



Maine Medical Association



**Testimony of
Maine Chapter, American Academy of Pediatrics
Maine Medical Association
Maine Osteopathic Association
Maine Public Health Association**

**In SUPPORT Of
LD 1378 - An Act to Protect Maine Communities by Enacting the Extreme Risk Protection
Order Act**

**Joint Standing Committee on Judiciary
June 11, 2025**

Senator Carney, Representative Kuhn, and distinguished members of the Joint Standing Committee on Judiciary, my name is Madeleine DesFosses. I am submitting this testimony on behalf of the Maine Chapter of the American Academy of Pediatrics (MAAP), Maine Medical Association (MMA), Maine Osteopathic Association (MOA), and Maine Public Health Association (MPHA) in support of LD 1378 - An Act to Protect Maine Communities by Enacting the Extreme Risk Protection Order Act.

MAAP is a professional organization representing 300 pediatricians and pediatric subspecialists working together to improve the lives of children and adolescents in Maine. MMA is a professional organization representing more than 4,000 physicians, residents, and medical students in Maine. MMA's mission is to support Maine physicians, advance the quality of medicine in Maine, and promote the health of all Maine people. MOA is a professional organization representing more than 1,200 osteopathic physicians, residents, and medical students in Maine whose mission is to serve the Osteopathic profession of the State of Maine through a coordinated effort of professional education, advocacy, and member services to ensure the availability of quality osteopathic health care to the people of this State. MPHA is the state's oldest, largest, and most diverse association for public health professionals. MPHA represents more than 850 individuals and 70 organizational members across the state. MPHA's mission is to advance the health of all people and places in Maine.

Because gun violence is now the leading cause of death for American children, adolescents, and young adults, addressing it is a priority for our organizations.

Public health recommendations from the American Academy of Pediatrics, American Medical Association, American College of Surgeons, American Psychiatric Association, and American Public Health Association (among many others), support the creation of a true Extreme Risk Protection Order (ERPO; otherwise known as a Red Flag law) to supplement the progress that has already been made with Maine's Yellow Flag Law.

Maine's Yellow Flag Law is a thoughtful, innovative approach to ensure our law enforcement officers have a pathway to temporarily remove weapons from an individual found to be experiencing an acute mental health crisis. Over the years since the law was enacted, we have learned a great deal about how the law has been understood and utilized. We have identified shortcomings based on law enforcement's limited understanding of the process prior to the Lewiston tragedy. The significant rise in the use of the law since that time has highlighted the fact that it serves an important protective function in our state.

However, it has been the longstanding recommendation of nearly every major medical and public health organization in the country that a true ERPO is the more protective approach to prevent gun violence.

Extreme Risk Protection Orders (ERPO)

ERPOs enable law enforcement, family members and others to go through the court to temporarily remove firearms from people who pose a danger to themselves or others in the community. It's a more straightforward process than Maine's Yellow Flag Law. According to the Johns Hopkins Center for Gun Violence Solutions, data show that, when implemented effectively, ERPO laws can save lives. Twenty-one states, including Vermont, Connecticut and Massachusetts, and Washington D.C. have enacted ERPO laws.

Data suggest ERPO laws are effective at reducing firearm suicides. Connecticut and Indiana were the first two states to enact ERPO laws, in 1999 and 2005, respectively. A recent (2018) study evaluated the laws in these two states and found, overall, that firearm seizure legislation was associated with reductions in state-level firearm suicide rates. In Indiana, the legislation was associated with a 7.5% decrease in firearm suicides in the first decade post-enactment (383 firearm suicides prevented). In Connecticut, while the law was enacted in 1999, it was not enforced until 2007 (after the Virginia Tech shooting). Thus, while the legislation was associated with only a 1.6% reduction in firearm suicides, the reduction increased to 13.7% following increased enforcement of the law (preventing 128 firearm suicides) (1).

Inconsistency of Law Enforcement's Assessment of Mental Illness

The protective custody statute states, "If a law enforcement officer has probable cause to believe that a person may be mentally ill and that due to that condition the person poses a likelihood of serious harm as defined in section 3801, subsection 4-A, paragraph A, B or C, or if a law enforcement officer knows that a person has an advance health care directive authorizing mental health treatment and the officer has probable cause to believe that the person lacks capacity, the law enforcement officer...may take the person into protective custody."

