

**FINAL REPORT
OF THE
INDEPENDENT COMMISSION
TO INVESTIGATE THE FACTS OF
THE TRAGEDY IN LEWISTON**



Presented to
Governor Janet T. Mills
Attorney General Aaron M. Frey
State of Maine
August 20, 2024

“When there is someone who is a danger to themselves, or to the community, do the uncomfortable task and protect us.”

Danielle Jasper, survivor
and victim

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August 20, 2024

The Honorable Janet T. Mills
Governor of Maine
State House Station 1
Augusta, ME 04333

Dear Governor Mills,

On behalf of the Independent Commission to Investigate the Facts of the Tragedy in Lewiston (Independent Commission), I hereby submit to you a final public report of its findings pursuant to your Executive Order dated November 9, 2023.

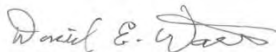
We are grateful to you, the Attorney General, and the people of Maine for entrusting us with investigating the complete facts and circumstances surrounding the unspeakable tragedy in Lewiston. And we thank the Maine State Legislature for granting us subpoena power so that we could complete our work unimpeded.

Members of the Independent Commission took their responsibility to the public interest seriously. Individually and collectively, we conducted work thoughtfully and thoroughly with an open mind and a hardened determination to find the truth. We asked questions. We followed leads. We unearthed information. I extend my gratitude to each member. While none of us wished to be in the position of serving on a commission investigating a mass shooting, I could not be prouder of the individual commissioners you chose to complete this solemn task and the final work product we share with you today.

I also wish to thank and acknowledge the following Commission staff members for their hard work and dedication to our state: Executive Director Anne Jordan, investigators Brian MacMaster and Jim Osterrieder, and communications consultant Kevin Kelley.

Every Mainer was touched by what occurred on October 25, 2023. The acts of violence ended and upended our lives, forever changed our communities, and damaged a sense of safety and tranquility that defines what it means to live in Maine. Our investigation and the information and findings set out in this final report are meant to bring truth to the victims' families, to those who were injured, and to the people of our state and nation. We hope this truth will help the healing process while simultaneously enabling the public and policymakers to learn from mistakes.

Again, thank you for the honor of serving the people of Maine.
Sincerely,



Honorable Daniel E. Wathen Chairman

CC: The Honorable Aaron M. Frey, Attorney General of Maine

Content Advisory

The Commission and the staff took great care to be deliberate about the words and phrases used in this report. The purpose of this report is to convey the facts as found by the Commission and to expose the truth. Nevertheless, the descriptions may be upsetting for some readers due to the explanations of this incident, the age or status of the victims and survivors, and the circumstances they endured.

The Commission carefully considered the FBI's recent recommendations not to name the shooter to avoid glorifying his actions and out of respect for the victims and survivors.¹ However, after careful deliberation and in light of the widespread and continuing use of the shooter's name by the media, the public, and the witnesses who testified at public hearings, the Commission decided to refer to him by name. This decision was not made to diminish the nature of his acts; rather, it was made to assist the reader in comprehending the report's content and the need to report the facts.

For resources, including free and confidential emotional support, please visit <https://988lifeline.org> or call or text 988 to reach the Suicide & Crisis Lifeline. If you are a veteran, press 1 for veterans' services. This service is available 24 hours a day, 365 days a year. Services are also available for teens and young adults by texting (207) 515-8398. For help managing stress and for resiliency resources for anyone in Maine experiencing stress reactions, call (207) 221-8198. This service is available from 8 a.m. to 8 p.m., seven days a week. For deaf and hard of hearing individuals, please contact the Maine Association for the Deaf at <https://deafmaine.org/>. Finally, the Maine Resiliency Center, located at 184 Main Street in Lewiston, offers trauma-informed resources, counseling, and support for anyone affected by the October 25, 2023, shootings, including family, friends, and loved ones of individuals killed on October 25th, victims and survivors, those present at the scenes, first responders, and medical personnel, and any member of the community. The Center may be reached at (207) 515-3930, by email at info@maineresileincycenter.org, or by visiting its website at <https://www.maineresiliencycenter.org/>.

¹ The Don't Name Them Campaign, endorsed and supported by the F.B.I., encourages media, law enforcement, and public information officers to shift their focus from the perpetrators of active shooter incidents towards the victims, survivors, and heroes who stopped them as well as the communities that come together to help in the healing process. dontnamethem.org. The Commission lauds these goals but reminds the readers that the charge contained in the Governor's Executive Order requires it to investigate the facts and response of law enforcement and the Army before and after the shooting. It must directly name all involved to carry out its charge.

Dedication

This report is dedicated to the memory of the 18 persons killed on October 25, 2023, at Just-In-Time Recreation and Schemengees Bar and Grille in Lewiston, Maine.

The report is also dedicated to the victims and survivors—those who were physically and/or emotionally injured, those who feared for their lives and the lives of their loved ones and friends, and those who risked their own safety and lives to protect others. They offered aid and comfort, called for help, transported injured persons, and assisted first responders during the dreadful aftermath. To the hundreds of survivors in this community, we acknowledge the harm that was inflicted and that your grief and fear linger today. To the hundreds of law enforcement and emergency medical responders who immediately responded to the scenes and rendered aid and protection, we thank you.

We honor all of you by remembering your loved ones and relating your stories to the rest of the country. We hope our review of the events of the days and months leading up to and after October 25, 2023, provides some answers to your questions and offers lessons learned that may help other survivors, victims, and communities in the future. Sadly, despite intensive efforts by law enforcement and the Commission, some questions may never be answered. The limitations of the human condition and the lack of evidence prevented the Commission from definitively answering all your questions.

The State of Maine and the nation mourned with the Lewiston community on that tragic day. We continue to do so. While we remain heartbroken by your loss, we are driven by the need to provide an authoritative accounting of the days and months leading up to that day, the response that transpired on October 25th, and the events and actions that followed.

