



# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1312

S.P. 408

In Senate, March 19, 2019

### **An Act Regarding Access to Firearms by Extremely Dangerous and Suicidal Individuals**

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator MILLETT of Cumberland.  
Cosponsored by Representative CARDONE of Bangor, Speaker GIDEON of Freeport and  
Senators: CARSON of Cumberland, GRATWICK of Penobscot, MIRAMANT of Knox,  
Representatives: BAILEY of Saco, HARNETT of Gardiner, HYMANSON of York,  
McCREIGHT of Harpswell, RECKITT of South Portland.

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 **EXTREME RISK 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. Court.** "Court" means a District Court.

11 **2. Extreme risk protection order.** "Extreme risk protection order" means a written  
12 order signed by the court that prohibits and enjoins a restrained individual from  
13 purchasing, possessing or controlling a firearm and from attempting to purchase, possess  
14 or control a firearm. An extreme risk protection order may be a temporary extreme risk  
15 protection order issued pursuant to subchapter 2 or an extended extreme risk protection  
16 order issued pursuant to subchapter 3.

17 **3. Family or household member.** "Family or household member" means a spouse  
18 or domestic partner of the respondent, a former spouse or former domestic partner of the  
19 respondent, an individual presently or formerly living as a spouse of the respondent, a  
20 parent of a child of the respondent or an adult related by consanguinity or affinity to the  
21 respondent.

22 **4. Law enforcement agency.** "Law enforcement agency" means the State Police, a  
23 sheriff's department or a municipal police department.

24 **5. Law enforcement officer.** "Law enforcement officer" means a person who by  
25 virtue of public employment is vested by law with the power to make arrests for crimes or  
26 serve criminal process, whether that power extends to all crimes or is limited to specific  
27 crimes, and who possesses a current and valid certificate issued by the Board of Trustees  
28 of the Maine Criminal Justice Academy pursuant to Title 25, section 2803-A. As used in  
29 this chapter, "law enforcement officer" does not include federal law enforcement officers  
30 or attorneys prosecuting for the State.

31 **6. Petition.** "Petition" means a petition for an extreme risk protection order filed  
32 under this chapter.

33 **7. Petitioner.** "Petitioner" means a law enforcement agency, law enforcement  
34 officer or family or household member who files a petition for an extreme risk protection  
35 order under this chapter.



1 danger of causing bodily injury to the respondent or others, the court shall issue a  
2 temporary extreme risk protection order.

3 **2. Testimony under oath or sworn affidavit.** The court, before issuing a temporary  
4 extreme risk protection order, shall examine under oath the petitioner and any witness the  
5 petitioner may produce after informing the petitioner and any witness that offering false  
6 testimony made under oath is perjury, as defined in Title 17-A, section 451, and is a Class  
7 C crime. In lieu of examining the petitioner and any witness, the court may accept sworn  
8 affidavits of the petitioner and any witness. An affidavit supporting a petition for the  
9 issuance of a temporary extreme risk protection order must set forth the facts tending to  
10 establish the grounds of the petition or the reason for believing that the grounds exist. A  
11 false material statement under oath on an affidavit supporting issuance of an extreme risk  
12 protection order is perjury, as defined in Title 17-A, section 451, and is a Class C crime.

13 **3. Determination on same day.** If the court finds probable cause to believe that the  
14 respondent poses an immediate and present danger of causing bodily injury to the  
15 respondent or others, the court shall issue a temporary extreme risk protection order on  
16 the day that the petition is submitted to the court. If the court does not find probable cause  
17 to believe that the respondent poses an immediate and present danger of causing bodily  
18 injury to the respondent or others, the court may not issue a temporary extreme risk  
19 protection order and shall set a date for a hearing on the petition, pursuant to subchapter  
20 3, to determine whether an extended extreme risk protection order should be issued.

21 **4. Ex parte order.** The court may issue a temporary extreme risk protection order  
22 on an ex parte basis.