The determination of the presence of mental illness, as well as the definition of "likelihood of serious harm," and the officers' interpretation of that likelihood, are some of the more concerning weak points of the Yellow Flag process. If a law enforcement officer assesses that there is a likelihood of serious harm, then they can obtain a medical practitioner evaluation to assess whether the person presents a likelihood of foreseeable harm. In discussions with staff at Sweetser, who have been contracted to conduct these assessments, they have found a likelihood of foreseeable harm in over 95% of their assessments.

This high number suggests one of two possibilities – either the medical practitioners are understandably risk-averse and are reporting a likelihood of foreseeable harm to avoid even the potential for harm, or the initial assessment by law enforcement officers, who are not trained to diagnose mental illness, are under-appreciating the likelihood of serious harm (or the presence of mental illness). If it's the former, then the process is in fact not providing due process to these individuals, but just creating a bureaucratic delay before the ultimate surrender of weapons. If it's the latter, then we are leaving weapons in the hands of individuals in risky situations.

Extreme Risk Protection Order's Broader Applicability

An ERPO would not be limited to mental health crises alone. They can be invoked in situations where there is credible evidence of various risks, including domestic violence, substance abuse, or other factors that may contribute to an increased likelihood of violence. This reflects the reality that 1) a mental illness or mental health crisis is not a requirement for an act of gun violence, 2) behaviors are a more important predictor of violence than a mental health diagnosis, and 3) most people who are mentally ill are not more likely to commit acts of violence. In fact, they are more likely to be victims of violence themselves. Only 3-5% of violent acts can be attributed to an individual's mental illness. A study of six states with additional protective order procedures found that 10% of all orders were filed in response to threats of mass violence, preventing more than 650 potential multiple victim/mass shooting incidents (2).

Intervention Before the Need for Protective Custody

An ERPO would allow for proactive measures before a situation escalates to a point where emergency custody or involuntary commitment becomes necessary. This early intervention can be critical in preventing harm and addressing the underlying issues contributing to the risk.

Protection of Individual Liberty and Ensuring Due Process

Protective custody is considered a greater infringement on an individual's liberty than the execution of an ERPO. Temporarily removing someone's weapons is a less intrusive approach than taking an individual into custody. An ERPO would involve judicial review, ensuring due process rights for the individuals involved. This contrasts with emergency custody, which may involve an immediate response without the same level of judicial oversight.

Debunking the "Disgruntled Ex" Myth

This is often brought up as a critique of ERPOs – that a former partner or someone with a personal vendetta could misuse the law to make false claims and have someone's firearms temporarily removed. The same argument has been made about domestic violence legislation. Fortunately, due process would be ensured via judicial scrutiny of the evidence before the removal of firearms. There could also be safeguards built into these measures to mitigate the risk of abuse, such as allowing the individual in question the opportunity to present their case, contest the order, and ensure a fair and impartial review. The law could also include legal consequences for intentionally false reports, serving as a deterrent and providing a measure of accountability to discourage misuse of the system. There is no evidence of wide-scale abuse of ERPO processes; in fact, two research studies found that consistently, all unqualified petitions were dismissed by the presiding judge before any order was decided and firearms were removed (3, 4).

Families Know Their Loved Ones Best

Family members are the first to notice when something is wrong and someone they love needs help. We need to ensure that an efficient process is available to family members that makes it easier for them to get dangerous weapons away from someone they love who is a threat to themselves or others.

We ask the committee to allow LD 1378 to be sent to the voters independently as a referendum question, without a competing measure.

Thank you.

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References:

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3. Barnard, L.M., McCarthy, M., Knoepke, C.E. *et al.* Colorado's first year of extreme risk protection orders. *Inj. Epidemiol.* 8, 59 (2021). <https://doi.org/10.1186/s40621-021-00353-7>.
4. Zeoli AM, Paruk J, Branas CC, Carter PM, Cunningham R, Heinze J, Webster DW. Use of extreme risk protection orders to reduce gun violence in Oregon. *Criminol Public Policy.* 2021;20:243–261. <https://doi.org/10.1111/1745-9133.12544>.