



CUMBERLAND COUNTY SHERIFF'S OFFICE

- Kevin J. Joyce
SHERIFF
- Brian R. Pellerin
CHIEF DEPUTY

36 County Way, Portland, Maine 04102

Phone (207)774-1444 – fax (207)828-2373

LD 2224, An Act to Strengthen Public Safety by Improving Maine's Firearm Laws and Mental Health System

Good morning Senator Carney, Representative Moonen and distinguished members of the Judiciary committee.

My Name is Kevin Joyce and I am the Sheriff of Cumberland County. I am writing in support of LD 2224, An Act to Strengthen Public Safety by Improving Maine's Firearm Laws and Mental Health System with some conditions.

First let me provide you with an example of the ineffectiveness of the current yellow flag law.

The Cumberland County Sheriff's Office was called by a family member concerned that their brother was mentally ill and had access to numerous firearms. The individual was described as:

- Former military with diagnosed PTSD.
- Had been mentally decompensating since the Lewiston shooting in October 2023.
- Had recently committed aggravated assault against a co-worker at work without out provocation. When the police went to the individual's place of employment, the individual was sitting quietly in a dark room with a firearm in his lap.
- The subject was not taking his mental health medications, but self-medicating with alcohol and marijuana.
- The individual was seen by relatives prowling around their residence at night wearing body armor, a military helmet and carrying firearms. He also gave a relative a gun suggesting that the gun was for "when they come".
- In the daylight, the individual continually walked up and down his driveway wearing a military helmet, body armor and carrying an AR-15 rifle with a suppressor.
- The individual parked his vehicle blocking his driveway and told relatives that his truck had been "bugged" by the government. He refused to drive his truck. He also claimed to have had "bugging paraphernalia planted in his ears by the government.

The Cumberland County Sheriff's Office attempted to contact the individual via telephone on numerous occasions over 3 days as approaching the residence was considered to be a high risk for the deputies assigned to check on his well-being. The residence sat on a hill and walking up to the house from any direction would have placed deputies in danger.

We had deputies doing surveillance on the individual's residence from a safe spot and out of sight for 72+/- hours, 24 hours per day hoping that the individual would come out of his residence and attempt to drive away. This was done to make sure that the individual didn't go somewhere create a violent encounter. We had hoped to contact the individual in an area free from a possible ambush and away from a large number of firearms. Over 72 hours, we attempted to find



a way to contact the individual. On a rare occasion, the individual would answer his telephone but not say anything and then hang up. Other times the individual shut his phone off. We also, placed a couple of deputies behind cover at the end of the individual's driveway and attempted to contact the individual by loud speaker. We attempted for 20+/- minutes, but the individual didn't respond. In fact, in addition to utilizing the public address system in the cruiser, the deputies also attempted to call the individual.

We had routine contact with an individual from Spurwink who does Yellow Flag evaluations in Portland. When we provided all of the aforementioned facts, we were told that if we could make physical contact with the individual, he was clearly a yellow flag candidate. BUT, we had to have physical contact with the individual.

We also were able to contact the individual's mental health provider who initiated the first part of the blue paper process. Upon getting that we wrote a search warrant affidavit in hopes of gaining justification to forcibly enter the individual's residence to make physical contact with him. When our investigators met with the judge who reviewed our affidavit, he had advised them that he had no legal authority to authorize a search warrant for a Yellow Flag case.

After 72 hours of dedicated efforts to take this individual into custody, and numerous efforts to have this individual come out of his residence and speak with us, we realized that we were caught between this individual's constitutional rights and the yellow flag statute. We could not do anymore.

We had to leave a mentally ill individual at his residence with several firearms and hope that he didn't leave his residence and do something tragic. We developed a plan and had an individual call us if the individual left his residence. For a week after we left his residence, we had a criminal investigator contact the individual working with us twice a day to see what was occurring at the residence.

On the 7th day after we left this individual's residence and 10 days after being called by this individual's relative, we received a call that the individual had left his residence. Thankfully we had a deputy in the area and we were able to take the individual into custody. When the individual was located, he was carrying a firearm, but was cooperative.

This ended a very stressful week for my staff who were hoping that the individual would not come out of his residence and do something tragic to others.

The most concerning issue that I have regarding the current yellow flag law is that currently there is no provision for a law enforcement agency to act on an individual who does not communicate with the police. The law enforcement agency may have all kinds of probable cause to take someone into protective custody for a yellow flag action, but they MUST first have physical contact with the individual.

When I reviewed LD 2224 one of my concerns is whether or not the bill will allow for a search warrant to be issued if we need one?

On page 4, the Protective Custody warrant is a good step, however, my question is this; does the Protective Custody warrant have the same authority as an arrest warrant under U.S Supreme Court- Payton v, New York, 445 U.S. 573 (1980) which states among other things..."an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe that there is a suspect



within"? If so, then will we also be able to go into the individual's residence without necessarily having a search warrant? If this individual is wanted on a Protective Custody warrant, but is in a friend's residence, will we be able to get a corresponding search warrant on the Protective Custody warrant to enter the friend's residence? These are the question I pose.

Additionally, this bill specifically requires that a Justice of Superior Court or Judge of District Court review the affidavit and approve the warrant. In Cumberland County, the on-call person approving warrants after hours and on weekends is a Justice of the Peace (JOP). There is 128 hours of on-call time that a Yellow Flag issue could occur in and the only option may be a JOP? If I read that correctly, that simply won't work. We can't wait until the next business day to get before a judge or justice. We will have to act immediately before some tragedy occurs.

As for the rest of the elements of this bill not specifically related to the Yellow Flag law, some of the other aspects make sense, especially the mental health receiving centers which seems to be working well in Portland. While anecdotally, the center called the "living room" has been helpful, but it doesn't seem to be enough considering the number of individuals needing services. Any additional mental health receiving centers would be helpful, especially throughout some of the areas of Maine who need assistance as well.

Holding individuals accountable for recklessly selling firearms to individuals who shouldn't have firearm due to mental illness makes sense, but may be difficult to prove.

You see this bill and others is not a panacea, but it will likely keep some people from acquiring a firearm who really shouldn't have one.

With the exception of section 2, which in my opinion, should be considered as another bill (which as its own constitutional issues), I encourage the committee to vote ought to pass on the yellow flag law and the mental health receiving centers and strike section 2.

Thank you,



Kevin J. Joyce, Sheriff
Cumberland County