In Loving Memory:

Peyton Brewer-Ross

Thomas Ryan Conrad

Joshua Seal

Aaron Young

William Young

Tricia Asselin

Robert Violette

Arthur Strout

Bryan MacFarlane

Maxx Hathaway

Michael Deslauriers

William "Billy" Brackett

Lucille Violette

Ronald Morin

Joseph Walker

Stephen Vozzella

Jason Walker

Keith Macneir



Photo of Just-In-Time Recreation by Kathleen Walker, survivor and widow of Jason Walker.

I. INTRODUCTION

A. Membership

On November 9, 2023, by Executive Order No. 4 FY23/24, Governor Janet T. Mills established the Independent Commission to Investigate the Facts of the Tragedy in Lewiston.² Governor Mills named the following individuals, who served without compensation, to the Commission:

1. The Honorable Daniel E. Wathen, Chair. Chair Wathen is a retired Chief Justice of the Maine Supreme Judicial Court.
2. Dr. Debra Baeder. Dr. Baeder is a forensic psychologist who was the Chief Forensic Psychologist for the State Forensic Service in Maine and the Director of Clinical Services for the Office of Behavioral Health.
3. George T. (Toby) Dilworth, Esq. Attorney Dilworth is a Portland attorney and a former federal prosecutor.
4. The Honorable Ellen A. Gorman. Justice Gorman is a retired Associate Justice of the Maine Supreme Judicial Court.
5. Dr. Anthony Ng. Dr. Ng is a practicing psychiatrist in Bangor and provided services in the aftermath of the Newtown, Connecticut, school shooting and consulted on other mass shootings.
6. The Honorable Geoffrey Rushlau. Judge Rushlau is a retired District Court judge and the former District Attorney for Lincoln, Knox, Waldo, and Sagadahoc counties.
7. The Honorable Paula D. Silsby. Attorney Silsby is of counsel to a Portland law firm and served as the U.S. Attorney for the District of Maine for nine years.

B. Commission's Charge

The purpose of the Commission was to: “(d)etermine the facts surrounding the tragedy in Lewiston on October 25th [2023], including relevant facts and circumstances leading up to

² See Appendix A for a copy of the Governor's Executive Order .

and the police response to it.” The Executive Order further stated that the Independent Commission “should determine the full scope of its work, and should ask any question necessary of any person that is relevant to the charge of gathering the facts regarding Robert Card’s mental health history, contact with State, Federal or military authorities, access to firearms, the initial law enforcement response to the Lewiston Shootings and the manhunt that ensued, and any other matters the Independent Commission determines are relevant to its purpose.”

In a letter to the Commission members, Governor Mills and Attorney General Aaron M. Frey stressed “*all that we ask is that you follow the facts, wherever they may lead, and that you do so in an independent and objective manner, biased by no one and guided only by the pursuit of truth.*”³

The Executive Order provided that the Chair would preside at, set the agenda for, and schedule Commission meetings, seek funding from the Attorney General as determined necessary to hire sufficient staff or consultants on a contract basis to fulfill its mission and, to the extent practical without hindrance and where possible, conduct its work in a manner open and accessible to the public. The records, proceedings, and deliberations of the Commission were specifically exempted from the provisions of Maine’s Freedom of Access Act, 1 M.R.S. c. 13.

It is important to acknowledge that the Commission was not asked to make policy recommendations regarding access to firearms, suggest amendments to Maine’s statutes, or propose operational changes for government agencies. Those responsibilities properly rest with elected and appointed officials. The Commission’s responsibility was to find the facts so that the public, law enforcement, military leaders, and elected and appointed officials can make informed decisions and reduce the risk of more such tragedies.

II. Executive Summary

At 6:54 p.m. on October 25, 2023, 40-year-old Army Reservist Robert Card II (Card) entered the Just-In-Time Recreation Facility in Lewiston, Maine, armed with a .308 Ruger SFAR⁴ rifle with a scope and laser. Over 60 patrons and employees, including 20 children, were present. In 45 seconds, Card fired 18 rounds, killing eight people and wounding three others. Additional people suffered injuries while trying to hide or escape. Card then drove about four

³ See Appendix A for the joint letter from the Governor and the Attorney General to the members of the Commission.

⁴ Small frame autoloading rifle. Card purchased this firearm legally from the Fine Line Gun Shop in Poland, Maine, on July 6, 2023, nine days before his hospitalization in New York.

miles to Schemengees Bar and Grille. He left his car running outside the main entrance and entered the building at 7:07 p.m. In 78 seconds, he fired 36 rounds, killing ten more people and wounding ten others. Additional individuals suffered other injuries during the chaos. In total, Card killed 18 people and wounded 13 in less than two minutes inside those businesses.

Card is solely responsible for his own conduct. He caused the deaths and injuries inflicted that night. Although he might still have committed a mass shooting even if someone had managed to remove Card's firearms before October 25, 2023, there were several opportunities that, if taken, might have changed the course of events.

The Commission affirms its earlier unanimous finding that in September 2023, the Sagadahoc County Sheriff's Office (SCSO) had sufficient probable cause to take Card into protective custody under Maine's yellow flag law⁵ and to initiate a petition to confiscate any firearms he possessed or over which he had control.

Several law enforcement officials testified that the yellow flag law is cumbersome, inefficient, and unduly restrictive regarding who can initiate a proceeding to limit a person's access to firearms. Further, the SCSO is justified in pointing out that the Army Reserve (AR) did not share all the relevant information it had about Card's behavior. Nevertheless, under the circumstances existing and known to the SCSO in September of 2023, the yellow flag law authorized the SCSO to start the process of obtaining a court order to remove Card's firearms.

