

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

Introduction

Several states have adopted “red flag laws.” In general, such laws permit 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 the provision 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 took effect on July 1, 2020. PL 2019, c. 411.

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 poses a likelihood of serious harm¹, a 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. The law enforcement officer must deliver the person for examination by a medical

¹ *Harm to self, or others, or inability to care for self.*

More specifically, by statute, “likelihood of serious harm” means:

- A. A substantial risk of physical harm to the person as manifested by recent threats of, or attempts at, suicide or serious self-inflicted harm;
- B. A substantial risk of physical harm to other persons as manifested by recent homicidal or violent behavior or by recent conduct placing others in reasonable fear of serious physical harm;
- C. A reasonable certainty that the person will suffer severe physical or mental harm as manifested by recent behavior demonstrating an inability to avoid risk or to protect the person adequately from impairment or injury; or
- D. For the purposes of a progressive treatment program, in view of the person's treatment history, current behavior, and inability to make an informed decision, a reasonable likelihood that the person's mental health will deteriorate and that the person will in the foreseeable future pose a likelihood of serious harm as defined in A, B, or C above.

practitioner for purposes of involuntary admission to a psychiatric facility (blue paper) or for a weapons restriction assessment if law enforcement has probable cause that the person possesses, controls, or may acquire a dangerous weapon. To the extent that protective custody is necessary for the weapons restriction assessment to proceed, if the blue paper evaluation and weapons restriction assessment are not co-occurring, the weapons restriction assessment should occur before the blue paper evaluation in that the release of the person from protective custody denies an opportunity for the weapons restriction assessment.

Assessment of Likelihood of Foreseeable Harm

When a medical practitioner is informed by law enforcement that there is probable cause to believe that a person in protective custody possesses, controls, or may acquire a dangerous weapon, the practitioner shall determine whether the person presents a likelihood of foreseeable harm. In addition to the information that led to protective custody and the information constituting the probable cause belief that the person possesses, controls, or may acquire a dangerous weapon, the law enforcement officer must also provide to the practitioner any historical information, including prior law enforcement interactions with the person and the person's criminal history.

Judicial Endorsement of Application for Weapons Restriction Order

If the medical practitioner determines that the person presents a likelihood of foreseeable harm, the practitioner shall endorse the Application for Weapons Restriction Order whereupon 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.² 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 probable cause declarations of law enforcement or the likelihood of foreseeable harm. Once endorsed, the Notice of Service on Restricted Person may be served on the restricted person.

METRO and District Attorney Notification of Issuance of Order

² The Houlton RCC (800-924-2261) maintains a list of after-hours judicial officers.

METRO Notification. The METRO Entering Agency must expeditiously enter the Weapons Restriction Order into the State Database Weapons Restriction Order File. (An order not yet served is a “suppressed order;” it becomes an “active order” after service of the order on the restricted person.) This will in turn cause the record to be entered into the Maine State Bureau of Identification database. After that, the record will be automatically entered into the Federal National Instant Criminal Background Check System (NICS) database. The entry will also generate a unique identifier called an ARI, which will be provided to the METRO Entering Agency for inclusion in any subsequent reports. The ARI is like 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.

DA Notification. The originating law enforcement agency must immediately send a copy of the Weapons Restriction Order and all other relevant reports, forms, or information to the District Attorney’s Office in the prosecutorial district in which the restricted person resides. The ARI must be included in any documentation submitted to the District Attorney’s Office.

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 may not be enforced until service of the order on the restricted person. In this respect, a Weapons Restriction Order is like a Protection from Abuse Order in that there can be no enforcement until the order is served.

METRO and District Attorney Notification of Service of Order

METRO Notification. Regardless of which agency makes service of the order, the METRO Entering Agency that entered the original information must expeditiously modify the appropriate entry in the State Database Weapons Restriction Order File to reflect that the order was served. (The status of the order then becomes an “active order” as opposed to a “suppressed order.”)

DA Notification. The originating law enforcement agency must immediately send a copy of the Weapons Restriction Order that was served on the restricted person to the District Attorney’s Office in the prosecutorial district in which the restricted person resides.

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, 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 initiated the Weapons Restriction Order process is expected to coordinate the weapons surrender process. A restricted person properly served becomes a prohibited person for purposes of possession or control of a firearm(s) (not ownership) pursuant to 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 the surrender requirement in the order is not subject to arrest or prosecution as a prohibited person for possessing or controlling weapons before or at the time of surrender. 34-B M.R.S. § 3862-A(5). If the District Court hearing results in the dissolution of the Weapons Restriction Order, the originating law enforcement agency is responsible for coordinating the return of weapons.

District Attorney's Office

The District Attorney's Office in the prosecutorial district in which the restricted person resides is responsible for initiating the court hearing and must file a petition within five (5) days of service of the Weapons Restriction Order. 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 of the order as soon as possible, including the notice of service. One of the most essential elements to relay to the DA's Office is the ARI number generated by the METRO entry of the order. Without it, tracking and necessary modifications to the order as it moves through the court process is not possible. If the DA's Office does not petition the court for a hearing, it will notify the originating law enforcement agency. The agency in turn must update the record in the State Database Weapons Restriction Order File.

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. The file is linked to a Driver's License Query so that the system will return an automatic response, as is the case with warrants, bail conditions, and protection orders.