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Legislative Document

No. 386

H.P. 312

House of Representatives, February 8, 2011

An Act To Implement the Recommendations of the Working Group Concerning Domestic Violence and Firearms

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative MORRISON of South Portland.
Cosponsored by Representatives: BECK of Waterville, BLODGETT of Augusta, EBERLE of South Portland, HARLOW of Portland, ROCHELO of Biddeford, Senator: BLISS of Cumberland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 15 MRSA §1023, sub-§4-A** is enacted to read:

3 **4-A. Firearms; bail condition upon arrest for certain crimes of domestic**
4 **violence.** If a law enforcement officer has seized firearms pursuant to this subchapter;
5 Title 17-A, section 15, subsection 1, paragraph A, subparagraphs (1), (5-A) or (5-B); or
6 Title 19-A, section 4012, subsection 5, the bail commissioner shall require, as a condition
7 of bail, that all firearms in the possession of the person arrested be relinquished to a law
8 enforcement officer and that the person refrain from possessing a firearm or other
9 specified dangerous weapons until further order of a court. Upon request of the
10 defendant, a bail condition imposed pursuant to this subsection must be heard by the
11 court as expeditiously as possible.

12 **Sec. 2. 15 MRSA §1026, sub-§3, ¶A,** as repealed and replaced by PL 2007, c.
13 518, §3, is amended to read:

14 A. If, after consideration of the factors listed in subsection 4, the judicial officer
15 determines that the release described in subsection 2-A will not reasonably ensure the
16 appearance of the defendant at the time and place required, will not reasonably ensure
17 that the defendant will refrain from any new criminal conduct, will not reasonably
18 ensure the integrity of the judicial process or will not reasonably ensure the safety of
19 others in the community, the judicial officer shall order the pretrial release of the
20 defendant subject to the least restrictive further condition or combination of
21 conditions that the judicial officer determines will reasonably ensure the appearance
22 of the defendant at the time and place required, will reasonably ensure that the
23 defendant will refrain from any new criminal conduct, will reasonably ensure the
24 integrity of the judicial process and will reasonably ensure the safety of others in the
25 community. These conditions may include that the defendant:

26 (1) Remain in the custody of a designated person or organization agreeing to
27 supervise the defendant, including a public official, public agency or publicly
28 funded organization, if the designated person or organization is able to
29 reasonably ensure the appearance of the defendant at the time and place required,
30 that the defendant will refrain from any new criminal conduct, the integrity of the
31 judicial process and the safety of others in the community. When it is feasible to
32 do so, the judicial officer shall impose the responsibility upon the defendant to
33 produce the designated person or organization. The judicial officer may
34 interview the designated person or organization to ensure satisfaction of both the
35 willingness and ability required. The designated person or organization shall
36 agree to notify immediately the judicial officer of any violation of release by the
37 defendant;

38 (2) Maintain employment or, if unemployed, actively seek employment;

39 (3) Maintain or commence an educational program;

40 (4) Abide by specified restrictions on personal associations, place of abode or
41 travel;