The Commission further finds that the leaders of Card's (AR) Unit failed to undertake necessary steps to reduce the threat he posed to the public. His commanding officers were well aware of his auditory hallucinations, increasingly aggressive behavior, collection of guns, and ominous comments about his intentions. Despite their knowledge, they ignored the strong recommendations of Card's Army mental health providers to stay engaged with his care and "mak[e] sure that steps are taken to remove weapons" from his home. They neglected to share with the SCSO all the information relating to Card's threatening behavior, and actually discounted some of the evidence about the threat posed by Card. Had they presented a full and complete accounting of the facts, the SCSO might have acted more assertively in September. While the AR leaders correctly point out that their authority over a reservist like Card is not as broad as the authority the military has over their active-duty

⁵ 34-B M.R.S. 3862-B (2024) authorizes a law enforcement officer to seek a court order that prohibits an individual from having or purchasing dangerous weapons, including firearms. The appropriate term for the order is "threat-based restriction." However, for ease of reading and understanding, this report refers to it as the "yellow flag" law. The Legislature has since amended the law in place in October 2023. See LD 2224, enacted into law as P.L. 2023, ch. 675 (signed by the Governor on April 26, 2024), Appendix D. The changes have not altered the Commission's finding that there was probable cause to take Card into protective custody and to initiate a yellow flag petition in September 2023.

service members, they failed to take advantage of the available opportunities to exercise their authority over him.

Finally, we find that the challenges faced by law enforcement in responding to the shootings were unprecedented in Maine: two active shooting sites with dozens killed and injured, multiple reports of other active shooting sites, gathering and preserving evidence for a possible criminal prosecution, and a simultaneous state-wide manhunt. Many law enforcement officers demonstrated bravery and professionalism in the face of danger. While the first hours were, at times, “utter chaos” as hundreds of law enforcement officers poured into Lewiston and were dispatched or self-dispatched to numerous scenes, the actions of law enforcement ultimately resulted in the discovery of Card’s body within 49 hours without further loss of life. While the Commission makes some findings about the actions of law enforcement following the shooting, we anticipate that the Maine State Police (MSP) will conduct a full after-action review with an independent evaluation by an entity with policing expertise. The MSP has already completed a “Manhunt Operations After Action Review” focused on tactical operations with an independent evaluation by the Pennsylvania State Police. Not only would a full after-action review allow for professional recommendations about policy, protocol, and other policing improvements, it would likely confirm what this Commission recognizes as positive and successful examples of the law enforcement response.

III. General Process

A. Organization and Approach

The Commission held its first public meeting on November 20, 2023. At that time, it appointed staff members Anne Jordan, Esq., as the executive director, Brian MacMaster and James Osterrieder as investigators, and Kevin Kelley as the Commission’s media relations specialist. The Commission took public commentary. It also voted unanimously to formally request that the Governor and the Attorney General seek subpoena power for the Commission so that all the relevant and necessary documents, evidence, and testimony could be obtained.

Emergency legislation was introduced on January 25, 2024, to grant the Commission the necessary powers to issue subpoenas.⁶ After a public hearing before the Legislature’s Judiciary Committee on January 29, 2024, and a work session on January 31st, the bill received unanimous support from both the House of Representatives and the Senate and was signed into law by the Governor on February 13, 2024. Because it was emergency legislation, the law went into effect immediately.

⁶Resolves 2023, chapter 129, granted this subpoena power , See Appendix B.

During its investigation, the Commission took voluntary statements from some witnesses and testimony under oath from others.⁷ Some, especially victims, submitted written statements. The Commission issued twelve subpoenas to testify and produce documents and three other subpoenas to produce records.⁸ Some law enforcement agencies voluntarily produced records and provided officers to testify, while others required subpoenas or other formal process.⁹ The Commission reviewed over a terabyte of electronic local, county, and state law enforcement records and engaged in other investigative tasks.

The Commission reviewed thousands of additional pages of reports and records from various institutions and agencies, including the Maine State Police Crime Lab, the Office of Chief Medical Examiner, the Boston University Chronic Traumatic Encephalopathy (CTE) Center, the Maine State Police Computer Crimes Unit, the Maine Information and Analysis Center (MIAC), the New Hampshire and New York State Police, the New York Department of Criminal Justice Services, the regional communications centers,¹⁰ various District

⁷ Persons who were subpoenaed were placed under oath. A court reporter recorded their testimony and transcribed it. Each subpoenaed witness was provided a copy of the testimony and allowed to review it, make corrections, and sign the transcript

⁸ See Appendix S for a detailed report on the subpoenas issued as required by Resolves 2023, ch. 129, section 13. One subpoena to testify was withdrawn by the Commission.

⁹ Lewiston, Lisbon, the Maine State Police, the Hudson New Hampshire Police Department, and Sagadahoc County Sheriff's Office all voluntarily produced witnesses and/or records directly to the Commission. Many other agencies from across the state voluntarily produced reports that were gathered by the Maine State Police and turned over to the Commission. Other agencies or their employees requested or required a subpoena due to various state or federal confidentiality or security laws or because the employees were both police officers and members of the AR. The regional dispatch centers produced partially redacted records pursuant to the confidentiality provisions of 25 M.R.S. §2929. Federal agencies required a formal *Touhy* request. Some federal agencies, including the FBI, the AR, the Bureau of Alcohol, Tobacco, Firearms and Explosives, Customs and Border Patrol, and the U.S. Attorney's Office for the District of Maine produced some, but not all, requested records, or produced partially redacted records citing various federal laws or attorney-client, or attorney work product privilege. Of note, the AR only produced 115 pages of the 3200 page internal investigation report requested via multiple *Touhy* requests. These requests began in December 2023. The Army completed and signed the report in March 2024.

