



## Testimony of the Maine Hospital Association

### In Support of

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

**March 7, 2024**

Please accept these comments on behalf of the Maine Hospital Association in support of many of the proposals in LD 2224.

There is one change with which we have concerns and one additional provision we would like to add.

While we support many of the changes, I am confining my comments to the changes to the so-called “yellow flag” aspects of the bill (sections 8-18).

**Preliminary Statement.** We would strongly prefer Maine move to a “red flag” version of the extreme risk protection order process rather than the “yellow flag” version.

Hospitals want the state to have some process in order to protect the public. Whether yellow or red or any other color, this tool is important.

However, in the course of preventing a tragedy, we need to mitigate the risk that we incite another.

Telling a person that he is not suitable to possess a weapon is a provocative statement. It is reasonably foreseeable that someone who is not suitable to possess a weapon under the yellow flag standard may react poorly to being told that by a clinician. This process creates the risk of foreseeable retaliation. Mitigating that risk is our obligation. A red flag law eliminates that risk by eliminating the clinician’s role.

**1. Section 10, line 17 – Changing “must” to “may.”**

*Notwithstanding any provision of law to the contrary, an assessment pursuant to this section may be performed at a health care facility ~~but or~~, when available and as appropriate, ~~must~~ may be performed at an alternative location.*

We have some concerns with this proposed change. My understanding is that the amendment is intended to assist hospitals and we always appreciate that goal.

The original intent of that language was to have law enforcement conduct yellow flag assessments via telehealth outside the hospital facility and not transport all such individuals to the hospital for the assessment. If you recall, the yellow flag law was adopted before COVID and before we were all comfortable with Zoom and the like. There was some concern that law enforcement would bring all of these folks to the hospital because that had been the practice with other individuals who had been placed in protective custody through the years.

Our understanding is that the majority of cases are now telehealth and are being done while the individual is outside hospitals. That is very consistent with the intent in the law today. We are happy about that.

We simply don't want to lose the bias in the statute that cases occur outside of hospitals where possible. How best to express that bias is your decision. But we don't want to lose that original legislative intent that law enforcement should not utilize hospitals except when necessary for medical or technical reasons.

Again, we are pleased that in practice things are finally operating as we had originally asked and hoped.

**ADDITION: Serving Extreme Risk Protection Orders.**

Maine has a statute on how law enforcement serves certain orders, such as protection from abuse orders, to patients while they are hospitalized. That statute does not include weapons restriction orders pursuant to the yellow flag law. Sometimes, law enforcement may need to serve the order on the individual while the individual is still hospitalized. Our existing statute needs amendment to address yellow flag orders.

See attached.

Thank You.

**Addition:**

**22 MRSA §1727. Cooperation with law enforcement**

A hospital licensed under chapter 404 or 405 shall make a good faith effort to cooperate with law enforcement agencies as provided in this section.

**1. Service of protection from abuse order.** A law enforcement agency may request that a hospital provide access to a defendant who is receiving care in the hospital for the purpose of serving a protection from abuse order pursuant to Title 19-A, section 4107.

A. The hospital shall provide the law enforcement agency with an opportunity to serve the defendant personally with the order at a time the hospital determines is clinically appropriate with due consideration to the medical condition of the defendant.

B. A hospital may disclose that the defendant is a patient to facilitate service under this section regardless of patient consent.

**2. Service of Notice of Restricted Person Status.** A law enforcement agency may request that a hospital provide access to a person who is receiving care in the hospital for the purpose of notifying the person that that the person is a restricted person as defined in Title 34-B, section 3862-A.

A. The hospital shall provide the law enforcement agency with an opportunity to notify the person with the restricted person order at a time the hospital determines is clinically appropriate with due consideration to the medical condition of the person.

B. A hospital may disclose that the person is a patient to facilitate notice under this section regardless of patient consent.