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LD 2283

An Act to Enact the Crisis Intervention Order Act to Protect the Safety of the Public  
Please oppose LD 2263.

This bill is fatally flawed in its concept, execution and drafting and should be “ought not to pass”.

Among the numerous and fatal flaws are these:

1. Though supposedly the intent is to help people avoid “temporary” problems there is no mechanism whereby someone affected by such an order gets any help. And despite what supporters say people intent on harm to others or suicides are “mentally ill” and need treatment. It is not like a temporary viral disease that passes. I’ve been around suicidal people for many years. Intensive initially and regular ongoing constant care is the only successful way forward especially since much of it is substance abuse dependent. For gun owners the mere existence of this law is likely to prevent individuals from seeking help. Improved access to care for persons with mental disorders will reduce the risk of suicide and violence involving firearms for persons with tendencies toward those behaviors and the State needs to focus first on providing settings where care can be obtained and the funding to make it available. 90% of the small numbers of gun deaths in Maine are suicides and this bill does exactly zero to address that issue. The idea that a person can simultaneously not meet the “medical determination” threshold of our existing “yellow flag” law and be a danger to themselves or others is just insane. But that’s what these supporters are suggesting.

2. Studies show that other States with these laws do not experience meaningful declines in suicides or homicides. The studies some others are quoting are equivocal and well out of date. And further a significant study of CA suicides (which has a 10 day waiting period for firearm purchase) shows that suicidal people don’t act in the “moment” they are often willing to wait significant periods of time to accomplish suicide via firearm. The most often quoted study of CT (done in 2017 so very dated) shows that at best the removal process drove 1/3 of the people to get help. That’s absolutely terrible. We need a series of actions that has close to 100% of the people who are subject to an order like this to get help. Not a single part of this bill deals with help.

3. Before depriving anyone of a constitutionally protected right you should have the right to confront the charges and defend yourself. The Courts have held in expedient circumstances that can be waived, but there is actually no need for that in the situations supporters describe. Many of the triggers to be able to file one of these are crimes already. Why not just arrest the person? Example: “The respondent has inflicted or attempted to inflict bodily harm on another person;” that’s normally considered assault under Maine law. Of the three criteria in the right circumstances they are already crimes. Arrest them and get them committed under existing law for evaluation. The idea that “MAY” is a sufficient standard is unacceptable.

4. The penalty for false reporting is far too light. If you are depriving someone of a Federal and State protected Constitutional right falsely you need to face the prospect that you will go to prison for a meaningful amount of time not some simple Class D crime. The history of domestic orders shows that a substantial number of them are false claims. And nobody gets charged since its not worth the time of our prosecution staff for such a low level crime.

5. The list of people who can report is way too broad. If you are a “former” anything your time and knowledge has passed. The idea that your former spouse from 20 years ago is a “loved one” as Rep. Cloutier suggests is unfathomable and wrong. If for some reason there is also a protection order in effect then you should be able to file regardless of your relationship status. But there is no way that this list is representative of the people who would have current knowledge of your mental situation, and its an open invitation for revenge and abuse. At a minimum you need to provide the court a detailed and provable relationship that is ongoing and current and

relevant to the acquisitions you are making.

6.If the police take custody of your firearms they should be responsible for safe and secure storage. The idea they are immune to damage claims is totally wrong. There is no possible reason for this exception. There is simply no other example of the government taking your private property and being immune from negligent actions of caring for it.

7.The standard of evidence is far too low. For this kind of constitutional rights deprivation it should be “beyond a reasonable doubt”.

8.The idea that that someone could file one of these because they have reasonable fear is ridiculous. I know certain people that merely suggesting you are carrying a firearm concealed legally puts them in apoplexy. In the context of firearms and this bill its meaning has been clouded by huge gap between those who have firearms for self defense and other lawful uses and those who despise and want to ban them. Its not a reliable measure in the context of taking away a constitutional right.

9.The idea that one could not give advance notice on service of an exparte order is the idea of an idiot who wants to get people killed. The world is filled with cases of the police descending on an accused (and ultimately innocent) person sometimes at the wrong address serving a no knock warrant who think that an invasion is happening and react appropriately to the situation. There is one just recently in the news.

10. The idea one could transmit any information about such an order by telephone is simply unacceptable from any standard of accountability and record keeping.

11. So you get served. Then you have to “immediately” surrender your firearms. Is the person serving you going to collect them right there? If you want to surrender them to an FFL how is that to happen “immediately”? This drafting is totally unworkable.

12.In what alternative universe should the respondent have any burden of proof to get the order removed? In this country we have the opposite. You are innocent till proven guilty. The petitioner needs to show up in court and present the case against you and you get the ability to defend yourself. That’s how justice actually works in this country. The order should expire automatically unless specific and verifiable evidence is presented to the Court.

13.We already have a huge body of law about being dangerous to someone in someone’s care. The idea that taking firearms away fixes or addresses such a situation is truly the concept of someone unfamiliar with such situations.

14.We have now substituting the judgment of judges (who by and large have no medical experience) for medical practioners about the medical situation of an individual. And in the context of this bill they are not and cannot be advised by any experts. Literally the same goes for law enforcement.