¹⁰ Lewiston-Auburn, Department of Public Safety at Augusta, Sagadahoc County, and Cumberland County.

Attorney's offices, the New York Administrative Office of the Courts,¹¹ the FBI,¹² the Bureau of Alcohol, Tobacco, Firearms and Explosives, and extensive medical records from Keller Army Community Hospital and Four Winds Hospital in New York.

The Commission also scrutinized records, policies, statutes, and regulations from the United States Army and ARs, hundreds of videos and photographs, maps, and hundreds more pages of text and email messages between various individuals. It reviewed a compilation of videos gathered from multiple businesses in and around the two scenes that partially documented the shooter's path of travel that evening. It reviewed after-action reports from Maine law enforcement and others to gather the necessary information to conduct this investigation. Commission members read dozens of external reports and reviewed numerous websites regarding related topics.

B. Public Meetings

To the extent possible, the Commission conducted its business in public. It held sixteen public hearings over the course of nine months. All but five of these meetings were conducted in a public building and all public hearings were recorded and live-streamed. This procedure allowed members of the public to attend either in person or via live stream and to see and hear the testimony as it unfolded.¹³ One hearing was a combination of live in-person testimony and live testimony over Zoom. Other hearings were conducted by Zoom live stream because the witnesses were located out of state or out of the country, and the use of Zoom live stream in a webinar format was the most appropriate mechanism to permit live public observation of the testimony.¹⁴ Video recordings of each session were posted on the

¹¹ New York's "Red Flag Law" has strict confidentiality provisions prohibiting public access to actual court records by any person or agency that is not a party to the case. The New York Administrative Office of the Courts, through the assistance of the New York Division of Criminal Justice Services, did provide the Commission a summary of requested case information without revealing the names of the parties or providing copies of court records. This provided the details the Commission needed while protecting the privacy interests of the parties involved.

¹² For some records, the FBI required the return of the records upon completion of the Commission's work. In others, the Commission was allowed to keep the records but was required to and did secure permission to include the information in this report. The agreement provided that before any of the records can be released to the public, the requestor needs permission specifically granted by the FBI.

¹³ Public hearings were held in the Cross Building at the Capitol Complex in Augusta, the Deering Building in Augusta, the University of Maine in Augusta, and Lewiston City Hall. At each of these locations, the facilities, and highly skilled technology and other staff were provided free of charge.

¹⁴ The Zoom online seminar format permitted the witnesses and members of the Commission to fully participate and offer testimony or ask questions. Persons who were not testifying or asking questions could only observe; they could not speak or interrupt the proceedings, thus avoiding the "Zoom bombing" problem encountered by other governmental boards.

Commission's website.¹⁵ Those who testified under subpoena were provided with transcripts of their testimony in accordance with the provisions of the subpoena law.

The Commission endeavored to ensure that members of Maine's Deaf community had full access to all the public proceedings. Certified American Sign Language (ASL) interpreters were employed, and their interpreting was simultaneously broadcast on a split screen. Prior to each live stream hearing, members of the staff and technical specialists met with the interpreters and enlisted their suggestions and guidance for room arrangement, interpreter location, and camera angles to ensure that the interpreters would be seen clearly and simultaneously on the screen. For one Zoom hearing, interpreters were not available. Closed captioning was enabled during the live hearing, and a split-screen interpretation was added to the recording of the session and posted on the Commission's website.

C. Private Meetings

Once the Commission received a compilation of all victim and survivor contact information, the Commission's Executive Director wrote to each individual and offered an opportunity to speak to the Commission.¹⁶ This included the options of appearing in public, submitting written letters or comments, or meeting with the Commission in private. Some requested private meetings with the Commission, while others asked that their written statements remain private. Recognizing the need for confidentiality and the protection of privacy and emotional well-being, the requests were granted. Ten individuals testified in private.¹⁷ The Commission also received written statements from three other victims and witnesses who requested the statements remain private.

D. Website and Email Notification

The day the Governor announced the creation of the Commission, a public website was launched. <https://www.maine.gov/icl/>. The website provided and continues to provide background information, regular announcements and updates on public hearing dates. It also serves as a repository for the recordings of all the Commission public hearings. Included on the website is a system for automated email notifications. This allowed all interested parties to receive timely notification of upcoming Commission meetings and announcements. Information concerning the availability of the automated system was

¹⁵ <https://www.maine.gov/icl/>

¹⁶ Over 200 letters were sent out. Three of the letters were returned as undeliverable. Staff then reached out to private counsel, victim witness advocates, and/or friends or fellow survivors to offer those individuals the opportunity to provide testimony or letters.

¹⁷ Four of these individuals subsequently elected to testify in public-Nicole Herling, James Herling, Katie Card and Cara Lamb.

provided to victims and survivors via the victim witness advocates. Notice of its availability was published on the website.

IV. DETERMINATION OF THE CONTENTS OF THE INTERIM REPORT

Early in the process, and after conferring with legislative leaders, the Commission agreed that it was important to divulge the Commission's findings up to that point. Recognizing that the Commission's work was not completed but that victims, survivors, public officials, and the general public were eager to learn of the Commission's work and findings to date, the Commission issued an Interim Report. The Report was provided to the Governor and the Attorney General and then released to the public on March 15, 2024.¹⁸ It provided a detailed description of the facts that had been found to date and the course of action that remained to be taken. This report is published on the Commission's website:

www.maine.gov/icl/sites/maine.gov/icl/files/2024-03/Commission%20Interim%20Report%203-15-24.pdf.

V. FACTS AND FINDINGS

A. Chronological History Prior to October 25, 2023

1. May 2023

In early May 2023, Card's then 17-year-old son, Colby Card, spoke to his mother, Cara Lamb (Card's former wife), concerning his father's increasingly erratic behavior, anger, and paranoia. He described his father's insistence that people were talking about him and calling him gay and a pedophile. When Colby told his father that people were not talking about him, Card became very angry and accused Colby of participating in the conversations.