- 1 (5) Avoid all contact with a victim of the alleged crime, a potential witness
2 regarding the alleged crime or with any other family or household members of
3 the victim or the defendant or to contact those individuals only at certain times or
4 under certain conditions;
- 5 (6) Report on a regular basis to a designated law enforcement agency or other
6 governmental agency;
- 7 (7) Comply with a specified curfew;
- 8 (8) Refrain from possessing a firearm and relinquish all firearms or other
9 dangerous ~~weapon~~ weapons as specified in section 1023, subsection 4-A;
- 10 (9) Refrain from use or excessive use of alcohol and from any use of drugs;
- 11 (10) Undergo, as an outpatient, available medical or psychiatric treatment, or
12 enter and remain, as a voluntary patient, in a specified institution when required
13 for that purpose;
- 14 (10-A) Enter and remain in a long-term residential facility for the treatment of
15 substance abuse;
- 16 (11) Execute an agreement to forfeit, in the event of noncompliance, such
17 designated property, including money, as is reasonably necessary to ensure the
18 appearance of the defendant at the time and place required, to ensure that the
19 defendant will refrain from any new criminal conduct, to ensure the integrity of
20 the judicial process and to ensure the safety of others in the community and post
21 with an appropriate court such evidence of ownership of the property or such
22 percentage of the money as the judicial officer specifies;
- 23 (12) Execute a bail bond with sureties in such amount as is reasonably necessary
24 to ensure the appearance of the defendant at the time and place required, to
25 ensure that the defendant will refrain from any new criminal conduct, to ensure
26 the integrity of the judicial process and to ensure the safety of others in the
27 community;
- 28 (13) Return to custody for specified hours following release for employment,
29 schooling or other limited purposes;
- 30 (14) Report on a regular basis to the defendant's attorney;
- 31 (15) Notify the court of any changes of address or employment;
- 32 (16) Provide to the court the name, address and telephone number of a
33 designated person or organization that will know the defendant's whereabouts at
34 all times;
- 35 (17) Inform any law enforcement officer of the defendant's condition of release
36 if the defendant is subsequently arrested or summonsed for new criminal
37 conduct; and
- 38 (18) Satisfy any other condition that is reasonably necessary to ensure the
39 appearance of the defendant at the time and place required, to ensure that the
40 defendant will refrain from any new criminal conduct, to ensure the integrity of
41 the judicial process and to ensure the safety of others in the community.

1 **Sec. 3. 17-A MRSA §15, sub-§1, ¶A**, as amended by PL 2009, c. 142, §3, is
2 further amended to read:

3 A. Any person who the officer has probable cause to believe has committed or is
4 committing:

5 (1) Murder. A law enforcement officer who arrests a person pursuant to this
6 subparagraph shall seize all firearms in the person's possession. A person subject
7 to firearm seizure pursuant to this subparagraph is subject to a bail condition as
8 specified in Title 15, section 1023, subsection 4-A;

9 (2) Any Class A, Class B or Class C crime;

10 (3) Assault while hunting;

11 (4) Any offense defined in chapter 45;

12 (5) Assault, criminal threatening, terrorizing or stalking, if the officer reasonably
13 believes that the person may cause injury to others unless immediately arrested;

14 (5-A) Assault, criminal threatening, terrorizing, stalking, criminal mischief,
15 obstructing the report of a crime or injury or reckless conduct if the officer
16 reasonably believes that the person and the victim are family or household
17 members, as defined in Title 19-A, section 4002, subsection 4. A law
18 enforcement officer who arrests a person pursuant to this subparagraph shall
19 seize all firearms in the person's possession. A person subject to firearm seizure
20 pursuant to this subparagraph is subject to a bail condition as specified in Title
21 15, section 1023, subsection 4-A;

22 (5-B) Domestic violence assault, domestic violence criminal threatening,
23 domestic violence terrorizing, domestic violence stalking or domestic violence
24 reckless conduct. A law enforcement officer who arrests a person pursuant to
25 this subparagraph shall seize all firearms in the person's possession. A person
26 subject to firearm seizure pursuant to this subparagraph is subject to a bail
27 condition as specified in Title 15, section 1023, subsection 4-A;

28 (6) Theft as defined in section 357, when the value of the services is \$1,000 or
29 less if the officer reasonably believes that the person will not be apprehended
30 unless immediately arrested;

31 (7) Forgery, if the officer reasonably believes that the person will not be
32 apprehended unless immediately arrested;

33 (8) Negotiating a worthless instrument if the officer reasonably believes that the
34 person will not be apprehended unless immediately arrested;

35 (9) A violation of a condition of probation when requested by a probation officer
36 or juvenile community corrections officer;

37 (10) Violation of a condition of release in violation of Title 15, section 1026,
38 subsection 3; Title 15, section 1027, subsection 3; Title 15, section 1051,
39 subsection 2; and Title 15, section 1092;

40 (11) Theft involving a detention under Title 17, section 3521;

