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Testimony of Speaker Rachel Talbot Ross supporting
**LD 2283, An Act to Enact the Crisis Intervention Order Act to Protect the
Safety of the Public**

Before the Joint Standing Committee on the Judiciary

Good morning Senator Carney, Representative Moonen, and esteemed members of the Committee on the Judiciary. My name is Rachel Talbot Ross of Portland. I represent House District 118, which is the Portland peninsula and I serve as Speaker of the House. I stand before you today to introduce LD 2283, *An Act to Enact the Crisis Intervention Order Act to Protect the Safety of the Public*.

Since the tragic mass shooting in Lewiston last year, Mainers have asked us to act on gun safety. Constituents from across the state have shown up at rallies, they've made phone calls, written letters-to-the-editor, they've delivered the hours of public testimony that this very committee has heard and they have been clear—the epidemic of gun violence requires leadership and a comprehensive approach to public health and safety.

Our constituents have also reminded us that these efforts are long overdue. Gun violence is a public health crisis, *and it is growing*. The rate of gun deaths has increased 41% from 2012 to 2021 in Maine, compared to a 39% increase nationwide; this means that in 2021 firearms claimed 48 more lives than in 2012. The majority of these deaths are suicides, which have seen a particularly steep rise: in Maine, the rate of gun suicide increased 45% from 2012 to 2021¹, and in 2021, suicide was the fourth leading cause of death among those ages 15-54 years old in Maine.² In that year, 277 Mainers died by suicide. Of these deaths, 56% used a firearm.³

Further, 2021 saw 17 firearm-related homicides in Maine, more than a third of which were domestic violence homicides. According to Maine's Domestic Violence Homicide Review Panel, about 40% of domestic violence homicide perpetrators use a firearm to kill their victim.

¹ <https://everystat.org/#Maine>

² Centers for Disease Control and Prevention, National Centers for Injury Prevention and Control. Web-based Injury Statistics Query and Reporting System (WISQARS) (2021). Available at: www.cdc.gov/injury/wisqars

³ https://lldc.mainelegislature.org/Open/Rpts/ra772_f57m3_2023.pdf

These data do not reflect isolated cases, but system-wide failures. Through years of policy choices, we have built regulations and structures that are not working adequately to protect and prioritize lives. We can choose to do something different. In the Second Regular Session, this Legislature has set in motion legislation from the Senate, from the House, and from the Mills Administration to advance gun safety in this state. These bills will implement 72-hour waiting periods, increase regulation of ghost guns and bump stocks, facilitate the destruction of forfeited firearms, strengthen our existent protection from substantial threats statute, spur research of firearm suicide prevention programs, and build a network of crisis receiving centers in response to rising need in mental health resources. Should they pass, we will take steps towards limiting the availability and use of firearms in dangerous situations, enabling intervention when Mainers' lives most depend on it.

But there is work left to do. Maine has a process around protection from substantial threats, created in 2019 and potentially bolstered this year should LD 2224, An Act to Strengthen Public Safety by Improving Maine's Firearm Laws and Mental Health System, pass. It is an essential mechanism to help ensure safety from firearms in dangerous situations. But Mainers asked that further steps be taken towards a pathway for removing firearms from those who should not have them. Local law enforcement attested that the existing process can be cumbersome to enforce due to the required assessment by a medical practitioner and the staff time required to complete such an order. I'll highlight a recent attempt by the Cumberland County Police to use this process, which was ultimately unsuccessful. The attempt cost the department \$25,000 over the course of 72 hours.⁴

Further, many who testified reminded us that mental illness is not a predictor of someone's ability to cause severe harm; such threats can come from those who exhibit no signs of mental illness or distress. This is substantiated by data that find that 95-97 percent of homicidal gun violence is not carried out by individuals with a mental illness.⁵ The determination of likelihood to cause harm is well within the judicial branch's purview.

LD 2283, before you today, addresses those gaps, creating an additional and much-needed process for ensuring that firearms are kept away from those who should not have them. It does not replace our existing protection from substantial threats process, but creates an additional pathway to ensure public safety.

I'll next outline the new mechanism, a crisis intervention order, including the two time-scales on which it operates. I'll then address some concerns that came up in the process of drafting the bill, and sketch out a few possible changes for the Committee's consideration.

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<https://www.pressherald.com/2024/03/24/lewiston-victims-law-enforcement-community-wait-for-more-complete-report-on-the-tragedy/>

⁵ <https://pubmed.ncbi.nlm.nih.gov/2142118/>

This bill enacts the Crisis Intervention Order Act. A crisis intervention order would restrain the purchase, possession or control of a firearm, and may be sought if a person, referred to as the respondent, is suspected of posing a significant danger of causing severe harm to themselves or to another person.

The petition may be filed by a family or household member of the respondent *or* by a law enforcement agency or a law enforcement officer and must be accompanied by an affidavit stating the facts to support the allegations, any firearms believed to be in the respondent's possession and whether the respondent is already the subject of a protection from harassment or protection from abuse order. Should a family member begin the process but terminate it early, law enforcement could file the motion requesting that the court issue an emergency crisis intervention order based on the information they had from the initially concerned family member.