This behavior, which started in the late winter of 2023, shortly after Card acquired hearing aids,¹⁹ was out of character for Card and deeply concerned his son. Colby told his mother that he was so worried about his father's actions, anger, and behaviors that he was no longer comfortable spending time at his father's house.²⁰ Colby also expressed concerns about his

¹⁸ It was brought to the attention of the Commission that one of the times included in the Interim Report concerning the actions taken by the Sagadahoc County Sheriff's Office on September 15, 2023, was incorrect. This clerical error was corrected and the correct time is reflected in the Timeline contained in Section VII of this report. While the Commission acknowledges this mistake, it did not alter or affect its findings.

¹⁹ Card's AR colleague and good friend, Daryl Reed, also testified to this behavioral change and time frame.

²⁰ Before 2023, Colby split his time between his father's and mother's homes. He had a good relationship with his father, and the two spent time together fishing, boating, jet skiing, motorcycling, and participating in other outdoor pursuits. At the time of his meeting with the SRO, Colby was a senior in high school and had his own vehicle, which allowed him to travel freely back and forth between the two homes.

father's access to the 10-15 firearms that were stored at his father's house, in his truck, and at other family properties.

After speaking with Colby, Cara decided to seek help and advice. On May 3, 2023, Colby and Cara met with the school resource officer (SRO) at Colby's school, Mount Ararat High School in Topsham. They explained their concerns for Card's mental health. When the SRO learned that Card resided in Bowdoin, she called the Sagadahoc County Sheriff's Office (SCSO) and asked that a deputy respond.

A short while later, SCSO Deputy Sheriff Chad Carleton met with them at the school. He took detailed statements. He learned that neither Colby nor Cara wanted Card to know that they were the ones who made the report. During the interview, Carleton learned of Card's long service in the AR.²¹ Carleton, Cara, and Colby decided that Carleton would reach out to Card's AR unit in Saco and try to get him help through the AR. That same day, Carleton spoke with First Sgt. Kelvin Mote, the senior non-commissioned officer (NCO) in Card's company at the AR unit, who was also a police officer in Ellsworth, Maine.

Mote told Carleton that members of the unit were starting to see behavioral changes in Card, but that he did not know it was as serious as described by Colby. Mote told Carleton that the AR unit had a "battle assembly" coming up and that AR members would sit down with Card and see if they could get him to "open up."²² Mote was familiar with the AR Psychological Health Program (PHP), which provides mental health assistance to reservists, their families, and their commanders. During his call with Carleton, Mote did not provide any information about the PHP to give to Card's family.

The next day, Carleton received a call from Cara Lamb. She said that she had spoken to Card's brother, Ryan Card, and told him about their concerns. She informed Carleton that on the evening of May 3, 2023, Ryan and his sister, Nicole Herling, had gone to Card's home to check on him. Card met them at the door with a gun in his hand. Although the meeting

²¹ Card joined the AR in 2003. He enjoyed favorable annual reviews and was praised for his work effort, dedication to the unit, and his willingness to lead. Colby and Cara both believed that Card was more likely to listen to one of his fellow reservists than to a law enforcement officer. During his years in the AR, Card had received a series of promotions and was a Sergeant First Class at the time of the shootings in Lewiston. He initially served as a petroleum supply specialist. In 2013, he became a trainer, working each summer with the 1,200 incoming cadets at the West Point Military Academy. He was primarily responsible for teaching the cadets how to properly throw live hand grenades. Over the course of his career, Card was present when thousands of live grenades were thrown each year.

²² Battle assembly is the term used by the AR for the once-a-month reserve duty that the soldiers in the unit must attend. AR regulations require regular attendance at the battle assembly. See AR-135-91, which sets out attendance requirements for reservists and the consequences, including discharge, for failure to attend the necessary number of battle assemblies each year.

was cordial for the most part, Card accused his siblings of talking about him behind his back. He also told them that he thought people were stalking him or casing his home. After receiving this information, Carleton tried to reach Mote again but was unsuccessful.

Carleton then sent the following message to all members of the SCSO patrol division:

Use extreme caution if responding to Robert Card's residence. Robert's mental health is in decline, and he is experiencing paranoia and hearing voices. He has several guns inside the house and is in the Army Reserves. His family and the Army are working on getting Robert help but his brother Ryan reported Robert answered the door with a gun on 5/3/23 when Ryan went to see him. Robert allegedly believes people are watching/talking about him.

There is no evidence that members of the AR sat down with or even attempted a meeting with Card during the May battle assembly or, for that matter, the June battle assembly. There is also no evidence that any member of the AR reached out to the PHP for assistance on how to address Card's deteriorating mental health.

2. June 2023

Throughout the month of June, Herling continued to research ways to get help for her brother. She testified that on June 3, 2023, she called the VA Crisis line. The worker she spoke with advised her not to inform command about her brother's delusions of being called gay or a pedophile as it could harm his career. Herling also testified that despite extensive online searches, she could not find clear information on where to report her concerns; much of the online information was outdated.

Between May and July 15, 2023, when Card reported to active duty at West Point, Herling attempted to reach someone at the AR unit in Saco to talk about the family's increasing concerns about Card and his deteriorating mental health.²³ She left five voicemail messages on various phones asking for a callback. No one called her back. She also spent hours conducting Internet and telephone research trying to find help for Card. She called 988 and other numbers and researched behavioral health programs for members of the AR. There is no evidence that she found the PHP website.

²³ During this time, Card and his family primarily communicated by text. Nicole Herling explained that Card also accused family members of talking about him, but they hoped by continuing the contact they could get him help and assure him his family loved and supported him. They were concerned that Card was getting worse.

