

PLEASE NOTE: The Office of the Revisor of Statutes **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Public Law
123rd Legislature
Second Regular Session

Chapter 670
H.P. 1336 - L.D. 1902

**An Act To Bring Maine into Compliance with Federal
Law Regarding Purchases of Firearms by Persons
Found To Be a Danger to Themselves or Others**

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

Sec. 1. 4 MRSA §152, sub-§13, as enacted by PL 1999, c. 731, Pt. ZZZ, §4 and affected by §42, is amended to read:

13. Desertion and nonsupport. Jurisdiction over complaints for desertion and nonsupport or nonsupport of dependents in the district where either the spouse, the dependent or the respondent resides; and

Sec. 2. 4 MRSA §152, sub-§14, as enacted by PL 1999, c. 731, Pt. ZZZ, §4 and affected by §42, is amended to read:

14. Civil violations. Jurisdiction over all civil violations, as provided in Title 17-A, section 9, and traffic infractions; and

Sec. 3. 4 MRSA §152, sub-§15 is enacted to read:

15. Restoration of right to possess firearms. Exclusive jurisdiction to conduct de novo review of a determination by the Commissioner of Public Safety pursuant to Title 15, section 393, subsection 4-A.

Sec. 4. 15 MRSA §393, sub-§1, ¶C, as amended by PL 2001, c. 549, §2, is further amended to read:

C. Has been adjudicated in this State or under the laws of the United States or any other state to have engaged in conduct as a juvenile that, if committed by an adult, would have been a disqualifying conviction:

(1) Under paragraph A-1, subparagraphs (1) to (4) and bodily injury to another person was threatened or resulted; or

(3) Under paragraph A-1, subparagraph (5); or

Sec. 5. 15 MRSA §393, sub-§1, ¶D, as enacted by PL 1997, c. 334, §2, is amended to read:

D. Is subject to an order of a court of the United States or a state, territory, commonwealth or tribe that restrains that person from harassing, stalking or threatening an intimate partner, as defined in 18 United States Code, Section 921(a), of that person or a child of the intimate partner of that person, or from engaging in other conduct that would place the intimate partner in reasonable fear of bodily injury to the intimate partner or the child, except that this paragraph applies only to a court order that was issued after a hearing for which that person received actual notice and at which that person had the opportunity to participate and that:

(1) Includes a finding that the person represents a credible threat to the physical safety of an intimate partner or a child; or

(2) By its terms, explicitly prohibits the use, attempted use or threatened use of physical force against an intimate partner or a child that would reasonably be expected to cause bodily injury; or

Sec. 6. 15 MRSA §393, sub-§1, ¶E is enacted to read:

E. Has been:

(1) Committed involuntarily to a hospital pursuant to an order of the District Court under Title 34-B, section 3864 because the person was found to present a likelihood of serious harm, as defined under Title 34-B, section 3801, subsection 4, paragraphs A to C;

(2) Found not criminally responsible by reason of insanity with respect to a criminal charge; or

(3) Found not competent to stand trial with respect to a criminal charge.

Sec. 7. 15 MRSA §393, sub-§2, as amended by PL 2007, c. 194, §3, is further amended to read:

2. Application after 5 years. A person subject to the provisions of subsection 1, paragraph A-1 or C as a result of a conviction or adjudication may, after the expiration of 5 years from the date that the person is finally discharged from the sentences imposed as a result of the conviction or adjudication, apply to the ~~Commissioner of Public Safety~~commissioner for a permit to carry a firearm. That person may not be issued a permit to carry a concealed firearm pursuant to Title 25, chapter 252. A permit issued pursuant to this subsection is valid for 4 years from the date of issue unless sooner revoked for cause by the ~~Commissioner of Public Safety~~commissioner. For purposes of this subsection, "firearm" does not include a firearm defined under 18 United States Code, Section 921(3).

Sec. 8. 15 MRSA §393, sub-§4, as enacted by PL 1977, c. 225, §2, is amended to read:

4. Notification, objection and decision. Upon receipt of an application, the ~~Commissioner of Public Safety~~commissioner shall determine if it is in proper form. If the application is proper, ~~he~~the commissioner shall within 30 days notify in writing the sentencing or presiding judge, the Attorney General, the district attorney for the county where the applicant resides, the district attorney for the county where the conviction occurred, the law enforcement agency ~~which~~that investigated the crime, the chief

of police and sheriff in the municipality and county where the crime occurred and the chief of police and sheriff in the municipality where the applicant resides as of the filing of the application. The commissioner may direct any appropriate investigation to be carried out. If, within 30 days of the sending of notice, any person so notified objects in writing to the issuance of a permit, ~~none shall a permit may not be issued.~~ The commissioner may deny an application even if no objection is filed.

