

Title 34-B: BEHAVIORAL AND DEVELOPMENTAL SERVICES

Chapter 3: MENTAL HEALTH

Subchapter 4: HOSPITALIZATION

Article 3: INVOLUNTARY HOSPITALIZATION

§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](#). [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

B. "Extended restrictions" means the continued threat-based restrictions imposed by the court pursuant to subsection 6, paragraph D. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

C. "Initial restrictions" means the immediate and temporary 14-day threat-based restrictions pursuant to subsection 4. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

D. "Judicial hearing" means a court hearing under subsection 6. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

E. "Law enforcement agency" has the same meaning as in [Title 25, section 3701, subsection 1](#). [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

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](#). [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

G. "Likelihood of foreseeable harm" means 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. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

H. "Medical practitioner" has the same meaning as in [section 3801, subsection 4-B](#). [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

I. "Prohibited person" means a person subject to [Title 15, section 393, subsection 1, paragraph E-1](#) or E-2. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

J. "Protective custody" means protective custody under [section 3862](#). [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

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K. "Restricted person" means a person taken into protective custody by a law enforcement officer who the officer has probable cause to believe possesses or controls or may acquire a dangerous weapon and who is found by a medical practitioner to present a likelihood of foreseeable harm. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

L. "Threat-based restriction" means a prohibition on a restricted person from purchasing, possessing or controlling or attempting to purchase, possess or control a dangerous weapon during the period of the restriction. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

[PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

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

A. Notwithstanding any provision of law to the contrary, the law enforcement officer shall provide to the medical practitioner the information that led to the protective custody including, but not limited to, the information that gave rise to the probable cause determination, the person's pertinent criminal history record information and other known history and recent or recurring actions and behaviors. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

B. The medical practitioner under paragraph A shall assess whether the person presents a likelihood of foreseeable harm. In assessing the person, a medical practitioner may consult with other medical professionals as the medical practitioner determines advisable. If the medical practitioner finds that the person can benefit from treatment and services, the medical practitioner shall refer the person to treatment and services. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

C. Notwithstanding any provision of law to the contrary, an assessment pursuant to this section may be performed at a health care facility but, when available and as appropriate, must be performed at an alternative location. If the assessment is provided at a health care facility, law enforcement shall, upon request of the facility and consistent with [section 3863, subsection 2-A](#), absent compelling circumstances, assist the facility with the security of the person awaiting the assessment under this section. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

D. A juvenile, as defined in [Title 15, section 3003, subsection 14](#), who is subject to this section may be accompanied at the assessment by a parent, guardian, grandparent, aunt or uncle or a sibling who has attained the age of 18, whose company is requested by the juvenile, who is timely available and whose accompaniment is practicable. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

E. A medical practitioner and any other medical or mental health professional consulted by the medical practitioner are not liable in a civil action brought by any person for any act performed in good faith in execution of the obligations imposed on medical practitioners by this section, including any decision regarding the affirmative or negative assessment of the likelihood of foreseeable harm. The immunity provided in this paragraph also applies to a principal if the medical practitioner or professional is acting as an agent or employee of the principal. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

[PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

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3. Notification by medical practitioner and judicial endorsement. A medical practitioner shall notify in writing the law enforcement officer or law enforcement agency that, based on the assessment under subsection 2, paragraph B, the person is found to present a likelihood of foreseeable harm. If so notified, the law enforcement officer or law enforcement agency shall as soon as practicable seek endorsement by a Superior Court Justice, District Court Judge, judge of probate or justice of the peace of the medical practitioner's assessment and law enforcement's declarations that the person was taken into protective custody and that the law enforcement officer has probable cause that the person possesses, controls or may acquire a dangerous weapon. The judge or justice shall promptly transmit to the law enforcement officer or agency the decision to endorse or not endorse. A decision transmitted electronically has the same legal effect and validity as a signed original. An endorsement must authorize law enforcement to execute the authority in subsection 4. This section may not be construed to prevent law enforcement from accepting a voluntary surrender of dangerous weapons.

[PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

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

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

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

(2) Shall immediately and temporarily surrender any weapons possessed, controlled or acquired by the restricted person to a law enforcement officer who has authority in the jurisdiction in which the weapons are located pending the outcome of a judicial hearing; and

(3) Has a right to a judicial hearing within 14 days of notice under paragraph B; and [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

B. A law enforcement officer shall, as soon as practicable, but no later than 24 hours after the judicial endorsement:

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

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

(b) Is required to immediately and temporarily surrender any weapons possessed, controlled or acquired by the restricted person to a law enforcement officer who has authority in the jurisdiction in which the weapons are located pending the outcome of a judicial hearing; and

(c) Has a right to a judicial hearing within 14 days of the notice under this paragraph;

(2) Notify the contact person, if any, disclosed by the restricted person to the medical practitioner and the district attorney in the district of the restricted person's residence of the person's restricted status; and

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(3) Report the person's restricted status to the Department of Public Safety. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

[PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

5. Temporary surrender to law enforcement. A law enforcement agency may store, or make arrangements with another law enforcement agency or federally licensed firearms dealer to store, and care for the weapons surrendered by a restricted person in the manner provided in subsection 7. A restricted person who makes all practical, immediate efforts to comply with a surrender notice under subsection 4 is not subject to arrest or prosecution as a prohibited person under [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.

[PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

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

A. Within 5 days of the date of the notice given to a restricted person under subsection 4, paragraph B, the district attorney in the district of the restricted person's residence shall file a petition for judicial review of the initial restrictions by the district court. The district attorney shall provide to the restricted person written notice of the petition and hearing at least 7 days prior to the hearing. The restricted person has the right to be represented by counsel at the hearing, and the court may appoint counsel for an indigent party. Upon a showing of good cause, the court may extend the time to hold the hearing. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

B. Within 14 days of the notice given under subsection 4, the court shall hold a hearing to determine whether to dissolve or extend the initial restrictions. In the hearing determining whether to dissolve or extend the initial restrictions, the district attorney has the burden to prove by clear and convincing evidence that the restricted person presents a likelihood of foreseeable harm. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

C. In determining whether there are grounds to extend the initial restrictions, the court shall consider all relevant evidence, including, but not limited to, recent threats or acts of violence by the restricted person directed toward other persons; recent threats or acts of violence by the restricted person directed toward the restricted person; recent acts of unlawful abuse of animals by the restricted person; the reckless use or threatening display of a dangerous weapon by the restricted person; a history of the use, attempted use or threatened use of physical force by the restricted person against other persons; a record of prior custodial events or restrictions under this section; prior involuntary confinement of the restricted person in a hospital for persons with psychiatric disabilities; prior protection from abuse and protection from harassment orders against the restricted person or violations regarding protection from abuse or protection from harassment by the restricted person; evidence of stalking behavior, severe obsession or sexual violence by the restricted person; the illegal use of controlled substances by the restricted person; and evidence of alcohol or drug abuse by the restricted person. The court shall also consider whether the restricted person is receiving treatment responsive to that person's mental health or substance use needs. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

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D. This paragraph governs court orders.

(1) If the court finds after hearing that there is not clear and convincing evidence to continue or extend the initial restrictions, the court shall dissolve the initial restrictions and order the return of any weapons surrendered or seized. The court shall direct the Department of Public Safety to remove the record of restrictions from the department's pertinent database when developed by the department.

(2) If the court finds after hearing that there is clear and convincing evidence to continue or extend the initial restrictions, the court shall inform the restricted person that the restricted person is prohibited for up to one year from purchasing, possessing or controlling any dangerous weapon or attempting to purchase, possess or control any dangerous weapon. The court shall further order the person to immediately surrender dangerous weapons possessed or controlled by that person to a law enforcement officer and notify the Department of Public Safety for entry in the pertinent database when developed by the department.