3. July and August 2023

On July 6, 2023, Card legally purchased a .308 Ruger SFAR rifle with a scope and laser and a 9mm Beretta pistol from Fine Line Gun Shop in Poland, Maine. On that date, Card had never been involuntarily hospitalized and had no felony criminal record, domestic violence protection order, or weapon restriction (“yellow flag”) order that would have prohibited his purchase under Maine or federal law.²⁴ Nothing prohibited him from purchasing the firearms.

In the early summer of 2023, Card received orders requiring him to report to the U.S. Military Academy at West Point for his annual training responsibilities. He and his unit were scheduled to instruct new cadets on properly throwing grenades and operating other weapons. On July 15, 2023, Card drove to New York and arrived at his accommodations at Camp Smith, a New York National Guard facility, where he and some members of the unit were staying. He checked in and joined his fellow soldiers at the pool. He immediately began to tell them that the woman at the front desk was talking about him being a pedophile. He also reported that clerks at a rest-stop restaurant on the way to West Point had been saying the same things. Members of his unit tried to tell him that was not happening, but he did not believe them. Many members of his unit found his behavior and statements odd and disconcerting.

Later in the early evening, Card and two other members of the AR unit, Daryl Reed and Christopher Wainwright, drove from the hotel to purchase beer and pizza. During the ride, Card accused the other soldiers of talking about him. When asked what he was talking about, Card would not explain the comment any further. When they stopped to purchase beer, Card angrily left the vehicle and, upon returning after purchasing his beer, Card, without provocation, suddenly and aggressively charged his longtime friend Reed with balled-up fists, wanting to fight. Reed backed away and avoided a physical altercation but found the behavior very disturbing. Reed was also concerned that Card kept repeating, “I’ll take care of it. It’s okay. I’ll take care of it.” Upon their return to the hotel, Card grabbed his beer and stormed off to his room.

Reed and Wainwright took the pizza to a common room and told their fellow soldiers about Card’s behavior. They were concerned for the safety of the cadets and soldiers if Card were to react violently during the training. They contacted Master Sergeant Ed Yurek to report their concerns. Yurek listened to the account of Card’s behavior and, believing that the behavior was alcohol-related, suggested they should let him “sleep it off.” The other reservists disagreed and asked that Yurek meet with Card that night. The soldiers also notified Mote

²⁴ See Appendices C, D, and F for the various laws that prohibit certain individuals from possessing firearms.

about the situation and asked him to assist. Mote was staying some distance away but arrived as quickly as he could.

Yurek and Mote then made repeated attempts to get Card to open his door and speak to them. He refused to open the door, telling them to leave him alone. Eventually, they summoned base security, who opened the door with a master key. Yurek and Mote were then finally able to observe Card's condition. Mote described him as having a blank, fixed expression, which he called "a thousand-yard stare." Mote stated that the expression on Card's face was so disturbing that it made the hairs on the back of his neck stand up.

Yurek and Mote scanned the room for weapons and found none. They took the keys to Card's rental car. Because of the beer in Card's room, Yurek still suspected alcohol might be the issue.²⁵ Yurek and Mote agreed they would evaluate Card the following day to see if his condition had improved.

Early the next morning, July 16, Yurek and Mote found no change. Card was again locked in his room. He refused to open the door despite orders to do so and would not communicate with his superiors. They then asked for assistance from the New York State Police.

Three New York troopers responded. When the troopers arrived, various reservists explained what had been happening and Card's troubling behavior. They also mentioned the private weapons that Card owned. The troopers went to Card's room with Yurek and Mote to assess Card's condition. Card again refused to open the door despite orders to do so. After base security again opened the door with a master key, the troopers entered and attempted to talk to Card. He briefly spoke to them, telling them that members of the unit were "scared of me [because they know] I am capable."²⁶ When asked what he meant by that, Card did not answer.

After further discussions and the New York troopers telling the reservists their hands were tied because they did not hear Card make any direct threats, the AR unit's leaders agreed that a command-directed behavioral health evaluation (CDBHE) was warranted. Cpt. Jeremy Reamer, the company commander who was at home in New Hampshire, verbally authorized a CDBHE over the telephone.²⁷ Card was informed of the decision to have him evaluated and acknowledged that because it was an order, he had to comply.

²⁵ A search of Card's room the next day confirmed it was not alcohol related: Card had only consumed two beers.

²⁶ All this interaction was captured on the NY State Police body worn cameras.

²⁷ Reamer was in New Hampshire and was not scheduled to be at West Point until later in the deployment.

Three soldiers accompanied Card to Keller Army Community Hospital (Keller) in the nearby city of West Point. Mote drove while Reed and Sgt. Matthew Noyes, also a Maine law enforcement officer, sat in the middle seat. Card was intentionally placed in the third-row seat so that he would not have access to the door. Two cruisers, operated by the troopers, and a third vehicle driven by Wainwright, followed the vehicle transporting Card. This caravan was established to ensure the occupants' safety and to provide an immediate police response if the need arose.

Reed and Noyes watched Card throughout the nearly hour-long ride to Keller.²⁸ Reed described him as quiet, just staring out the window, not saying anything. At one point, Card started to weep quietly. When they attempted to get him to talk, he did not say a word.

Upon arrival at Keller, hospital personnel instructed the group to maintain a watch on Card. He was taken to an examination room, and the soldiers who accompanied him to the hospital took turns sitting with him. During the first hour, Card and Reed were having a “normal everyday conversation” when Card blurted out, “There they go again, talking about me.” When asked who was talking about him, Card pointed to some nurses outside the room, even though the room was enclosed in glass partitions and the doors were closed. Reed described Card’s behavior as paranoid. Wainwright then took over the watch. He later reported to Reed that Card indicated he wanted to “beat [Reed] up and knock out his teeth,” or words to that effect. Both found this behavior disturbing.

