



# 128th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2018

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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)

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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.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

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 **CHAPTER 16**

4 **COMMUNITY PROTECTION ORDERS**

5 **SUBCHAPTER 1**

6 **GENERAL PROVISIONS**

7 **§401. Definitions**

8 As used in this chapter, unless the context otherwise indicates, the following terms  
9 have the following meanings.

10 **1. Community protection order.** "Community protection order" means a written  
11 order signed by the court that prohibits and enjoins temporarily, if issued pursuant to  
12 subchapter 2, or on an extended basis, if issued pursuant to subchapter 3, a named  
13 individual from having a firearm in that individual's custody or control or owning,  
14 purchasing, possessing or receiving or attempting to purchase or receive a firearm.

15 **2. Family or household member.** "Family or household member" has the same  
16 meaning as in Title 19-A, section 4002, subsection 4.

17 **3. High-risk individual.** "High-risk individual" means an individual who presents  
18 an imminent and substantial risk of serious bodily injury or death to the individual or to  
19 another individual and:

20 A. Has a mental illness that may be controlled by medication but has not  
21 demonstrated a pattern of voluntarily and consistently taking the individual's  
22 medication while not under supervision; or

23 B. Is the subject of documented evidence that would give rise to a reasonable belief  
24 that the individual has a propensity for violent or emotionally unstable conduct.

25 The fact that an individual has been released from a mental health facility or has a mental  
26 illness that is currently controlled by medication does not establish that the individual  
27 presents an imminent and substantial risk of serious bodily injury or death to the  
28 individual or to another individual for the purposes of this chapter. As used in this  
29 subsection, "mental illness" has the same meaning as in section 3318-A, subsection 1,  
30 paragraph B.

31 **4. Restrained individual.** "Restrained individual" means an individual who is the  
32 subject of a community protection order.

33 **SUBCHAPTER 3**

34 **ISSUE OF TEMPORARY COMMUNITY PROTECTION ORDERS**

1           **§411. Petition**

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

9           **§412. Procedure for issuance of temporary community protection order**

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           A. The subject of the petition is a high-risk individual; and

15           B. A temporary community protection order is necessary to prevent serious bodily  
16           injury or death to the subject of the petition or to another person.

17           **2. Testimony or affidavit under oath.** The court, before issuing a temporary  
18           community protection order, shall examine under oath the petitioner and any witness the  
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           **4. Ex parte order.** The court may issue a temporary community protection order on  
29           an ex parte basis.

30           **§413. Contents of order**

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

33           **1. Grounds.** The finding of facts by the court supporting the issuance of the  
34           temporary community protection order;

35           **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           **3. Notice.** 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."

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

9 **1. Effect.** 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.

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

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

23 **§415. Term of order**

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

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

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

30 **1. Serve order.** 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;

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

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





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

6 **SUMMARY**

7 This bill creates a community protection order to authorize a court to order a person  
8 to surrender that person's firearms temporarily for 21 days or on an extended basis for  
9 180 days when it has been proved that the person poses a danger of causing personal  
10 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

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