Sec. 9. 15 MRSA §393, sub-§4-A is enacted to read:

4-A. Application for relief. Except as otherwise provided, a person subject to the federal prohibition against possession of firearms pursuant to 18 United States Code, Section 922(g)(4) as a result of being adjudicated a mental defective or committed to any psychiatric hospital pursuant to Title 34-B, section 3863 and who has not been committed to a psychiatric hospital pursuant to an order of the District Court pursuant to Title 34-B, section 3864 may, after the expiration of 5 years from the date of final discharge from commitment, apply to the commissioner for relief from the disability.

Relief is not available under this subsection for a person found not criminally responsible by reason of insanity or incompetent to stand trial in a criminal case or a person adjudged by a Probate Court to lack the capacity to contract or manage the person's own affairs.

A. An application under this subsection must be on a form developed by the commissioner. The application must include the applicant's full name; all aliases; date and place of birth; place of legal residence; occupation; make and model of the firearm sought to be possessed; reason for the request; date, place and docket number of commitment; name of institution to which applicant was committed; names of providers that provided mental health treatment for the applicant; date of discharge from commitment; release for all mental health records; and any other information determined by the commissioner to be of assistance. The application must be accompanied by certified or attested copies of the commitment from which the applicant seeks relief and the report of an independent psychologist or psychiatrist licensed to practice in this State specifically addressing the factors set forth in paragraph E. The commissioner may establish a roster of psychologists and psychiatrists qualified and interested in doing these evaluations. The psychologist or psychiatrist must be available for cross-examination. The psychologist or psychiatrist listed on the roster is an employee for the purposes of the Maine Tort Claims Act for evaluations under this paragraph.

B. The commissioner has the independent authority to establish the following, to be paid by the applicant:

(1) Application fee; and

(2) Fees for evaluations required by paragraph A.

C. Upon receipt of a completed application, the commissioner shall notify persons who received notice of the commitment pursuant to Title 34-B, section 3864, subsection 3, paragraph A, subparagraph (2) and the district attorney, chief of police and sheriff in the municipality and county where the applicant resides of the filing of the application, with a request to provide to the commissioner any information relevant to the factors in paragraph E.

D. Upon receipt of a completed application, the commissioner shall review the application and determine whether the person has made a prima facie showing of the elements of paragraph E. If the commissioner determines that the person has made a prima facie showing, the commissioner shall schedule a hearing.

E. The burden of proof is on the applicant to prove, by clear and convincing evidence, that the circumstances that led to the involuntary commitment to a hospital have changed, that the applicant is not likely to act in a manner dangerous to public safety and that granting the application for relief will not be contrary to the public interest.

F. If the commissioner finds by clear and convincing evidence that the circumstances that led to the involuntary commitment have changed, that the applicant is not likely to act in a manner dangerous to public safety and that granting the application for relief will not be contrary to the public interest, the commissioner may grant relief.

G. Notwithstanding any other provision of law, and except as indicated in this paragraph, all applications for relief pursuant to this subsection and documents made a part of the application, refusals and any information of record collected by the commissioner during the process of determining whether an applicant qualifies for relief are confidential and may not be made available for public inspection or copying unless:

(1) The applicant waives this confidentiality in writing or on the record of any hearing; or

(2) A court of record so orders. Proceedings relating to the grant or denial of relief are not public proceedings under Title 1, chapter 13.

The commissioner shall make a permanent record, in the form of a summary, of the final decision regarding each application. The summary must include the name of the applicant and indicate whether the application for relief was granted or denied. The information contained in this summary is available for public inspection.

H. An applicant may appeal the denial of an application for relief under this subsection within 30 days of receipt of the written notice of decision by filing a complaint in the District Court for de novo review in the district where the Department of Public Safety has its principal office. Hearings are closed unless otherwise agreed to by the applicant. A party aggrieved by a decision of the District Court may not appeal as of right. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.

