

STATE OF MAINE
OFFICER’S GUIDE TO WEAPONS RESTRICTION ORDER
34-B MRS § 3862-A

Introduction

Several states have adopted “red flag laws.” In general, such a law permits police or family members to petition a court to order the temporary removal of firearms from persons who present a danger to themselves or others. Maine’s version of the “red flag law” is unique in that provisions for restricting access to weapons depends on whether a person taken into protective custody by law enforcement is initially determined by a qualified medical practitioner to present a likelihood of foreseeable harm. Such a determination provides a basis for a Weapons Restriction Order, which imposes restrictions on possessing, controlling, or acquiring dangerous weapons, and requires a person to surrender such weapons to law enforcement pending a court hearing. Maine’s law takes effect on July 1, 2020.

Initial Criteria

The threshold for invoking the statutory process to obtain a Weapons Restriction Order is that the person for whom such an order is sought is in protective custody. Specifically, 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 presents a threat of imminent and substantial physical harm to that person or to other persons, the law enforcement officer may take the person into protective custody. Thus, the process for the issuance of a Weapons Restriction Order begins in the same way as the process for a “blue paper” with a person first in protective custody.

Assessment of Likelihood of Foreseeable Harm

When a medical practitioner evaluates a person in protective custody for purposes of determining if involuntary admission (“blue paper”) is warranted, and the practitioner is presented with probable cause that the person possesses, controls, or may acquire a dangerous weapon, the practitioner shall also determine whether the person presents a likelihood of foreseeable harm. For purposes of both evaluations, the law enforcement officer must provide historical information, including prior law enforcement interactions with the person and the person’s criminal history, along with the details that led to the current protective custody.

Judicial Endorsement of Application for Weapons Restriction Order

If the medical practitioner determines that that the person presents a likelihood of foreseeable harm and endorses the Application for Weapons Restriction Order, law enforcement must then seek judicial endorsement of the Application (either in

person or electronically), which authorizes law enforcement to notify the restricted person of the initial Weapons Restriction Order. A Superior Court Justice, a District Court Judge, a Judge of Probate, or a Justice of the Peace is authorized to endorse the determination by the medical practitioner that the person presents a likelihood of foreseeable harm and the law enforcement officer's declarations that the person was taken into protective custody and that there is probable cause to believe that the person possesses, controls, or is likely to acquire a dangerous weapon. There is no requirement that the judicial officer independently assess the likelihood of foreseeable harm or the probable cause. Once endorsed, the Application becomes the initial Order that can be served on the restricted person.

Notice to Restricted Person of Weapons Restriction Order

As soon as practicable, but no later than 24 hours after the judicial endorsement, law enforcement shall notify the subject of the Weapons Restriction Order (1) that the person is prohibited from possessing, controlling, acquiring, or attempting to acquire a dangerous weapon pending the outcome of a court hearing; (2) that the person must immediately and temporarily surrender any weapons possessed, controlled, or acquired by the person to a law enforcement officer who has authority in the jurisdiction in which the weapons are located pending the outcome of the court hearing; and (3) that the person has a right to a court hearing within 14 days of notice of the Weapons Restriction Order.

A Weapons Restriction Order cannot be enforced criminally until service of the Order. In this respect, a Weapons Restriction Order is very similar to a Protection from Abuse Order in that there can be no enforcement until the order is served upon the person. In most cases, the person will still either be at the hospital or otherwise immediately available to law enforcement. However, that may not always be the case. For example, a person released from protective custody must be located and served. The expectation is that service of the Order will occur "as soon as practicable," but no later than 24 hours after the judicial endorsement.

Effect of Service of the Weapons Restriction Order

Once a judicial official endorses the Application for a Weapons Restriction Order and a law enforcement officer serves the Order, the person to whom the Order applies is restricted from possessing, controlling, or acquiring, or attempting to possess, control, or acquire dangerous weapons. (A "dangerous weapon" means a firearm or any device designed as a weapon and capable of producing death or serious bodily injury. 17-A M.R.S. § 2(9)(C)). The person must surrender all such weapons to a law enforcement officer who has authority in the jurisdiction in which the weapons are located, pending the outcome of the court hearing. The agency that

took the person into protective custody and started the Weapons Restriction Order process is expected to coordinate the weapon surrender process. A restricted person becomes a prohibited person for purposes of possession or control of a firearm(s) (not ownership) pursuant to Title 15 M.R.S. § 393(1)(E-1). A violation is a Class D crime. However, a restricted person who makes all practical and immediate efforts to comply with a surrender notice is not subject to arrest or prosecution as a prohibited person for possessing or controlling weapons prior to or at the time of surrender. 34-B M.R.S. § 3862-A(5).