In response, the court shall grant a petition and issue a crisis intervention order if it finds by a preponderance of the evidence that the respondent poses a significant danger of causing severe harm to themselves or to another person by purchasing, possessing or receiving a firearm or by having or attempting to have custody or control of a firearm.

To meet this standard, the court must, by a preponderance of the evidence, find that:

1. The respondent has inflicted or attempted to inflict bodily harm on another person;
2. By the respondent's threats or actions, the respondent has placed another person in reasonable fear of physical harm;
3. By the respondent's actions or inactions, the respondent has presented a danger to persons in the respondent's care; OR
4. The respondent has attempted or threatened suicide.

A successful crisis intervention order would immediately prohibit and enjoin an individual from purchasing, possessing or receiving a firearm or having or attempting to have custody or control of a firearm.

For those seeking such an order, there are two variations available, with different timelines: the emergency crisis intervention order, and the crisis intervention order. The emergency crisis intervention order, is valid for up to 14 days. It is intended for use in a true emergency situation, where it is clear that someone's life would be endangered by the respondent having continued access to a firearm. An emergency order is issued *ex parte*, without notice to the respondent. The petitioner's request could thus be granted within a few hours, helping to ensure immediate safety.

The full crisis intervention order, on the other hand, is valid for up to one year, and requires a judicial hearing. Upon receipt of the petition and affidavit, the District Court is required to hold this hearing **within 14 days** of the filing of the petition, and provide notice of the hearing to the respondent.

These two timelines work together to create a reliable safety net for those in danger: someone in a dangerous situation could act immediately to ensure that firearms, should they be cause for legitimate and provable threat, are taken away. At the same time, they could kick into motion the process for the year-long order, the hearing for which would take place prior to the end of the 14-day emergency order.

This process requires us to strike a thoughtful balance between constitutional liberties and public safety. In prior conversations of the committee, we heard justifiable concerns around the possibility of false claims. Regarding false claims, courts are well positioned to assess credibility of a petitioner's affidavit (made under oath) which is required to include specific facts supporting the allegations in the motion, including the imminent danger posed by the respondent. Further, the penalty for submitting a false claim intended to harass a respondent is a Class D crime.

We also took into consideration concerns around due process, ensuring that the measures we propose are in complete alignment with the right to fairness in proceedings with the judicial branch and law enforcement. Like other state laws, this Crisis Intervention Order bill creates a fair and transparent process that gives people the opportunity to be heard and the chance to contest or discontinue orders. This bill has all of the standard due process features that are contained in our Protection from Harassment and Protection from Abuse code sections. Ex parte or emergency orders of course do not include an opportunity for the respondent to be heard, but they are only temporary and allow the respondent a motion to terminate. Similar ex parte procedures already exist in our domestic violence laws and our criminal laws.

In the time since this bill has been published, I have reached out to stakeholders and learned of amendments that would improve the bill before you. I will outline them now, and hope to work with this committee in the coming days to produce an amended bill that is responsive to feedback and meets the needs of our communities in our pursuit to prevent gun violence and save lives.

1. We may want to reconsider the term "firearm", in favor of a more expansive definition of dangerous weapon that is currently part of the protection from substantial abuse law.
2. This draft requires a technical change, which is the requirement that the courts submit information to NICS, the National Instant Criminal Background Check System.
3. We may want to remove the role of the Attorney General, who, in the bill as drafted, would be receiving a copy of crisis intervention orders. The Attorney General does not

play a role in the rest of the process, so their inclusion on this process may be unnecessary.

4. In response to the concerns from local law enforcement that they may have insufficient space to store weapons, we recommend having the Department of Public Safety store weapons. Funding could be sought from the U.S. Department of Justice, which disburses significant funds to help states implement processes similar to this one.
5. Further, we'd like to change the preponderance of the evidence standard to a "clear and convincing" standard. This is an additional assurance that the process is held to the highest standards.

I think everyone in this room has heard about warning signs that were missed, cries for help that went unanswered, and lives that could have been saved if only the appropriate intervention had occurred. We have heard about how our existing process can be cumbersome for law enforcement and dangerous for medical providers when their facilities are used for an evaluation. And we have heard from the people of Maine who asked us to consider this bill, to strengthen this process, to intervene before it is too late, to prevent acts of violence before they occur, and to provide individuals in crisis with the support and assistance they desperately need.

This bill will ensure that those people who are a risk to themselves and others can receive the help they need, while preventing senseless acts of violence. It will create an additional process in which law enforcement and concerned family members petition the court for temporary removal of firearms from individuals who pose a credible threat to themselves or others. By doing so, we would empower our communities to intervene in situations of potential harm.

Thank you for your time today and your tremendous work over this session. I'd be happy to answer any questions you may have.