- 1 (12) Harassment, as set forth in section 506-A;
- 2 (13) Violation of a protection order, as specified in Title 5, section 4659,
3 subsection 2; Title 15, section 321, subsection 6; former Title 19, section 769,
4 subsection 2; former Title 19, section 770, subsection 5; Title 19-A, section 4011,
5 subsection 3; and Title 19-A, section 4012, subsection 5;
- 6 (14) A violation of a sex offender registration provision under Title 34-A,
7 chapter 15;
- 8 (15) A violation of a requirement of administrative release when requested by the
9 attorney for the State;
- 10 (16) A violation of a condition of supervised release for sex offenders when
11 requested by a probation officer;
- 12 (17) A violation of a court-imposed deferment requirement of a deferred
13 disposition when requested by the attorney for the State;
- 14 (18) A violation of a condition of release as provided in Title 15, section
15 3203-A, subsection 9;
- 16 (19) A violation of a condition of supervised community confinement granted
17 pursuant to Title 34-A, section 3036-A when requested by a probation officer;
- 18 (20) A violation of a condition of placement on community reintegration status
19 granted pursuant to Title 34-A, sections 3810 and 4112 when requested by a
20 juvenile community corrections officer; or
- 21 (21) A violation of a condition of furlough or other rehabilitative program
22 authorized under Title 34-A, section 3035 when requested by a probation officer
23 or juvenile community corrections officer; and

24 **Sec. 4. 19-A MRSA §4012, sub-§5**, as enacted by PL 1995, c. 694, Pt. B, §2 and
25 affected by Pt. E, §2, is amended to read:

26 **5. Arrest in certain situations.** When a law enforcement officer has probable cause
27 to believe that there has been a criminal violation under section 4011 of a court-approved
28 consent agreement or a protection order issued pursuant to this chapter or Title 15,
29 chapter 12-A, or that a violation of Title 17-A, section 208 has occurred between
30 members of the same family or household, that enforcement officer shall arrest and take
31 into custody the alleged offender. A law enforcement officer who arrests a person
32 pursuant to this subsection shall seize all firearms in the person's possession. A person
33 subject to firearm seizure pursuant to this subsection is subject to a bail condition as
34 specified in Title 15, section 1023, subsection 4-A.

35 **Sec. 5. 25 MRSA §2803-B, sub-§1, ¶D**, as amended by PL 2003, c. 361, §1, is
36 further amended to read:

37 D. Domestic violence, which must include, at a minimum, the following:

- 38 (1) A process to ensure that a victim receives notification of the defendant's
39 release from jail;

1 (2) A process for the collection of information regarding the defendant that
2 includes the defendant's previous history, the parties' relationship, the name of the
3 victim and a process to relay this information to a bail commissioner before a bail
4 determination is made; ~~and~~

5 (3) A process for the safe retrieval of personal property belonging to the victim
6 or the defendant that includes identification of a possible neutral location for
7 retrieval, the presence of at least one law enforcement officer during the retrieval
8 and giving the victim the option of at least 24 hours notice to each party prior to
9 the retrieval; and

10 (4) A process for the seizure of firearms and safe storage of firearms seized by a
11 law enforcement officer in a domestic violence arrest;

12 **Sec. 6. 25 MRSA §2803-B, sub-§2**, as repealed and replaced by PL 2009, c. 652,
13 Pt. A, §37, is amended to read:

14 **2. Minimum policy standards.** The board shall establish minimum standards for
15 each law enforcement policy no later than June 1, 1995, except that policies for expanded
16 requirements for domestic violence under subsection 1, paragraph D, subparagraphs (1)
17 to (3) must be established no later than January 1, 2003; policies for death investigations
18 under subsection 1, paragraph I must be established no later than January 1, 2004;
19 policies for public notification regarding persons in the community required to register
20 under Title 34-A, chapter 15 under subsection 1, paragraph J must be established no later
21 than January 1, 2006; policies for the recording and preservation of interviews of suspects
22 in serious crimes under subsection 1, paragraph K must be established no later than
23 January 1, 2005; policies for the expanded use of physical force, including the use of
24 electronic weapons and less-than-lethal munitions under subsection 1, paragraph A, must
25 be established no later than January 1, 2010; ~~and~~ policies for mental illness and the
26 process for involuntary commitment under subsection 1, paragraph L must be established
27 no later than January 1, 2010; and policies for expanded requirements for domestic
28 violence under subsection 1, paragraph D, subparagraph (4) for the seizure of firearms
29 and safe storage of firearms seized by a law enforcement officer in a domestic violence
30 arrest must be established no later than January 1, 2013.