An emergency room physician initially examined Card and determined that he was exhibiting psychosis and paranoia and needed to be further examined. Shortly thereafter, a psychiatric nurse practitioner, Capt. Matthew Dickison,²⁹ examined Card and completed a Report of Mental Status Evaluation (DA Form 3822). The evaluation report stated that Dickison diagnosed Card with “Unspecified Psychosis not due to a substance or physiological condition.” Based on his evaluation of Card, Dickison determined that Card needed to be transferred to another hospital for a higher level of care. When explaining this to Reamer as Card’s company commander, Dickison also gave Reamer a series of recommendations: (1) “ensure that Card attends all follow-up appointments, (2) increase leader/supervisory support with intent of keeping [Card] engaged with unit members and other sources of support; (3) encourage Card to temporarily secure personal weapons with MPs, arms rooms, or other trusted sources, and (4) restrict access to or disarm all military weapons and

²⁸ Testimony indicated that the normal drive time to Keller was around 15 minutes. However, due to the washout of a local bridge, the caravan had to take a different, longer route to the hospital.

²⁹ Dickison, a master’s level psychiatric nurse practitioner with 12 years of experience, was on temporary assignment at Keller. He was later assigned to a post overseas, promoted to Major and testified via Zoom.

ammunition. No range duties.” He further informed Reamer that Card was not fit for duty.³⁰ According to Dickison, Reamer appeared to understand the recommendations, expressed no concerns about his ability to carry them out, and left Dickison with the impression that he would follow them.

Dickison informed Card that he needed psychiatric hospitalization, and Card agreed to be transferred.³¹ Arrangements were made to have Card transported via ambulance to Four Winds Hospital (Four Winds) in Katonah, New York. Dickison informed the members of Card’s unit who were at the hospital, including Reamer, of the plan. Card was taken to Four Winds on July 16, 2023, and, after discussions with staff there, he signed a form indicating that he was voluntarily admitting himself to the hospital for treatment.³² He stayed at Four Winds from July 16 to August 3, 2023.³³ Upon admission, he received a psychosocial assessment during which he acknowledged having a “hit list.” He also stated that he had told a military peer that if he didn’t stop talking about him, he’d “be added to my list.” Card was assessed as having psychosis and thought disorder. The risk factors and high-risk psychosocial issues requiring immediate intervention in a treatment plan were Card’s access to firearms and his active thoughts of homicidal ideation, as demonstrated by his hit list.

On July 26, 2023, ten days later, Card underwent a psychodiagnostic evaluation to assist his treatment team in reaching a diagnosis and developing a treatment plan.³⁴ The psychologist who conducted the evaluation stated that there were three aspects of Card’s personality that were likely to cause him difficulty: inconsistent coping skills, poor emotional controls, and narcissism. This was apparently based, in part, on Card’s reporting that “he feels constantly persecuted, misunderstood, and underappreciated by others.” The psychologist

³⁰ Card’s access to his assigned (military- owned) weapon was restricted on July 20, 2023.

³¹ Dickison testified that because Card agreed to go to Four Winds, there was no need for him to begin the process under New York law for an involuntary commitment. See Appendices H and I.

³² Under both federal and state laws that prohibit a person involuntarily hospitalized from possessing a firearm, there must be a finding by a court, board, commission, or other lawful authority that a person, as a result of a mental illness, is a danger to self or others and that the person must be committed to the hospital for further treatment. In this case, no hearing was ever held, and no finding that Card was a danger to himself or others was ever made by a court. See Appendices C, D, E, F, I, and Q for the various statutes.

³³ Reamer extended Card’s active-duty orders to include this entire period, thereby enabling him to get paid while hospitalized. Reamer could have invoked other AR regulations that would have extended his duty and allowed continued treatment and care, and continued Army authority over him after his discharge. He did not do so.

³⁴ Card’s treating psychiatrist voluntarily agreed to provide a statement and to be questioned by the Commission. Due to New York privacy law concerns, the Commission agreed to a private meeting. The psychiatrist relied, in part, on this psychodiagnostic testing in formulating Card’s treatment plan.

also opined that Card's paranoia "is of sufficient magnitude that it may reach delusional proportions at least part of the time." The doctor further suggested that given all the factors involved, although there might be some limited benefit from the use of psychotropic medications, Card appeared to be a poor candidate for psychological treatment, and his prognosis for significant change was guarded.

On July 27, 2023, at 5 p.m., Dickison called Reamer. He reviewed the findings on DA 3822 and the need for discharge planning for Card. In the notes he made after speaking with Reamer, Dickison wrote that he told Reamer that he needed to "include medical regarding discussion to start medical board process³⁵ and service members (sic) medical disposition going forward." He also wrote, "It was also discussed with Commander about making sure that steps are taken to remove weapons from service members home to ensure safety." Dickison noted, "Commander did not have any questions or concerns after our conversation."

Reamer said he had had difficulties retrieving a copy of the DA 3822 form due to email issues and agreed to come to Keller on July 28, 2023, to pick up a hard copy left for him at the front desk.³⁶ This report provided a diagnosis, findings, and the list of specific recommendations referenced above.

When Dickison testified before the Commission, he explained,³⁷ "I was all about making sure the service member did not have access to weapons." Dickison told the Commission that Reamer appeared to understand all his recommendations, was going to ensure that Card's personal weapons were removed from his home and see to it that the recommendations were followed. At no time did Reamer express concerns that he would be unable to follow the recommendations or that he lacked the authority to do so. After this conversation, Dickison had no further contact with Reamer.