Notification of Service of Order to Department of Public Safety

Law enforcement must report both the issuance and the service of a Weapons Restriction Order to the Department of Public Safety. DPS Bangor RCC will maintain a database of persons subject to a Weapons Restriction Order, including whether the person was served (active order) or not yet served (suppressed order). The Weapons Restriction Order will also be entered into NICS, so that even if service is not yet made, the system will show the person as prohibited from firearms purchases. When an initial entry is made by Bangor RCC into the Weapons Restriction Order database, the entry will generate a unique identifier called an ARI, which will be provided to the law enforcement officer for inclusion in any subsequent report. The ARI is very similar to an ATN or a bail ID in that it provides a unique identifier if two or more orders are tied to the same name and date of birth. It is important that an officer include the ARI on any subsequent documentation submitted to the prosecutor or any updates to Bangor RCC so that the correct database entry is identified.

District Attorney's Office

In addition to notifying the Bangor RCC of the issuance and service of a Weapons Restriction Order, the originating law enforcement agency must also notify the District Attorney's Office of the Order. The DA's Office is responsible for initiating the court hearing and must file the petition within 5 days of service of the initial Order on the restricted person. The hearing should be conducted within 14 days of the service of the Order. Accordingly, the DA's Office needs all documentation generated through the point of service as soon as possible, including the notice of service of the Order. One of the most essential elements to relay to the DA's Office is the ARI number generated by the Bangor RCC. Without it, tracking and necessary modifications to the Order as it moves through the court process are not possible. If the District Attorney's Office does not petition the court for a hearing, the DA's Office will notify the originating law enforcement agency. The agency in turn must notify the Bangor RCC to update the record in the Weapons Restriction Order database. If the DA's Office does petition the court for a hearing, the court will

transmit the results of any hearing to the Bangor RCC. If the hearing results in dissolution of the Weapons Restriction Order, the originating law enforcement agency is responsible for coordinating the return of weapons.

Getting a Hit on a Weapons Restricted Person

There is a special METRO file populated with the names of persons who are the subjects of Weapons Restriction Orders. Linked to a Driver's License Query, the system will return an automatic response, as is the case with warrants, bail conditions, and protection orders. However, a hit requires verification through DPS Bangor RCC before any enforcement action. The RCC may ask for the ARI number on the response you received. The confirmation process is expected to become more automated over the first year of use as more programming is implemented to support the weapons restriction process but, for now, all hits must be verified with Bangor RCC before any enforcement action.

Below is an example of a hit from the Weapons Restriction File when running a Driver's License Query. In this case, the license run was for a person named "Test Restricted," with a DOB of 04/01/80. Note the ARI line with the unique identifier just above the miscellaneous text near the bottom of the response.

MAINE STATE RESTRICTED PERSON DATABASE RESULTS - ON YOUR INQUIRY OF
NAM/RESTRICTED, TEST A DOB/19800401

THE PERSON NAMED BELOW MAY BE RESTRICTED PURSUANT TO
34-B MRS SS 3862-A FROM ACQUIRING OR POSSESSING DANGEROUS WEAPONS.
CONFIRM WITH THE MAINE STATE POLICE, BANGOR OFFICE,
AT 207-973-3700, OPTION 9, BEFORE ANY ENFORCEMENT ACTION IS TAKEN
BASED ON THIS RESPONSE

MAINE STATE DATABASE - RESTRICTED PERSON ORDER

SCN/365499 ORI/MEMSP0073
NAM/RESTRICTED, TEST A
DOB/19800401
SEX/M RAC/W HGT/600 WGT/201 EYE/BRO HAI/BRO
OLN/ OLS/
ARI/2091150
MIS/CASE INITIATED BY TROOPER JOHN TEST SMITH, MEMSP0000 TEST-RPF-1

DATE OF ENTRY/20200407