

Nicole
Palmer
LD 7283

CRISIS INTERVENTION ORDER TALKING POINTS

GENERAL POINTS

- As we saw in the tragedy in Lewiston, warning signs are present before a shooting. When people in our communities see these warning signs, they need a way to act. They need the power and the ability to help separate a person showing those warning signs from firearms.
- Crisis Intervention Orders create a pathway to quickly remove firearms in dangerous situations. This bill would enable law enforcement officers and family members to *immediately and directly* seek a court order that would temporarily prohibit a person from accessing firearms, as soon as they see warning signs. In this process, filing the court petition *is the first step*.
- **21 other states**¹, including nearly all of our Northeastern and New England neighbor states, have similar laws. Florida enacted their extreme risk law in 2018, after a school shooter killed 17 people and injured 17 others.
- **Maine is special, but it is not invincible.** Mainers have experienced gun violence and will experience gun violence again, be it a tragedy like Lewiston or preventable acts of firearm suicide. Mainers deserve the same tools that hundreds of millions of other Americans can currently use to keep their loved ones and communities safe.

PUBLIC SUPPORT FOR THIS POLICIES

- According to 2019 polling, 86% of Americans support policies like Red Flag laws.
- And according to polling of Mainers from that same year, 81% of our state's residents support Red Flag legislation. This includes 70% of Republicans and 79% of rural voters.

EXTREME RISK PROTECTION ORDERS / RED FLAG LAWS SAVE LIVES

- Evidence shows that temporarily removing guns from people in crisis can reduce the risk of firearm suicide. In Maine, nearly 90% of our firearm deaths are gun suicides.
 - In the ten years after Indiana passed its Extreme Risk law, the state's firearm suicide rate decreased by **7.5 percent**.² Another study found that one suicide was averted for approximately every 10 gun removals in the state.³
 - In Connecticut, the Extreme Risk law was associated with a **14 percent reduction** in firearm suicide rate once enforcement of the law increased significantly.⁴ Another

¹ California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Mexico, New Jersey, New York, Oregon, Rhode Island, Vermont, Virginia and Washington have enacted Extreme Risk Laws

² Kivisto AJ, Phalen PL. Effects of risk-based firearm seizure laws in Connecticut and Indiana on Suicide Rates, 1981-2015. *Psychiatric Services*. 2018; 69(8): 855-862.

³ Swanson JW, Easter MM, Alanis Hirsch K, et al. Criminal justice and suicide outcomes with Indiana's risk-based gun seizure law. *Journal of the American Academy of Psychiatry and the Law*. 2019 Apr 15. pii: JAAPL.003835-19.

⁴ *Id.*

study found that approximately one suicide was averted for approximately every 11 gun removals carried out under the law.⁵

- Laws similar to this bill (Extreme Risk, Red Flag laws) have been used in other states to prevent potential shootings.
 - Police in California used an order similar to a Crisis Intervention Order to recover five guns from a car dealership employee who threatened to shoot his boss and coworkers.⁶
 - In Florida, an order was used to recover an **AR-15** from a student who was stalking and threatening an ex-girlfriend and classmate at school.
- In **32 percent** of mass shootings where four or more people were killed from 2015 to 2022, the shooter exhibited dangerous warning signs before the shooting.⁷

CRISIS INTERVENTION ORDER PROCESS

- This bill sets up a process that is very similar to extreme risk laws in other states, and similar to other restraining order procedures, such as Protection from Abuse Orders that protect survivors of domestic abuse.
- **Family members** and **law enforcement officers** can file petitions in District Court seeking an order that will temporarily prohibit that person from possessing, purchasing, or acquiring firearms. The petitions must describe specific facts that show that the person poses a risk of harming themselves or others with a firearm.
- Family members or law enforcement officers can seek an **emergency crisis intervention order** or a **crisis intervention order**.
 - A district court can grant an *emergency* order without hearing from the respondent (ex parte), but those orders last only up to **14 days**.
 - An extended order, which can last up to **one year**, can only be granted after a hearing, at which the respondent can appear and present evidence.
- In both situations, courts will consider evidence that indicates the respondent poses a danger to themselves or others, including **whether they've physically harmed themselves or others in the past, or whether they've made threats to harm themselves or others**. In order to issue an *emergency* order, a court must find that there is an *imminent* risk of harm.

⁵ Swanson JW, Norko M, Lin H, et al. Implementation and effectiveness of Connecticut's risk-based gun removal law: Does it prevent suicides? *Law and Contemporary Problems*. 2017; 80: 179-208.

⁶ Garen J. Wintemute et al., "Extreme Risk Protection Orders Intended to Prevent Mass Shootings," *Annals of Internal Medicine* 171, no. 9 (2019): 655–58, <https://doi.org/10.7326/M19-2162>.

⁷ Everytown for Gun Safety Support Fund, Mass Shootings in the United States, March 2023, available at <https://everytownresearch.org/mass-shooting-report/>.