23 **§413. Contents of temporary extreme risk protection order**

24 A temporary extreme risk protection order issued pursuant to this subchapter must  
25 include a notice informing the restrained individual:

26 **1. Prohibition regarding firearms.** That the restrained individual is prohibited  
27 from purchasing, possessing or controlling any firearm or attempting to purchase, possess  
28 or control any firearm;

29 **2. Surrender of firearms.** That the restrained individual is required to surrender all  
30 firearms the restrained individual owns, possesses or controls to a law enforcement  
31 agency or law enforcement officer;

32 **3. Hearing.** The time, date and location of the hearing, if any, pursuant to  
33 subchapter 3;

34 **4. Right to counsel.** The restrained individual's right to counsel, including the right  
35 for an indigent restrained individual to be appointed counsel;

36 **5. Right to review petition and findings.** The restrained individual's right to access  
37 and review the petition and findings of fact; and

38 **6. Duration.** The duration of the temporary extreme risk protection order.

1           **§414. Effect of temporary extreme risk protection order; surrender of firearm**

2           **1. Effect.** A temporary extreme risk protection order prohibits and enjoins the  
3           restrained individual from purchasing, possessing or controlling or attempting to  
4           purchase, possess or control any firearm while the order is in effect. The temporary  
5           extreme risk protection order also must direct the restrained individual to surrender to a  
6           law enforcement agency or law enforcement officer all firearms the restrained individual  
7           owns, possesses or controls.

8           **2. Search warrant.** The court shall subsequently issue a search warrant authorizing  
9           a law enforcement officer to search for and seize any firearms if the court finds there is  
10          probable cause to believe the restrained individual owns, possesses or controls any  
11          firearms. This subsection does not authorize a law enforcement officer to perform a  
12          warrantless search or seizure if a warrant would otherwise be required.

13          **3. Surrender of firearm.** Upon request of the law enforcement officer serving a  
14          temporary extreme risk protection order, a restrained individual subject to a temporary  
15          extreme risk protection order shall immediately surrender all firearms the restrained  
16          individual owns, possesses or controls in a safe manner to the control of the law  
17          enforcement officer. Any firearm not surrendered to a law enforcement officer at the  
18          time of service of the temporary extreme risk protection order or removed pursuant to a  
19          search warrant must be surrendered to a law enforcement agency within 24 hours of  
20          service of a temporary extreme risk protection order.

21          **§415. Term of temporary extreme risk protection order**

22          A temporary extreme risk protection order expires either 14 days from the date the  
23          order is issued or when a hearing is held pursuant to subchapter 3 to determine whether  
24          an extended extreme risk protection order should be issued, whichever occurs first.

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

26          Following the issuance of a temporary extreme risk protection order by a court  
27          pursuant to this subchapter, the court shall order a law enforcement officer to serve the  
28          temporary extreme risk protection order. The law enforcement officer shall:

29          **1. Serve order.** Serve the temporary extreme risk protection order on the restrained  
30          individual as soon as practicable after issuance if the restrained individual can reasonably  
31          be located;

32          **2. File with court.** File with the court a copy of the temporary extreme risk  
33          protection order and an inventory of any firearms surrendered at the time of the service of  
34          the temporary extreme risk protection order, any firearms surrendered by the restrained  
35          individual following service of the temporary extreme risk protection order and any  
36          firearms seized during the execution of a search warrant issued pursuant to section 414,  
37          subsection 2 as soon as practicable after the surrender or seizure of the firearms; and

38          **3. Database.** Enter the record of the temporary extreme risk protection order into  
39          the database for protection orders maintained by the Department of Public Safety.

1 SUBCHAPTER 3

2 EXTENDED EXTREME RISK PROTECTION ORDERS

3 §421. Procedure for issuance of extended extreme risk protection orders

4 1. Time of hearing. Within 14 days of the filing of a petition under section 411, the  
5 court shall hold a hearing to determine if an extended extreme risk protection order  
6 should be issued.

7 2. Evidence; burden of proof. In determining whether grounds for issuance of an  
8 extended extreme risk protection order exist, the court shall consider all relevant  
9 evidence. At a hearing for an extended extreme risk protection order, a petitioner has the  
10 burden of proof.

11 3. Right to counsel. All parties have the right to be represented by counsel at the  
12 hearing. If any party is indigent and requests counsel, the court shall appoint an attorney  
13 to represent that party.

14 4. Standard of proof for issue of order. At the conclusion of a hearing for an  
15 extended extreme risk protection order, if the court finds by clear and convincing  
16 evidence that the respondent poses a danger of causing bodily injury to the respondent or  
17 others, the court shall issue an extended extreme risk protection order.