(3) Extended restrictions imposed under this paragraph expire according to the terms of the court's order. The court shall schedule a hearing within 45 days prior to the expiration of the order to determine if the order should be extended. The district attorney has the burden of proving that the restricted person continues to pose a likelihood of foreseeable harm. If, after a hearing, the court finds by clear and convincing evidence that the restricted person continues to pose a likelihood of foreseeable harm, the court shall renew the extended restrictions for up to one year. If the court does not so find, the court shall deny the petition and order the return of any weapons surrendered or seized. Upon motion by the State, the court may for cause shown order that the restricted person be examined for assessment of whether the restricted person continues to pose a likelihood of foreseeable harm. The fees or expenses for an assessment pursuant to this subparagraph may be paid from the Extradition and Prosecution Expenses Account established by [Title 15, section 224-A](#).

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

(5) A court shall electronically update or transmit to the Department of Public Safety, Bureau of State Police an abstract of the order issued by the court pursuant to this section that includes a prohibition on the possession of a dangerous weapon. The abstract must include the name, date of birth and gender of the person who is the subject of the order; the court's order and the expiration date of that order; and a notation that the person has been notified by the court.

The abstract required by this subparagraph is confidential and is not a public record as defined in [Title 1, chapter 13](#); however, the information contained in the abstract or a copy of the abstract may be provided by the Department of Public Safety to a criminal justice agency for 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. The Department of Public Safety shall, when the pertinent database is developed, request that the Federal Bureau of Investigation ensure that, immediately after the order expires, the National Instant Criminal Background Check System no longer reflects that expired order as a ground for prohibiting the subject of the order from possessing or acquiring a firearm. For the purposes of this subsection, "criminal justice agency" means a federal, state, tribal, district, county or local government agency or any subunit of those

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entities 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, as is any equivalent agency at any level of Canadian government.

(6) Nothing in this subsection may be construed to prevent the restricted person, district attorney and court from accepting a court-ordered disposition to which each agrees. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

[PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

7. Weapons storage and return. A law enforcement agency may store, or make arrangements with another law enforcement agency or federally licensed firearms dealer to store, any weapon surrendered to or seized by law enforcement under this section for as long as the threat-based restrictions are in effect. The duties and liability of a law enforcement agency with respect to handling and storage of a weapon surrendered or seized are governed by [Title 25, section 2804-C, subsection 2-C](#). A weapon surrendered to or seized by a law enforcement agency must be returned to the restricted person when the threat-based restrictions expire. If a seized or surrendered weapon remains unclaimed for 6 months after the expiration or dissolution of threat-based restrictions, the law enforcement agency may dispose of the weapon consistent with [Title 25, section 3503-A](#).

[PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

8. Offense. Possession of a dangerous weapon by a restricted person is a Class D crime.

Title 34-B: BEHAVIORAL AND DEVELOPMENTAL SERVICES

Chapter 3: MENTAL HEALTH

Subchapter 4: HOSPITALIZATION

Article 1: GENERAL PROVISIONS

§3801. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1983, c. 459, §7 (NEW).]

4. Likelihood of serious harm.

[PL 2009, c. 651, §3 (RP).]

4-A. Likelihood of serious harm. "Likelihood of serious harm" means:

- A. A substantial risk of physical harm to the person as manifested by recent threats of, or attempts at, suicide or serious self-inflicted harm; [PL 2009, c. 651, §4 (NEW).]
- B. A substantial risk of physical harm to other persons as manifested by recent homicidal or violent behavior or by recent conduct placing others in reasonable fear of serious physical harm; [PL 2009, c. 651, §4 (NEW).]
- C. A reasonable certainty that the person will suffer severe physical or mental harm as manifested by recent behavior demonstrating an inability to avoid risk or to protect the person adequately from impairment or injury; or [PL 2009, c. 651, §4 (NEW).]
- D. For the purposes of [section 3873-A](#), in view of the person's treatment history, current behavior and inability to make an informed decision, a reasonable likelihood that the person's mental health will deteriorate and that the person will in the foreseeable future pose a likelihood of serious harm as defined in [paragraphs A, B or C](#). [PL 2009, c. 651, §4 (NEW).]

Restricting Access to Dangerous Weapons Guide

