



Janet T. Mills
Governor

Michael J. Sauschuck
Commissioner

STATE OF MAINE
Department of Public Safety
MAINE STATE POLICE

45 Commerce Drive - Suite 1
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William G. Ross
Colonel

LTC. Brian P. Scott
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Testimony of Lieutenant Michael Johnston
Maine State Police

In Opposition of (1378)

**An Act to Protect Maine Communities by Enacting Extreme
Risk Protection Order Act**

Initiated Ballot Measure

Senator Carney, Representative Kuhn, and other distinguished members of the joint standing committee on Judiciary. My name is Lieutenant Michael Johnston, and I am here to represent the Maine State Police and the Maine Department of Public Safety to testify in opposition of LD 1378, "An Act to Protect Maine Communities by Enacting Extreme Risk Protection Order Act."

As of 6/10/2025 there have been 880 successful yellow flag applications since the tragic events that occurred in Lewiston. There were eighty-one total in the three and half years preceding Lewiston. This increase represents a few important things; chief among them is that the current "yellow flag" law is working.

For clarification purposes, our current statute is codified at 34-B MRS §3862-A and is titled Extreme Risk Protection Orders. It is also commonly referred to as a weapons restriction order. It is known better by its colloquial term, the yellow flag law. I will reference it as the yellow flag law throughout my testimony. Conversely, this proposed legislation is also titled Extreme Risk Protection but is commonly referred to as a red flag law. I will refer to the proposed ballot initiative as a red flag.

I am the principal instructor on the yellow flag law for the Maine State Police. I was also part of the public safety team involved with the implementation of the law when it went into effect back on 7/1/2020. The Maine State Police have successfully applied for a yellow flag order 90 times since the law went into effect, the most of any law enforcement agency in Maine. My troop alone has had over fifty successful applications. I have seen firsthand how the current law can be effectively implemented to ensure the safety of the respondents, their family, and the public. While a new law can always be improved upon, we feel that the passage of Public Law 2024 Chapter 675, titled An Act to Strengthen Public Safety by Improving Maine's Firearm Laws and Mental Health System, passed in the 131st Legislative Session, improved and strengthened the existing yellow flag law. I have some concerns that the proposed legislature, if passed, will potentially undermine and detract from a law that is working effectively.



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Under the language of this bill, a law enforcement officer, law enforcement agency, family, or household member can petition the court for a red flag order. The standard for receiving an order is showing the respondent poses a significant danger of causing physical injury to the respondent or another person by purchasing, possessing, or receiving a dangerous weapon or by having or attempting to have custody or control of a dangerous weapon. I am not sure what harm this bill seeks to prevent which is not already covered by existing statutes under Title 17-A MRS, 19-A MRS Chapter 4 (PFA), 5 MRS Chapter 337-A, or the current yellow flag law under 34-B MRS Section 3862-A.

Because this law is very similar to the provisions and remedies available in the PFA statutes under 19-A MRS Chapter 103, I have concerns about creating confusion for domestic violence victims and muddying the waters about what process victims should utilize, and potentially siphoning resources from that critically important process. Do they utilize this new process or the existing one? Again, the relief provided by the PFA process, along with the existing yellow flag, is as comprehensive as this new statute, raising the question of whether this proposed legislature is necessary. With any new law, it takes law enforcement, prosecutors, the courts, and the public time to adjust. The risk of adding new processes that add limited new tools or protections is that they could detract from existing ones, making them less effective overall.

Under the current yellow flag law, third-party members such as family or household members, friends, colleagues, community members, and mental health professionals can already initiate this process by reporting their concerns to law enforcement and the data shows that this happens every day across the state. It's been my experience that those reporting parties are crucial to the utilization of this law as they are often the people calling law enforcement to report their concerns and request a welfare check. Their reports already provided the legal and factual basis to initiate this process. Pursuant to 34-B MRS §3862 when formulating probable cause to take a person into protective custody, the law enforcement officer may rely upon information provided by a third parties if the officer confirms that the informant has reason to believe, based upon the informant's recent personal observations of or conversations with a person, that the person may be mentally ill and that due to that condition the person poses a likelihood of serious harm.

There are public safety concerns regarding the service of these orders. Many of these orders will be high-risk in terms of service, requiring additional resources and personnel to serve them safely. This will be different from serving other protective orders because here, there is a judicial finding of dangerousness. Currently, under yellow flag, the person to be served is usually in protective custody when service takes place in a hospital setting. This allows law enforcement to serve the respondent in a safe and controlled environment and then work with family members on the relinquishment of firearms and other dangerous weapons. Under this bill, the restricted person will likely not be in custody of law enforcement and are more likely to be at home when the service takes place. Service of these orders while the restricted person is at home with access to firearms and other dangerous weapons significantly raises the risk of that service and increases the chance of a barricade situation or a violent encounter with law



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enforcement. The purpose of these orders is to protect the respondents and the public when there is a likelihood of foreseeable harm. This bill could very well have the opposite effect by increasing the likelihood of a dangerous and violent encounter which could give rise to a situation where force may have to be utilized, resulting in creating the harm that this bill intends to prevent.

This bill appears to take the statutory scheme from the protection from abuse (PFA) and protection from harassment statutes (PFA) and impose it on this civil process for red flag orders. That creates questions or issues related to the role of law enforcement in this process. For example, under this law, a law enforcement officer (LEO) or law enforcement agency (LEA) can petition the court in a similar fashion to what you would find under the PFA and PFH process. Except in those cases the plaintiff or complainant is a victim and not a law enforcement officer. Does that mean that LEAs are responsible for defending the petition on appeal or at the final hearing? Under the yellow flag law, the district attorney's office represents the State in court. If a LEO is expected to do this, it really is outside the scope of our training and expertise. Additionally, it would require LEOs to be in court to defend a petition within fourteen days. That would put considerable strain on LEAs who are already at capacity and have limited resources, hence the fiscal note.

Based on the number of yellow flags we have seen post-Lewiston; this will cause a fiscal note for law enforcement. Law enforcement will increasingly spend time petitioning the court for these orders, serving them, appearing in court to defend them, and incurring costs related to the storage of firearms and other dangerous weapons.

While outside my purview, there may be due process issues here. The current law was carefully crafted to ensure there were procedural due process safeguards put in place that balanced an individuals' rights with public safety. Because there was a nexus between mental health and dangerous weapons, a medical practitioner reviews the application from law enforcement before it goes to a judicial officer for review and endorsement. There is no medical practitioner review under this bill. Additionally, the burden of proof to prevail at a final hearing is preponderance of the evidence (more likely than not or 51%) rather than the higher burden of clear and convincing evidence.

In closing, we believe that continued training, awareness, and utilization of the existing yellow flag law is the appropriate path forward. This is in addition to continuing to focus on providing and bolstering resources for mental health treatment options and services, including mobile crisis units, and crisis receiving centers, which will ensure that people in crisis are being helped, and public safety is being protected.

Respectfully,

Lieutenant Michael Johnston