18 §422. Contents of extended extreme risk protection order

19 An extended extreme risk protection order issued pursuant to this subchapter must  
20 include a notice informing the restrained individual:

21 1. Prohibition regarding firearms. That the restrained individual is prohibited  
22 from purchasing, possessing or controlling any firearm or attempting to purchase, possess  
23 or control any firearm;

24 2. Surrender of firearms. That the restrained individual is required to surrender all  
25 firearms owned, possessed or controlled by that restrained individual to a law  
26 enforcement agency or law enforcement officer;

27 3. Duration of order. Of the duration of the extended extreme risk protection order;

28 4. Right to motion for dissolution. That the restrained individual has the right to  
29 file one motion for dissolution during the duration of the extended extreme risk protection  
30 order; and

31 5. Right to counsel. That the restrained individual has the right to counsel,  
32 including the right, if indigent, to be appointed counsel.

33 §423. Effect of extended extreme risk protection order; surrender of firearms

34 1. Effect. An extended extreme risk protection order prohibits a restrained  
35 individual from purchasing, possessing or controlling or attempting to purchase, possess  
36 or control any firearm.

1           **2. Search warrant.** Following the issuance of an extended extreme risk protection  
2 order pursuant to this subchapter, the court shall issue a search warrant authorizing a law  
3 enforcement officer to search for and seize any firearms if the court finds there is  
4 probable cause to believe the restrained individual owns, possesses or controls any  
5 firearms. This subsection does not authorize a law enforcement officer to perform a  
6 warrantless search or seizure if a warrant would otherwise be required.

7           **3. Surrender of firearm.** A restrained individual subject to an extended extreme  
8 risk protection order shall surrender all firearms that restrained individual owns,  
9 possesses or controls in a safe manner to the control of a law enforcement agency. A  
10 firearm not surrendered to a law enforcement officer at the time of service of the  
11 temporary extreme risk protection order pursuant to section 414 or removed pursuant to a  
12 search warrant must be surrendered to a law enforcement agency within 24 hours of  
13 issuance of an extended extreme risk protection order.

14           **§424. Term of extended orders and renewal**

15           An extended extreme risk protection order expires one year from the date the order is  
16 issued. Within 45 days prior to the expiration of an extended extreme risk protection  
17 order, the petitioner may request that the court renew the order. The petitioner has the  
18 burden of proving that the restrained individual continues to pose a danger of causing  
19 bodily injury to the restrained individual or others. If, after a hearing, the court finds by  
20 clear and convincing evidence that the restrained individual continues to pose a danger of  
21 causing bodily injury to the restrained individual or others, then the court shall renew the  
22 extended extreme risk protection order for one year from the date the court orders the  
23 renewal. Pursuant to subchapter 4, the restrained individual may file a motion requesting  
24 a hearing to dissolve the order once within the term of the extended extreme risk  
25 protection order.

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

27           Following the issuance of an extended extreme risk protection order by a court  
28 pursuant to this subchapter, the court shall order a law enforcement officer to serve the  
29 extended extreme risk protection order. The law enforcement officer shall:

30           **1. Serve order.** Serve the extended extreme risk 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 extended extreme risk  
34 protection order and an inventory of any firearms surrendered at the time of the service of  
35 the extended extreme risk protection order, any firearms surrendered by the restrained  
36 individual following service of the extended extreme risk protection order and any  
37 firearms seized during the execution of a search warrant issued pursuant to section 423,  
38 subsection 2 as soon as practicable after the surrender or seizure of the firearms; and

39           **3. Database.** Enter the record of the extended extreme risk protection order into the  
40 database for protection orders maintained by the Department of Public Safety.



1 If a seized or surrendered firearm remains unclaimed 6 months after the expiration or  
2 dissolution of an extreme risk protection order, the law enforcement agency may dispose  
3 of the unclaimed firearm in accordance with Title 25, section 3503-A.

4 **3. Law enforcement agency duties; liability.** The duties and liability of a law  
5 enforcement agency with respect to the safe handling and storage of firearms surrendered  
6 or seized pursuant to this chapter are governed by Title 25, section 2804-C, subsection  
7 2-C.

