

Pinette, Susan

From: Keim, Lisa
Sent: Tuesday, April 03, 2018 10:35 AM
To: Pinette, Susan
Subject: FW: NRA Memo of Opposition to LD 1884

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From: State and Local [state&local@nrahq.org]
Sent: Tuesday, April 03, 2018 10:08 AM
To: Keim, Lisa; Whittemore, Rodney; Hill, Dawn; Moonen, Matthew; McCreight, Joyce; Babbidge, Christopher; Bailey, Donna; Cardone, Barbara; GalgayReckitt, Lois; Guerin, Stacey; Sherman, Roger; Bradstreet, Dick; Johansen, Chris
Subject: NRA Memo of Opposition to LD 1884

For a pdf copy of this memo, please [click here](#).

MEMORANDUM OF OPPOSITION

DATE: April 3, 2017
TO: Honorable Members of the Joint Committee on Judiciary
FROM: John Hohenwarter
State Liaison
RE: Legislative Document 1884

On behalf of the National Rifle Association of America, this states our opposition to Legislative Document 1884, introduced by state Senator Mark Dion (D-SD28). This legislation would create two new orders, a “temporary order” and an “extended” order, that restrain a “high risk” person from possession, acquisition or custody and control of firearms. Clearly, this type of proposal is disconcerting because it allows for the infringement of Second Amendment and property rights based on third-party allegations, including allegations of conduct that is constitutionally protected.

Maine's mental health procedures statute already allows for the apprehension and detention of persons – not just weapons – who meet the standard of a risk to self or others. First, under 34-B M.R.S.A. § 3862 on “protective custody,” a law enforcement officer who has probable cause to believe that a person may be mentally ill and that, due to that condition the person presents a “threat of imminent and substantial physical harm” to self or others, the officer may take the person into protective custody for an examination by a medical practitioner. An officer is expressly allowed to formulate probable cause by relying “upon information provided by a 3rd-party informant” if the third party’s “recent personal observations of or conversations with a person” indicate that the person “may be mentally ill and that due to that condition the person presents a threat of imminent and substantial physical harm to that person or to other persons.” This detention may last up to 18 hours pending a medical examination and decision on whether the person poses an imminent threat.

Under a different section, 34-B M.R.S.A. § 3863, a person may be admitted to a psychiatric hospital for an emergency evaluation based on an application by law enforcement, a health professional, or “any person” who believes that the person is mentally ill and who, because of the illness, “poses a likelihood of serious harm.” The application must be accompanied by a certificate signed by a medical practitioner that confirms the risk, although this may be based on either the examiner’s personal observation or “on history and information from other sources considered reliable by the examiner, including, but not limited to, family members.” This allows temporary detention in the psychiatric hospital for evaluation and possible treatment, and opens the way to court proceedings to have a person involuntarily committed under 34-B M.R.S.A. § 3864.

Unlike these existing procedures and contrary to what these “community protection orders” purport to do, nothing in LD 1884 is tied to a person being apprehended, evaluated, or treated for the underlying mental condition or illness, which perpetuates the idea that a person who is too dangerous to be trusted with a gun because of allegations of a significant or substantial risk of serious bodily injury or death, is fine to be left alone once firearms are taken away. Furthermore, nothing in this bill even suggests that a court has the power or obligation to order a mental health evaluation once an order is granted, or in lieu of an order.

There are other concerns with the legislation and its implementation. For example, there are no provisions in the legislation to require the removal of any dangerous items that are not firearms (drugs, knives, cars), which undermines the public safety justification for the bill. Drugs pose a significant risk: sources indicate that Maine overdose fatalities “soared by 40 percent” in 2016 to 378, the fifth straight year that such fatalities continued to climb. Interestingly, the Centers for Disease Control (CDC) reports that firearm mortality in Maine for the same year was less than a third of that, at 123 deaths. This far broader problem is unfortunately not addressed in this measure.

The bill imposes a possession and acquisition ban even for a temporary order, which may be an ex parte order issued on one-sided allegations without any notice or right to an opportunity to be heard to the affected person. The penalty for a violation of an order under the bill includes a mandatory two-year firearm prohibition, even though a conviction is not otherwise a firearm-disqualifying one under state or federal law. In contrast, the bill has no penalty for a person who misuses the procedure to get an order. This bill mandates that a petitioner is entitled to use public resources in seeking an order (the time and expertise of a prosecutor), while a respondent has no similar entitlement to assistance in opposing an order. A respondent faces the possibility that, as soon as an order expires, a law enforcement agency is authorized to “dispose of an unclaimed firearm in accordance with Title 25, section 3503-A” (sale at public auction after six months of the law enforcement agency’s obtaining possession, based on § 3503).

In reality, the proponents of this bill want you to believe that individuals who are not dangerous enough to arrest, prosecute, commit to a mental institution, or subject to a domestic violence restraining order are still too dangerous to exercise one right and one right only, the right to “Keep and Bear Arms.” This is a proposition that will not save lives or improve public safety. It will, however, lead to people losing their rights without justification.

On behalf of the membership of the National Rifle Association in Maine, I respectfully ask that you oppose this misguided legislation and consider other alternatives for protecting the public from “high risk” individuals.

Please feel free to contact me at 703-267-1208 if you have additional questions or concerns.

Thank you for your time and consideration of this matter.