

Peggy McGehee
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Testimony in Support of L.D. 2283.

Good morning, Chair Carney, Chair Moonen and Members of the Judiciary Committee:

I am Peggy McGehee, a Falmouth resident, and an adjunct professor at the University of Maine School of Law. I speak personally today in support of L.D. 2283, to give families the right to go to court themselves for an emergency order to remove guns from their dangerous relative who is threatening to shoot themselves or others.

This bill directly addresses the observation made by the Governor's Commission investigating the Lewiston mass shooting, as stated in its March Interim Report¹ that, when the police made "*the decision to turn over the responsibility for removing Mr. Card's firearms to Mr. Card's family*" and "*closed the case,*" the family, as "*civilians,*" had "*neither the legal authority to begin the Yellow Flag process nor any legal authority to seize weapons.*"

This crisis intervention bill responds to the Commission's observation and will give families that right.

The bill protects gun owners' rights to due process. It requires any gun removal order to be served at the "*earliest possible time and take precedence over other summonses and orders,*" and guarantees a court hearing within 14 days, with an appointed attorney. This process is like the notice, 14 day hearing, with counsel, process required by the yellow flag law, which the Maine Supreme Judicial Court specifically upheld as meeting constitutional due process requirements.²

¹ <https://www.maine.gov/icl/sites/maine.gov/icl/files/2024-03/Commission%20Interim%20Report%203-15-24.pdf>

² *In re Weapons Restrictions of J.*, <https://www.courts.maine.gov/courts/sjc/lawcourt/2022/22me034.pdf>
In so ruling, the Court did not mention, as a due process requirement, either the yellow flag law's limit of its use to police only, or that the gun owner be detained first, or that the gun owner first undergo a mental health evaluation. Cf. *Anctil v. Cassese*, 232 A.3d 245 | Casetext Search + Citator (due process provided by a "meaningful post-deprivation remedy for the loss").

L.D. 2283's procedural protections, with its "preponderance of the evidence" proof standard, is as good or better than the procedural protections provided in Maine's long-established constitutional statutes and rules for other emergency *ex parte* temporary orders, including: temporary restraining orders, <https://www.courts.maine.gov/rules/text/MRCivPPlus/RULE%2065.pdf>, *ex parte* attachment orders, [Rule](#)

Because this bill would provide families their own legal authority to go to court, without having to wait for the police to go to court for them, it may prevent in future the circumstances that led to the Lewiston mass shooting. The bill could be especially helpful to Mainers who live in rural counties such as Washington County, which is experiencing “*severe [law enforcement] staffing challenges,*” with the result that the yellow flag procedure has been used there just once, even though the county has the second highest gun death rate in Maine.³

Finally, not only does this bill respect citizens’ rights under the U.S. Constitution, it helps fulfill Maine citizens’ right to pursue and obtain safety, as stated in Maine’s Constitution. This right to safety is provided in the opening lines of the Maine Constitution’s Declaration on Rights, in Article I, Section 1.⁴ If we had to rank the vital importance of constitutional rights, I submit there would be none that Mainers would rank ahead of personal safety. Your vote in favor of this bill will support that constitutional right, by giving Maine citizens a right to go to court to pursue and obtain safety.

Thank you for your consideration of these comments.

4A - Attachment, Me. R. Civ. P. 4A | Casetext Search + Citator, child preliminary protection orders, [Title 22, §4034: Request for a preliminary protection order \(maine.gov\)](#), and temporary protection from abuse orders (that include a provision to remove defendant’s guns), [Title 19-A, Chapter 103: PROTECTION FROM ABUSE \(maine.gov\)](#), and protection from harassment orders [Title 5, Chapter 337-A: PROTECTION FROM HARASSMENT \(maine.gov\)](#).

Former President Trump said in August, 2019, in calling for the adoption of red flag laws: “*We must make sure that those judged to pose a grave risk to public safety do not have access to firearms and that if they do, those firearms can be taken through rapid due process.*”

<https://www.cnn.com/2019/08/05/politics/red-flag-law-explainer-donald-trump/index.html>

³ <https://www.newscentermaine.com/article/news/crime/yellow-flag-law-washington-county-behind-on-gun-control/97-fb253867-7831-4457-9cf5-61edcfedf4bb>.) Washington County is reported by the CDC to have the 2d highest per capita rate of gun deaths among Maine’s 16 counties, and the 3rd highest gun suicide rate. *Id.*

⁴ Maine Constitution. Article I. Declaration of Rights. Section 1. “**Natural Rights.** All people are born equally free and independent, and have certain natural, inherent and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of **pursuing and obtaining safety and happiness.**” (emphasis added.)