31 **Sec. 7. 25 MRSA §2803-B, sub-§3**, as repealed and replaced by PL 2009, c. 652,
32 Pt. A, §38, is amended to read:

33 **3. Agency compliance.** The chief administrative officer of each law enforcement
34 agency shall certify to the board no later than January 1, 1996 that the agency has adopted
35 written policies consistent with the minimum standards established by the board pursuant
36 to subsection 2, except that certification to the board for expanded policies for domestic
37 violence under subsection 1, paragraph D, subparagraphs (1) to (3) must be made to the
38 board no later than June 1, 2003; certification to the board for adoption of a death
39 investigation policy under subsection 1, paragraph I must be made to the board no later
40 than June 1, 2004; certification to the board for adoption of a public notification policy
41 under subsection 1, paragraph J must be made to the board no later than June 1, 2006;
42 certification to the board for adoption of a policy for the recording and preservation of
43 interviews of suspects in serious crimes under subsection 1, paragraph K must be made to

1 the board no later than June 1, 2005; certification to the board for adoption of an
2 expanded use of physical force policy under subsection 1, paragraph A must be made to
3 the board no later than June 1, 2010; and certification to the board for adoption of a
4 policy regarding mental illness and the process for involuntary commitment under
5 subsection 1, paragraph L must be made to the board no later than June 1, 2010. The
6 certification must be accompanied by copies of the agency policies. The chief
7 administrative officer of each agency shall certify to the board no later than June 1, 1996
8 that the agency has provided orientation and training for its members with respect to the
9 policies, except that certification for orientation and training with respect to expanded
10 policies for domestic violence under subsection 1, paragraph D, subparagraphs (1) and (3)
11 must be made to the board no later than January 1, 2004; certification for orientation and
12 training with respect to policies regarding death investigations under subsection 1,
13 paragraph I must be made to the board no later than January 1, 2005; certification for
14 orientation and training with respect to policies regarding public notification under
15 subsection 1, paragraph J must be made to the board no later than January 1, 2007;
16 certification for orientation and training with respect to policies regarding the recording
17 and preservation of interviews of suspects in serious crimes under subsection 1,
18 paragraph K must be made to the board no later than January 1, 2006; certification for
19 orientation and training with respect to policies regarding expanded use of physical force
20 under subsection 1, paragraph A must be made to the board no later than January 1, 2011;
21 ~~and~~ certification for orientation and training with respect to policies regarding mental
22 illness and the process for involuntary commitment under subsection 1, paragraph L must
23 be made to the board no later than January 1, 2011; and certification to the board for
24 expanded policies for domestic violence under subsection 1, paragraph D, subparagraph
25 (4) for the seizure of firearms and safe storage of firearms seized by a law enforcement
26 officer in a domestic violence arrest must be made to the board no later than June 1, 2013.

27 SUMMARY

28 This bill implements the recommendations of the working group concerning domestic
29 violence and firearms established under Resolve 2009, chapter 86.

30 Specifically, the bill authorizes a law enforcement officer to seize firearms from a
31 person upon arrest for certain crimes of domestic violence, including: murder; assault,
32 criminal threatening, terrorizing, stalking, criminal mischief, obstructing the report of a
33 crime or injury or reckless conduct if the officer reasonably believes that the person and
34 the victim are family or household members; domestic violence assault, domestic
35 violence criminal threatening, domestic violence terrorizing, domestic violence stalking
36 or domestic violence reckless conduct; violating a court-ordered consent agreement or
37 protection from abuse order; or aggravated assault on a family or household member. A
38 person subject to firearm seizure pursuant to this authority is subject to a new bail
39 condition established in the Maine Revised Statutes, Title 15, section 1023, subsection
40 4-A. The new provision requires, as a condition of bail, that all firearms in the possession
41 of the person arrested be relinquished to a law enforcement officer and that the person
42 refrain from possessing a firearm or other specified dangerous weapons until further order
43 of a court. Upon request of the defendant, such a bail condition must be heard by the
44 court as expeditiously as possible.

1 The bill also amends Title 25, section 2803-B to expand policies regarding domestic
2 violence by requiring that all law enforcement agencies adopt a written policy for the
3 seizure of firearms and safe storage of firearms seized by a law enforcement officer in a
4 domestic violence arrest.