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Testimony For:
L.D. 2283 - An Act to Enact the Crisis Intervention Order Act to Protect
the Safety of the Public

Good morning, Senator Carney, Rep. Moonen, and members of the Judiciary Committee.

My name is Margaret Groban. I live in South Portland. I recently retired after a 30+ year career as a federal prosecutor focusing on firearms and domestic violence and the intersection between the two. I served on Maine's Domestic Violence Homicide Review Panel. I currently am adjunct faculty at University of Maine School of Law where I co-teach a class on the Second Amendment and the Regulation of Firearms.

It is my extensive experience with firearm laws that leads me to submit comments on L.D. 2283. This proposed legislation presents an opportunity for this committee to improve the current "yellow" flag system in a way that provides the greatest chance for intervention when dangerous people have access to firearms. This improvement would best protect Mainers from both suicide and homicide. The proposed legislation allows law enforcement and/or close family members to petition courts directly to issue temporary firearm relinquishment orders when presented with sworn materials attesting to the "significant danger" of "severe harm" posed by an individual with access to firearms. This additional avenue respects both Second Amendment and Due Process rights and acknowledges the reality of Maine's under-resourced law enforcement and mental health professionals. The Committee heard testimony from Sgt. Coleen Adams of the Sanford Police Department detailing (1) the difficulty police have in assessing mental illness as required by the yellow flag law; and (2) the dangers and time commitments posed by requiring protective custody and a medical professional assessment. The streamlined system outlined in L.D. 2283 greatly strengthens the current statutory scheme. It would focus on a person's dangerous behavior and access to firearms - which is a better indicator of dangerousness than mental illness. "In light of the very high lifetime prevalence of the symptoms of mental illness among the U.S. population, formally diagnosed mental illness is not a very specific predictor of violence of any type, let alone targeted violence."¹

To be clear, the current system requires law enforcement to make a probable cause determination that a person may be "mentally ill" and that this condition presents a "likelihood of serious harm."² It is only then that law enforcement can take someone

¹ A Study of the Pre-Attack Behaviors of Active Shooters, P. 17 ("Stress is considered to be a well-established correlate of criminal behavior." P.15)
<file:///Users/apple/Downloads/pre-attack-behaviors-of-active-shooters-in-us-2000-2013.pdf>

into protective custody. Offering an additional avenue that focuses on dangerous behavior – and not mental illness – which can and is assessed by our judiciary every day of the week when setting bail or determining a sentence more closely addresses the danger posed by a person with access to firearm exhibiting harmful behavior, i.e:

- Recent acts or threats of violence towards self or others.
- History of threatening or dangerous behavior.
- History of, or current, risky alcohol or controlled substance use.
- Recent violation of a domestic violence protective order.
- Unlawful or reckless use, display, or brandishing of a firearm.
- Cruelty to animals.³

This streamlined approach addresses both harm to self and others and eliminates the need for protective custody – which can pose danger to law enforcement as well as the person – and also eliminates the need for an additional assessment by a medical professional since the determination is based on “tailored, individualized risk assessments, rather than regulating people’s access to firearms based on their membership in broad classes like felons or the mentally ill.”⁴ This is consistent with both the Second Amendment and Due Process guarantees.⁵

In addition, evidence-based policy shows that ERPOs (not Maine’s yellow flag law) prevent suicides. <https://publichealth.jhu.edu/sites/default/files/2023-02/research-on-extreme-risk-protection-orders.pdf>

For all these reasons, I respectfully request out to pass for L.D. 2283.

² <https://www.mainelegislature.org/legis/statutes/34-b/title34-Bsec3862.html>

³ <https://www.jud.ct.gov/Publications/JDPCL140.pdf>

⁴ Joseph Blocher & Jacob D. Charles, Firearms, Extreme Risk, and Legal Design: “Red Flag” Laws and Due Process. <https://virginialawreview.org/authors/joseph-blocher-jacob-d-charles/>, P. 1289.

⁵ Andrew Willinger and Shannon Frattaroli, Extreme Risk Protection Orders in the Post-bruen Age: Weighing Evidence, Scholarship, and Rights for a Promising Gun Violence Prevention Tool, 51 Fordham Urb. L.J. 157 (2023). “Under the Mathews [due process case] test, and when compared to procedural protections in similar statutes such as state domestic violence restraining order laws (and associated disarmament provisions), most, if not all, state ERPO statutes likely provide sufficient pre- and post-deprivation process.” <https://ir.lawnet.fordham.edu/ulj/vol51/iss1/5>