may be construed to prevent the restricted person,  
23 district attorney and court from accepting a court-ordered disposition to which  
24 each agrees.

25 **7. Weapons storage and return.** A law enforcement agency may store, or make  
26 arrangements with another law enforcement agency or federally licensed firearms dealer  
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  
29 enforcement agency with respect to handling and storage of a weapon surrendered or  
30 seized are governed by Title 25, section 2804-C, subsection 2-C. A weapon surrendered  
31 to or seized by a law enforcement agency must be returned to the restricted person when  
32 the threat-based restrictions expire. If a seized or surrendered weapon remains unclaimed  
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:

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







**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.

"Likelihood of foreseeable harm" is defined as 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 others in reasonable fear of serious physical harm.

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

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.

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

**FISCAL NOTE REQUIRED**

**(See attached)**