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Good afternoon, Senator Keim, Representative Moonen, distinguished members of the Judiciary Committee. I am Senator Mark Dion of Portland and I am here today to present LD 1884, *An Act to Create a Community Protection Order.*

I want to thank the Committee in advance for the attention and work you will apply to this Bill. Moving forward the burden of policy making will lie squarely on your collective shoulders. In that light, I offer you the wisdom of Doctor King who cautioned us that there is no *convenient season* to declare what is right. It will be no less the case with the proposition that lies at the core of this initiative. The idea that there can be a failure in responsible gun ownership.

Responsible gun owners will declare that legislative policy details matter. I agree with them. I am also confident that responsible owners agree that the right to bear arms necessitates an obligation that rises above safe storage and careful handling of one's own firearms — responsible gun ownership is also about making sure we keep guns out of unsafe hands. This bill addresses the issue of what should occur if one's capacity to safely discharge that responsibility is called into question. It is not about the gun but the person who may choose to pick up that gun.

A Community Protection Order will authorize the surrender of a citizen's firearm to the police subsequent to the written order of a District Court judge. The firearm will be taken for safekeeping, by the police, for a period of twenty-one days. At the conclusion of that three-week timeline, the court will hold a hearing to determine whether the order should be dissolved and the weapon returned to its owner or if there continues to exist tangible evidence that would warrant the extension of the order for period of time not to exceed six months.

The judge, in issuing the surrender order, will have to be convinced that there are objective facts, evidence that represents something more than the mere opinion of well-intentioned persons, that would allow her or him to conclude that the gun owner's behavior, left unchecked, presents an imminent threat of harm to either the individual or other community members.

This proposal would provide family members and law enforcement officials a judicial pathway to de-escalate the behavior of such an individual and its probable adverse outcome should they not intervene.

In my three decades as a law enforcement officer, I have witnessed individuals who were clearly on a trajectory for self-destruction and the lingering question, following those contacts,

was whether someone else would be swallowed into that coming storm and pay a price that no one should. In these instances, my common sense clearly saw the possibility of tragedy, but I had no readily available tool to interrupt that cycle of increasingly risky behaviors.

Now some would say that the *blue paper* process for involuntary psychiatric commitment provides just such a resource. The truth of the matter it does not. I have wrestled with the legal and clinical mechanics underlying involuntary commitment both as a Sheriff and lawmaker and little forward progress has come from it. There is an ongoing policy tension between medicine and public safety and it lies in their respective understanding of what constitutes an imminent threat.

Disordered, erratic and impulsively threatening behaviors do not necessarily satisfy the threshold for psychiatric commitment but nonetheless raise significant safety concerns for affected family members and police officers. That risk to personal and community safety is significantly aggravated if the person in question has ready access to a firearm. These factors prompt the need for a community protection order process.

I recognize that some 2<sup>nd</sup> Amendment advocates will critique this initiative as a legislative overreach, a conscious attempt to trespass on *section 16* of the Maine Constitution's expression *that the right to bear arms cannot be questioned*.

In response to that oft stated claim, the Maine Supreme Judicial Court has made the following conclusions of law:

**State v. Brown, 571 A. 2d 816 - Me: Supreme Judicial Court 1990**

Our holding that amended section 16 does not vest every citizen with an absolute right to possess firearms also finds support in a common sense view of the context in which the voters of Maine adopted the 1987 amendment. Plainly, the people of Maine who voted for the amendment never intended that an inmate at Maine State Prison or a patient at a mental hospital would have an absolute right to possess a firearm. *Once it is apparent, as common sense requires it to be, that amended section 16 does not bar some reasonable regulation of the constitutional right to possess firearms, the only remaining question becomes what are the outer bounds of reasonableness for the regulation of that non-absolute right.* All of the case authority from other states likewise rejects the notion that the constitutional right to keep and bear arms is absolute. *See, e.g., People v. Smelter*, 175 Mich.App. 153, 437 N.W.2d 341 (1989); *State v. Smoot*, 97 Or.App. 255, 775 P.2d 344 (1989); *Gardner v. Jenkins*, 116 Pa. Commw.Ct. 107, 541 A.2d 406, *alloc. denied*, 520 Pa. 620, 554 A.2d 511 (1988); *City of Princeton v. Buckner*, 377 S.E.2d 139 (W.Va.1988); *State v. Hamlin*, 497 819\*819 So.2d 1369 (La.1986); *State v. Sabala*, 44 Wash.App. 444, 723 P.2d 5 (1986); *State v. Mak*, 105 Wash.2d 692, 718 P.2d 407, *cert. denied*, 479 U.S. 995, 107 S.Ct. 599, 93 L.Ed.2d 599 (1986). *See also State v. Friel*, 508 A.2d 123, 126 nn. 4 & 5 (Me. 1986), *cert. denied*, 479 U.S. 843, 107 S.Ct. 156, 93 L.Ed.2d 96 (1986).

The policy question that thus follows is whether the proposed Community Protection Order, presents the Legislature with an opportunity to advance the public safety in a manner that is both reasonable and compatible with the principle of self-protection that underscores the rationale of our state constitutional right to bear arms.

I will humbly remind the Committee that no one law can anticipate or prevent every and all circumstances where firearms are employed to achieve tragic ends. This reality qualifies every law that we pass. Each statute represents an attempt to control, manage or respond to

conditions or circumstances that *have occurred* and it is our best collective guess that the laws we pass will have an impact in lessening the chance of future unwanted conduct from occurring. No law provides absolute protection but that condition should not deter us from taking reasonable steps to address potential threats to our collective safety.

Now this Bill has been characterized as a "*red flag*" statute. That label is appropriate if we consider that we often know when someone close to us is "*coming apart*" in a way that does cause us to worry that maybe this time it won't end well. Sometimes, for some of us that uncomfortable concern grows into palpable anxiety, that our worst fears could become all too real as we bear witness to the evolving slow-motion wreck that is fast becoming the context of a loved one's life.

Will this law prevent a mass shooting? I don't know, none of us do, but if we can see the *red flags* for what they are then we have may have a chance to interrupt and stop what none of us want to see happen.

Can this Order be brought to bear on silent epidemic of firearm involved suicide? I suspect that it could. For some the psychological isolation of their lives sets up a cascade of emotional decisions that can often lead to the finality of suicide. Should we not have the option to separate them from their gun and remove the possibility of an impulsive, irrevocable and fatal act by a family member? I would say yes, we should.

I appreciate your attention and would welcome your questions. I am sure that there will be testimony to follow that will offer a diversity of suggestions, amendments and out right rejections of this LD. That conversation is important and necessary to your consideration of this proposal. I am, however, confident in the integrity of this Committee and your ability to make a decision that is in the best interest of the people of Maine.

### Factors Courts Should Consider when Evaluating Petitions

- Recent acts or threats of violence against self or others.
- A history of using violence against self or others.
- Prior convictions for crimes of violence, domestic violence crimes, stalking, and other relevant criminal history.
- Evidence of drug or alcohol abuse.
- The existence or previous violations of protective orders, no-contact orders, or red flag orders.
- Prior unlawful or reckless use of firearms.
- The respondent's ownership, access to, and recent attempts to acquire firearms.

Courts may also consider any other reliable evidence that is relevant to the risk the respondent poses to self or others by having access to firearms.