Sec. 10. 15 MRSA §393, sub-§5, as enacted by PL 1977, c. 225, §2, is amended to read:

5. Appeal. Any person to whom a permit under subsection 2 has been denied may appeal to the Superior Court of Kennebec County. The decision of the commissioner may not be overturned unless the court shall find that the applicant's request is reasonable and that the denial of the commissioner was arbitrary, capricious or discriminatory file a petition for review pursuant to Title 5, chapter 375, subchapter 7.

Sec. 11. 15 MRSA §393, sub-§7, ¶E is enacted to read:

E. "Commissioner" means the Commissioner of Public Safety or the commissioner's designee.

Sec. 12. 15 MRSA §393, sub-§8, as amended by PL 2005, c. 527, §5, is further amended to read:

8. Penalty. A violation of subsection 1, paragraph A-1 or C is a Class C crime. A violation of subsection 1, paragraph D or E is a Class D crime. A violation of subsection 1-A by a person at least 18 years of age is a Class C crime.

Sec. 13. 15 MRSA §393, sub-§9 is enacted to read:

9. Prima facie evidence. Notwithstanding any other law or rule of evidence, a copy of a court abstract provided by a court to the Department of Public Safety, State Bureau of Identification pursuant to Title 34-B, section 3864, subsection 12, if certified by the custodian of the records of that bureau, or the custodian's designee, is admissible in a criminal prosecution brought pursuant to this section as prima facie evidence that the person identified in the abstract has been involuntarily committed by the court issuing the abstract and has been provided the notice required in Title 34-B, section 3864, subsection 5, paragraph A-1 and Title 34-B, section 3864, subsection 13.

Sec. 14. 15 MRSA §393, sub-§10 is enacted to read:

10. Subpoena power. The commissioner is authorized to issue a subpoena in the name of the commissioner in accordance with Title 5, section 9060, except that this authority applies to any stage of an investigation under this section and is not limited to an adjudicatory hearing. If a witness refuses to obey a subpoena or to give any evidence relevant to proper inquiry by the commissioner, the Attorney General may petition the Superior Court in the county where the refusal occurred to find the witness in contempt. The Attorney General shall cause to be served on that witness an order requiring the witness to appear before the Superior Court to show cause why the witness should not be adjudged in contempt. The court shall, in a summary manner, hear the evidence and, if it is such as to warrant the court in doing so, punish that witness in the same manner and to the same extent as for contempt committed before the Superior Court or with reference to the process of the Superior Court.

Sec. 15. 15 MRSA §393, sub-§11 is enacted to read:

11. Rules. The commissioner may adopt rules to implement the provisions of subsections 2 to 4-A. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

Sec. 16. 25 MRSA §1541, sub-§3, ¶C is enacted to read:

C. The commanding officer shall report to the Federal Bureau of Investigation, National Instant Criminal Background Check System a court's finding, upon the commanding officer's receipt of an abstract from a court that a person has been:

(1) Committed involuntarily to a hospital pursuant to an order of the District Court under Title 34-B, section 3864 because the person was found to present a likelihood of serious harm, as defined under Title 34-B, section 3801, subsection 4, paragraphs A to D;

(2) Found not criminally responsible by reason of insanity with respect to a criminal charge; or

(3) Found not competent to stand trial with respect to a criminal charge.

The commanding officer may adopt rules to implement the requirements of this paragraph. Rules adopted pursuant to this paragraph are routine technical rules, as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 17. 34-B MRSA §1207, sub-§1, ¶B, as amended by PL 2007, c. 286, §2, is further amended to read:

B. Information may be disclosed if necessary to carry out the statutory functions of the department; the hospitalization provisions of chapter 3, subchapter 4; the purposes of sections 3607-A and 3608; the purposes of Title 5, section 19506 or; the purposes of United States Public Law 99-319, dealing with the investigatory function of the independent agency designated with advocacy and investigatory functions under United States Public Law 88-164, Title I, Part C or United States Public Law 99-319; or the investigation and hearing pursuant to Title 15, section 393, subsection 4-A;

Sec. 18. 34-B MRSA §3864, sub-§5, ¶A-1 is enacted to read:

A-1. Prior to the commencement of the hearing, the court shall inform the person that if an order of involuntary commitment is entered, that person is a prohibited person and may not own, possess or have under that person's control a firearm pursuant to Title 15, section 393, subsection 1.