- Courts can grant *emergency* petitions after a review of the petition and supporting affidavits. The bill allows petitioners to file those affidavits and petitions electronically so that anyone in **immediate danger** can get **immediate help**.
- If a court issues a crisis intervention order or an emergency crisis intervention order, law enforcement will serve an order on the respondent that instructs them to **relinquish their firearms and advises them that they may not purchase or possess firearms** (for up to 14 days, or up to one year). Respondents can temporarily relinquish their firearms to a **federally licensed gun dealer or a law enforcement department**. Law enforcement departments or licensed dealers **must return** the firearms to respondents when the orders expire (as long as they're not otherwise prohibited by law from possessing them).

DUE PROCESS

- 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.
- Petitioners must meet a **burden of proof – preponderance of the evidence**. The bill guides courts to consider specific factors, like past violent behavior and past threats, in determining whether the burden is met.
- Respondents have **the chance to be heard** in petitions for crisis intervention order (not emergency). The bill requires that respondents are provided with **legal counsel** at this hearing.
- If a respondent feels that a court wrongly issued a crisis intervention order, they can **appeal** that court order to the Supreme Judicial Court.
- If a respondent feels that they are *no longer* at risk of harming themselves or others, they can ask the court to **terminate** the order. The court will hold a hearing on the motion and must terminate the order if it finds that the person no longer poses a risk of harm.
- The bill penalizes anyone who **frivolously or falsely files a petition** for a Crisis Intervention Order. Those who do so can be charged with a **Class D crime**.
- *Ex Parte* or emergency orders of course do not include an opportunity for the respondent to be heard, **but they are only temporary**. Similar ex parte procedures already exist in our domestic violence laws and our criminal laws. **Our current Yellow Paper process contains no opportunity for the respondent to be heard at the outset.**

DIFFERENCE BETWEEN YELLOW PAPER AND CRISIS INTERVENTION ORDER

- The current Yellow Paper process is only available in situations where a person has a severe mental health issue – so severe, in fact, that they need to be taken into *protective custody*. **By contrast, the Crisis Intervention Order can be used in any number of dangerous situations and can be initiated by both law enforcement and non-law enforcement petitioners.**
 - These orders might help people who are in a tense or volatile relationship with someone who has guns, but who aren't willing to seek a Protection from Abuse order.
 - These orders can be used to keep guns out of the hands from a person who is threatening mass violence or school shootings.
 - These orders can also be used in situations where a person is making targeted threats against someone like a former boss, teacher, or romantic partner.
 - They can also prevent those who are contemplating suicide from accessing the most lethal means of self harm–firearms–regardless of the root causes of their suicidal crisis.
 - ** There are people who might not be served by the Yellow Paper process, but they still deserve protection.
- Even in cases where a person is in a mental health crisis, the Yellow Paper process **imposes numerous procedural requirements** on law enforcement officers before they are able even to *ask* a court to issue an order restricting firearms. (Law enforcement must be notified of the person in crisis, they must then determine whether there's probable cause to believe that person is mentally ill, then, if they do they must take that person into protective custody, and once they're in custody they must have the individual undergo a mental health assessment.)
- **By contrast, the Crisis Intervention Order process simply starts with a concerned family member or law enforcement officer directly filing a petition with the court.**
- The Yellow Paper process relies wholly on law enforcement throughout the process, even by requiring officers to hold people in protective custody for hours. **By contrast, Crisis Intervention orders would empower the families of individuals in crisis to take action directly and quickly when they recognize someone in danger. Though Law enforcement officers can also initiate the process–without facing any of the procedural officers imposed by the Yellow Paper law–they need not be involved in Crisis Intervention Order petitions, until the service of the actual court order.**

MASSACHUSETTS (Only if asked)

- States with ERPO laws use those processes to varying degrees, depending on their rates of gun ownership, other gun safety laws they have, and the resources they've dedicated to implementing their law.
- In addition to an Extreme Risk law, Massachusetts has many other gun safety laws designed to keep guns out of the hands of people who are or could be a danger to themselves or others. The state requires a license (permit) to purchase a gun and keep that gun inside one's home – this is their Firearms Identification Card. The state also requires a license to carry or transport a gun outside the home – this is their License to Carry.
- These license systems involve thorough criminal background checks. Furthermore, law enforcement departments that issue the licenses can deny the licenses to people who, based on an investigation, are determined to be “unsuitable.” According to their statutes, people are “unsuitable” if they “create a risk to public safety” or are at risk of hurting themselves or others with a firearm.
- In Massachusetts, law enforcement officers have *several* tools at their disposal to remove guns from people who are at risk of hurting themselves or others:
 - They can prevent a purchase of firearms by denying an application for a FID or LTC;
 - They can *revoke* an FID or LTC;
 - They can *suspend* an FID or LTC;
 - They can *deny* a person's renewal of an FID or LTC; or
 - They can file an ERPO petition.
- What we're seeing is that there are **many more** FID and LTC revocations and suspensions than there are ERPO petitions.
 - Between 2018 and 2022, there were **57 ERPO petitions** filed in Massachusetts.
 - However, between 2018 and 2023, there were ...
 - **9,990 LTC Suspensions and 319 FID Suspensions**
 - **595 LTC Revocations and 36 FID Revocations**
 - We don't know exactly how many of these suspensions and revocations are due to the unsuitability of licensees, but it's clear that law enforcement are heavily utilizing the revocation and suspension process.
 - These numbers don't account for the fact that, at the outset, it is *much harder* for a dangerous or prohibited person to acquire a gun in the first place.