8 **4. Return to another claimant.** If a person other than a restrained individual claims  
9 title to a firearm surrendered or seized pursuant to this chapter and the person is  
10 determined by the law enforcement agency that has custody of the firearm to be the  
11 lawful owner of the firearm, the law enforcement agency shall return the firearm to that  
12 person only after determining, through a background check, that that person is not  
13 prohibited from possessing firearms under state or federal law. A person seeking the  
14 return of a firearm under this subsection shall attest in writing that a firearm returned to  
15 that person will be securely stored in a manner that ensures that the firearm cannot be  
16 accessed by the restrained individual.

17 **§433. Offense**

18 Possession of a firearm by a restrained individual is a Class D crime when the  
19 restrained individual has prior actual notice, which may be notice by means other than  
20 service in hand, of the existence of an extreme risk protection order issued against that  
21 restrained individual.

22 **Sec. 2. 25 MRSA §2804-C, sub-§2-C,** as amended by PL 2013, c. 147, §30, is  
23 further amended to read:

24 **2-C. Receipt of firearms; training; procedure; liability.** The Maine Criminal  
25 Justice Academy shall provide training for municipal, county and state law enforcement  
26 officers regarding the proper handling, storage, safekeeping and return of firearms and  
27 firearm accessories received pursuant to a court order under Title 15, chapter 16, Title  
28 19-A, section 4006, subsection 2-A or Title 19-A, section 4007, subsection 1, paragraph  
29 A-1. Such training must include education concerning the prohibitions on the purchase or  
30 possession of a firearm when a protection order has been obtained and communication  
31 with parties to protection orders concerning such prohibitions.

32 In developing materials for training in domestic violence issues, the Maine Criminal  
33 Justice Academy may consult with a statewide organization involved in advocacy for  
34 victims of domestic violence and with an organization having statewide membership  
35 representing the interests of firearms owners.

36 A law enforcement officer who receives custody of a firearm pursuant to Title 15, chapter  
37 16, Title 19-A, section 4006, subsection 2-A or Title 19-A, section 4007, subsection 1,  
38 paragraph A-1 shall exercise reasonable care to avoid loss, damage or reduction in value  
39 of the firearm and may not permanently mark the firearm or fire the firearm unless there  
40 is reasonable suspicion that the firearm has been used in the commission of a crime. Any  
41 liability for damage or reduction in value to such a firearm is governed by Title 14,  
42 chapter 741.

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## SUMMARY

2 This bill creates an extreme risk protection order to authorize a court to order a  
3 person to surrender that person's firearms temporarily for 14 days or on an extended basis  
4 for 365 days when it has been proved that the person poses a danger of causing personal  
5 injury to that person or another person. The bill provides that:

6 1. A law enforcement officer, a law enforcement agency or a family or household  
7 member may file a petition for a temporary extreme risk protection order, which may be  
8 granted if the court finds probable cause exists to issue the order. The temporary extreme  
9 risk protection order expires in 14 days or when a hearing to determine whether to issue  
10 an extended extreme risk protection order is held, whichever occurs sooner. A temporary  
11 extreme risk protection order may be issued on an ex parte basis;

12 2. Whether or not the court issues a temporary extreme risk protection order, the  
13 court is required to hold a hearing within 14 days to determine whether the person poses a  
14 danger of causing personal injury to that person or another person. If the court, based on  
15 clear and convincing evidence, finds that an extended extreme risk protection order  
16 should be issued, the extended extreme risk protection order must be issued, and it  
17 expires 365 days after the issuance of the order unless extended after another hearing;

18 3. Following the issuance of a temporary or extended extreme risk protection order,  
19 the court is required to order law enforcement to serve the order and is required to issue a  
20 search warrant if the court finds probable cause that the person who is the subject of the  
21 order is in possession of a firearm;

22 4. A person who is the subject of a temporary or extended extreme risk protection  
23 order is required to surrender all firearms in the person's possession to a law enforcement  
24 officer or law enforcement agency. The firearms must be returned to the person at the  
25 expiration of the extreme risk protection order unless an extended extreme risk protection  
26 order is issued;

27 5. A person against whom an extended extreme risk protection order is issued may  
28 request that the order be dissolved and be granted a hearing once during the term of the  
29 extended extreme risk protection order; and

30 6. A person who possesses firearms in violation of an extreme risk protection order  
31 commits a Class D crime.