Sec. 19. 34-B MRSA §3864, sub-§12 is enacted to read:

12. Transmission of abstract of court ruling to the State Bureau of Identification.

Notwithstanding any other provision of this section or section 1207, a court shall transmit to the Department of Public Safety, State Bureau of Identification an abstract of any order for involuntary commitment issued by the court pursuant to this section. The abstract must include:

- A. The name, date of birth and gender of the person who is the subject of the order for involuntary commitment;
- B. The court's ruling that the person has been involuntarily committed; and
- C. A notation that the person has been notified by the court in accordance with subsection 5, paragraph A-1 and subsection 13.

The abstract required in this subsection is confidential and is not a "public record" as defined in Title 1, chapter 13; however, a copy of the abstract may be provided by the State Bureau of Identification to a criminal justice agency for legitimate law enforcement purposes, to the Federal Bureau of Investigation, National Instant Criminal Background Check System or to an issuing authority for the purpose of processing concealed firearm permit applications.

For the purposes of this subsection, "criminal justice agency" means a federal, state, tribal, district, county or local government agency or any subunit thereof that performs the administration of criminal justice under a statute or executive order and that allocates a substantial part of its annual budget to the

administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government.

Sec. 20. 34-B MRSA §3864, sub-§13 is enacted to read:

13. Firearms possession prohibition notification. A court that orders a person to be committed involuntarily pursuant to this section shall inform the person that possession, ownership or control of a firearm by that person is prohibited pursuant to Title 15, section 393, subsection 1. As used in this subsection, "firearm" has the same meaning as in Title 17-A, section 2, subsection 12-A.

Sec. 21. Report. The Commissioner of Public Safety shall report to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters by January 15, 2010 regarding the administration of the relief from disabilities provision allowing certain persons to regain the ability to possess a firearm. The report must include a summary of the number of applications for relief, the hearing and appeals process, the amount of resources necessary to administer the law and the fee structure. Upon receiving the report, the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters may report out legislation to the Second Regular Session of the 124th Legislature if necessary.

Sec. 22. Implementation. Notwithstanding the Maine Revised Statutes, Title 25, section 1541, subsection 3, paragraph C and Title 34-B, section 3864, subsection 12, a court is not required to transmit to the Department of Public Safety, State Bureau of Identification an abstract of any order for involuntary commitment issued by the court and the commanding officer of the State Bureau of Identification is not required to report to the Federal Bureau of Investigation, National Instant Criminal Background Check System any court's finding described in Title 25, section 1541, subsection 3, paragraph C until the judicial branch and the Department of Public Safety receive sufficient funding for the implementation of Title 25, section 1541, subsection 3, paragraph C and Title 34-B, section 3864, subsection 12.

Sec. 23. Appropriations and allocations. The following appropriations and allocations are made.

JUDICIAL DEPARTMENT

Courts - Supreme, Superior, District and Administrative 0063

Initiative: Allocates funds for one-time contractual services for computer programming.

FEDERAL EXPENDITURES FUND	2007-08	2008-09
All Other	\$0	\$155,000
	<hr/>	<hr/>
FEDERAL EXPENDITURES FUND TOTAL	\$0	\$155,000
JUDICIAL DEPARTMENT		
DEPARTMENT TOTALS	2007-08	2008-09
FEDERAL EXPENDITURES FUND	\$0	\$155,000

DEPARTMENT TOTAL - ALL FUNDS	\$0	\$155,000
-------------------------------------	------------	------------------

PUBLIC SAFETY, DEPARTMENT OF

State Police 0291

Initiative: Allocates funds for development of a new computer system to transmit information to the Federal Government.

FEDERAL EXPENDITURES FUND	2007-08	2008-09
All Other	\$0	\$48,000
FEDERAL EXPENDITURES FUND TOTAL	\$0	\$48,000

PUBLIC SAFETY, DEPARTMENT OF DEPARTMENT TOTALS	2007-08	2008-09
FEDERAL EXPENDITURES FUND	\$0	\$48,000
DEPARTMENT TOTAL - ALL FUNDS	\$0	\$48,000

SECTION TOTALS	2007-08	2008-09
FEDERAL EXPENDITURES FUND	\$0	\$203,000
SECTION TOTAL - ALL FUNDS	\$0	\$203,000

Sec. 24. Effective date. That section of this Act that enacts the Maine Revised Statutes, Title 15, section 393, subsection 4-A takes effect July 31, 2009.

See title page for effective date, unless otherwise indicated.