



Testimony in Opposition to LD 2283: An Act to Enact the Crisis Intervention Order Act to Protect the Safety of the Public

Senator Carney, Representative Moonen, and the distinguished members of the Committee on Judiciary, my name is Harris Van Pate and I serve as a policy analyst at Maine Policy Institute. Maine Policy is a non-profit, nonpartisan free market think tank that works to expand individual liberty and economic freedom in Maine. Thank you for the opportunity to testify **in opposition to LD 2283**.

I am certain that this bill was proposed with the best of intentions. In the wake of the Lewiston shooting, policymakers are looking for ways to ensure such a tragedy never happens again in our state. However, this bill would violate four different constitutional rights of Maine people: the right to bear arms, the right to due process, the right to face one's accusers, and the right against unreasonable seizure of property.

Strict red flag laws like the one before you in LD 2283 don't comply with the language of the Maine Constitution, nor our state's culture. Red flag laws are dangerous because they allow courts to deprive people of their right to bear arms as secured by the Maine Constitution and the United States Constitution.

Maine's Constitution states that the right to bear arms "shall never be questioned." Of the seven states with this language, only Colorado has a red flag law and their constitution severely limits the purposes for which the right to bear arms exists.¹ No other state which has a blanket constitutional protection of gun rights like Maine has a red flag law, and that is because red flag laws violate these protections.

The importance of gun rights should not be ignored in a state as rural as Maine, but just as relevant here are due process rights. Under this bill's emergency hearing section, someone can initiate a one-sided court proceeding without the person whose rights are on trial being given legal defense.

The Sixth and Fourteenth Amendments of the Bill of Rights guarantee the due process of law² and the right to face one's accusers. Our courts have interpreted these to combine into a right to notice of proceedings³ and to defend oneself in court.⁴ When this

¹ Colorado Constitution Art. II, § 13 "The right of no person to keep and bear arms in **defense of his home, person and property, or in aid of the civil power when thereto legally summoned**, shall be called in question; but nothing herein contained shall be construed to justify the practice of carrying concealed weapons." (emphasis added)

² <https://supreme.justia.com/cases-by-topic/due-process/>

³ *Mattox v. United States*, 156 U.S. 237 (1895).

⁴ *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).



bill's emergency orders would be considered by a court, both of these rights would be violated, as it would only be after the court makes a ruling and one's guns are taken away that notice is given and defense against these accusations could begin.

Another problematic provision within LD 2283 is that it would have courts consider these accusations under a “preponderance of the evidence” standard, similar to those in civil lawsuits.⁵ This is highly inappropriate, as the suspension of constitutional rights, when necessary, should be treated like a criminal matter rather than civil matter, giving respect and acknowledgement to this individual right which our founders felt was as central to freedom as speech and religion.

When the preponderance of evidence standard is applied, the court is required to consider, like in a lawsuit, whether something is marginally more likely to be true than not. That means that any level of ambiguity about the risk someone poses would make a court consider suspending that person's constitutional rights. How would one defend against this ambiguity if they aren't allowed to defend themselves in court?

Also worrying is the complete legal immunity this bill would give to law enforcement in possession of seized firearms. No current red flag law in the nation gives immunity to law enforcement in possession of people's private property. If this bill were to pass as written, it would potentially violate the Fifth Amendment's takings clause. As LD 2283's procedure section reads, law enforcement would be allowed to deal damage and even intentionally destroy someone's firearms seized under this law without any legal consequences.

When the government takes someone's land through eminent domain to build a road, they must under the Bill of Rights compensate that landowner.⁶ The same principle applies here. If LD 2283 is passed, it may be entirely stricken by a federal court for violating the Constitution's Fifth Amendment for allowing police to damage people's private property without just compensation.

Please **deem LD 2283 “Ought Not To Pass”** to protect Mainers' rights to bear arms, due process, face one's accuser, and private property. Thank you for your time and consideration.

⁵ https://www.law.cornell.edu/wex/preponderance_of_the_evidence

⁶ https://constitution.congress.gov/browse/essay/amdt5-9-1/ALDE_00013280/