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Testimony in Support of LD 2283, "An Act to Enact the Crisis Intervention Order Act to Protect the Safety of the Public"

Senator Carney, Representative Moonen, and distinguished members of the Committee on Judiciary, my name is Laura Blaisdell, MD, MPH. I am a resident of South Portland, a primary care pediatrician in Portland, and I serve as the President of the Maine Chapter of the American Academy of Pediatrics. I am here to express our support for LD 2283, "An Act to Enact the Crisis Intervention Order Act to Protect the Safety of the Public."

The Maine Chapter of the AAP is a professional organization representing over 275 pediatricians and pediatric subspecialists working together to further our mission *to improve the lives of children and adolescents in Maine*. Because gun violence is now the leading cause of death for American children, adolescents, and young adults, addressing it is a priority for the AAP.

Public health recommendations from the American Academy of Pediatrics, the American Medical Association, the American College of Surgeons, the American Psychiatric Association, and the American Public Health Association (among many others), support the creation of a true extreme risk protection order to supplement the progress that has already been made with Maine's yellow flag law.

Maine's yellow flag law is a thoughtful, innovative approach to ensure our law enforcement officers have a pathway to temporarily remove weapons from an individual found to be experiencing an acute mental health crisis. It is unique and the only such law in the country. Over the years since the law was enacted, we have learned a great deal about how the law has been understood and utilized. We have identified shortcomings based on law enforcement's limited understanding of the process prior to the Lewiston tragedy. The significant rise in the use of the law since that time has highlighted the fact that it serves an important protective function in our state.

However, it has been the longstanding recommendation of nearly every major medical and public health organization in the country that a true extreme risk protection order is the desired approach to address preventable gun violence. Below are some factors outlining why such a process would be helpful to run in parallel to Maine's yellow flag law.

Inconsistency of Law Enforcement's Assessment of Mental Illness

The protective custody statute states "*If a law enforcement officer has probable cause to believe that a person may be mentally ill and that due to that condition the person poses a likelihood of serious harm as defined in section 3801, subsection 4-A, paragraph A, B or C, or if a law enforcement officer knows that a person has an advance health care directive authorizing mental health treatment and the officer has probable cause to believe that the person lacks capacity, the law enforcement officer...may take the person into protective custody*".

The determination of the presence of mental illness, as well as the definition of "likelihood of serious harm", and the officers' interpretation of that likelihood, are some of the more concerning weak points of the yellow flag process. If a law enforcement officer assesses that there is a likelihood of serious harm, then they can obtain a medical practitioner evaluation to assess whether the person presents a *likelihood of foreseeable harm*.

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In discussions with staff at Sweetser, who have been contracted to conduct these assessments, they have found a likelihood of foreseeable harm in over 95% of their assessments.

This high number suggests one of two possibilities – either the medical practitioners are understandably risk-averse and are reporting a likelihood of foreseeable harm to avoid even the potential for harm, or the initial assessment by law enforcement officers, who are not trained to diagnose mental illness, are under-appreciating the likelihood of serious harm (or the presence of mental illness). If it's the former, then the process is in fact not providing due process to these individuals, but just creating a bureaucratic delay before the ultimate surrender of weapons. If the latter, we are leaving weapons in the hands of individuals in risky situations.

Extreme Risk Protection Order's Broader Applicability

An extreme risk protection order would not be limited to mental health crises alone. They can be invoked in situations where there is credible evidence of various risks, including domestic violence, substance abuse, or other factors that may contribute to an increased likelihood of violence. This reflects the reality that 1) a mental illness or mental health crisis is not a requirement for an act of gun violence, 2) behaviors are a more important predictor of violence than a mental health diagnosis, and 3) most people who are mentally ill are not more likely to commit acts of violence. In fact, they are more likely to be victims of violence themselves. Only 3-5% of violent acts can be attributed to an individual's mental illness. A study of six states with additional protective order procedures found that 10% of all orders were filed in response to threats of mass violence, preventing more than 650 potential multiple victim/mass shooting incidents.¹

Intervention Before the Need for Protective Custody

An extreme risk protection order would allow for proactive measures before a situation escalates to a point where emergency custody or involuntary commitment becomes necessary. This early intervention can be critical in preventing potential harm and addressing the underlying issues contributing to the risk.

Protection of Individual Liberty & Ensuring Due Process

Protective custody is considered a greater infringement on an individual's liberty than the execution of an extreme risk protection order. Temporarily removing someone's weapons is a less intrusive approach than taking an individual into custody. An extreme risk protection order would involve judicial review, ensuring due process rights for the individuals involved. This contrasts with emergency custody, which may involve an immediate response without the same level of judicial oversight.

Debunking the "Disgruntled Ex" Myth

This is often brought up as a critique of Extreme Risk Protection Orders – that a former partner or someone with a personal vendetta could misuse the law to make false claims and have someone's firearms temporarily removed. The same argument has been made about domestic violence legislation. Fortunately, due process would be ensured via judicial scrutiny of the evidence before the removal of firearms. There could also be safeguards built into these measures to mitigate the risk of abuse, such as allowing the individual in question the opportunity to present their case, contest the order, and ensure a fair and impartial review. The law could also include legal consequences for false reports, serving as a deterrent and providing a measure of accountability to discourage misuse of the system. There is no evidence of wide-scale abuse of ERPO processes, and in two studies on the topic, all unqualified petitions were dismissed by the presiding judge before any order was decided and firearms were removed.^{2,3}



Families know their loved ones best

Pediatricians are trained to trust a parent’s intuition. A parent’s expression of concern for their child is often built into our clinical algorithms because we know that parents and loved ones recognize patterns and changes in behavior before even a trained clinician does. Outside of clinical settings, we know that family members are often the first people to notice that their loved one needs help. We need to ensure that a speedy process is available to family members that makes it easier for them to get dangerous weapons away from someone they love who is a threat to themselves or others.

We all experienced a collective trauma when our state was rocked by the worst mass shooting in its history. We genuinely hope that the leaders in our state can turn this tragedy into a moment of cooperation and pass this much-needed legislation. Our children’s lives depend on it.

Sincerely,

Laura Blaisdell, MD, MPH, FAAP
President, Maine Chapter of the American Academy of Pediatrics

¹ April M. Zeoli, et al., “Extreme risk protection orders in response to threats of multiple victim/mass shooting in six U.S. states: A descriptive study,” *Preventive Medicine* 165, part A (2022): 107304.

² <https://injepijournal.biomedcentral.com/articles/10.1186/s40621-021-00353-7>

³ <https://deepblue.lib.umich.edu/bitstream/handle/2027.42/168353/capp12544.pdf?sequence=2>