³⁵ The Medical Board review process occurs when a service member's treating physicians believe the soldier will not be able to return to duty for medical reasons. It can be part of the discharge and/or retirement process and is initiated by the soldier's treating physician. See Army Regulation 40-501 (Standards of Medical Fitness) and Army Regulation 635-40 (Disability Evaluation for Retention, Retirement or Separation).

³⁶ Reamer needed to return to Keller to complete other paperwork. In the further comments section of the DA 3822, it was specifically recommended the "SM(Service Member) Chain of Command stay engaged with the SM care." It was also recommended that measures be taken to safely remove all firearms and weapons from SM's HOR (home of residence).

³⁷ The nurse practitioner previously sent a copy of the DA 3822 form to Capt. Reamer's email. The DA 3822 form is a report of a soldier's mental status evaluation. Capt. Reamer later testified that his email was not working at the time. Nevertheless, Capt. Reamer was verbally informed of the information on the form, including Card's diagnosis and condition and the need to ensure the weapons were removed. A hard copy was left for him to pick up at the front desk.

Reamer neglected to follow any of the recommendations Dickison gave him. In fact, he ignored them. Nor did he complete the Developmental Counseling Form (DA Form 4856) that, among other things, directed Card to make and maintain regular contact with his case management team. Reamer failed to follow up with treatment providers, failed to read email messages³⁸ concerning Card, failed to heed the advice of the providers to ensure the removal of all firearms from Card's home,³⁹ failed to contact the SCSO or have other members of his unit who were law enforcement officers in Maine contact the SCSO to arrange for the removal of the weapons, and failed to follow up with Card to ensure that he was participating in treatment.

Lt. Col. Ryan Vazquez, who assumed the position of Battalion Commander in late June 2023, testified that he discussed Mr. Card's diagnosis and hospitalization with Reamer first on July 16, 2023. They discussed his diagnosis, his inpatient hospitalization, and the Commander's Critical Information Report (CCIR).⁴⁰ Vazquez and Reamer spoke about Card's treatment progress a few more times during Card's hospitalization. It does not appear that Vazquez provided Reamer with any meaningful advice, guidance, or direction about Card. Neither Reamer nor Vazquez ordered a Line of Duty Investigation to determine Card's duty status.

Reamer and Vazquez both explained to the Commission that the AR had more limited authority over Card while he was in civilian status than they would have had if Card had been a full-time soldier. However, they neglected to use the tools available to them. They failed to initiate a Line of Duty Investigation (LODI) while Card was still at Four Winds. That process would have extended Card's active-duty orders and allowed him to be held longer. Reamer made no effort to compel Card to appear at either the September or October 2023 battle assemblies. This omission flew in the face of Dickison's recommendation, which Reamer appeared to accept, to "increase leader/supervisory support with intent of keeping [Card] engaged with unit members and other sources of support." At the battle assemblies, Reamer or a ranking NCO could have engaged Card about his failure to attend his follow-up appointments and encouraged Card to "temporarily secure personal weapons with MPs, arms rooms, or other trusted sources."⁴¹ Reamer also could have ordered Card to undergo another command-directed mental health evaluation.

³⁸ Card's treatment providers also sent Reamer this report via email on July 27, 2023. Reamer testified that he did not read this message until after the shootings in Lewiston occurred, some three months after it was sent. He testified that "his computer was down" during those three months.

³⁹ Four Winds also urged Reamer to have Card's weapons removed from his home. Reamer ignored Four Wind's recommendation.

⁴⁰ A CCIR is a Commander's Critical Information Report. In this case, it contained details surrounding the incident that led to Card's transportation to Keller and Card's diagnosis.

⁴¹ See AR-190-11, Sections 4-5.

The AR leadership did not try any of these options. Card was left to continue in his isolation, disengaged from other unit members or other sources of support. Instead of trying to secure Card's weapons through the chain of command, Reamer inexplicably left the task to Sean Hodgson, Card's friend, who had no authority over Card⁴² and was himself prohibited from possessing firearms during the summer and fall of 2023.

On July 26, 2023, a nurse case manager from the Army Reserve's Psychological Health program (PHP) emailed Card, introduced herself, and offered Card help in securing services when he got out of Four Winds. The only information provided to her about Card was the CCIR report that had been created as a result of Card's Command Directed Behavioral Health Evaluation. She was never provided and never had access to any of Card's medical records from either Keller or Four Winds, his psychological assessment results, or the DA 3822 Report of Mental Status Evaluation.

Card underwent extensive medical and psychiatric testing while at Four Winds. While he initially resisted group therapy or treatment, he was always compliant with his medication and, over the course of his treatment, hospital staff saw improvements in his condition. Dr. Klagsbrun, Card's treating psychiatrist, and other staff members participated in weekly calls with Dr. Sanchez and others at Keller and specifically discussed Card's care and situation. While Klagsbrun said the name Reamer was familiar, she could not state with certainty that Reamer was on any of these calls.

On July 28, 2023, Four Winds Hospital filed a petition with a New York court, seeking an order of continued admission for involuntary treatment. This was because Card had filed a petition for release a few days earlier. The hospital's petition was dismissed on August 1, 2023, after Card withdrew his petition for release. No court hearing ever occurred. Klagsbrun stated that given Card's progress in treatment, his agreement to continue his medications and participate in therapy and his stabilization at that point in time, she did not feel that the hospital would be successful in court.

Klagsbrun also testified that she considered six factors over the course of Card's treatment, in determining when, and if, he was safe for discharge:

1. His aggression risk,
2. His homicidal risk,
3. His suicidal risk,
4. His behavior in the hospital (i.e. was he unsafe to self or others),
5. His protective factors vs. risk factors, and
6. His medication compliance.

⁴² Card was an E-7, and Hodgson was an E-6.

It was her opinion, that as of the date of his discharge, Card was safe to be released. His discharge plans were discussed by Klagsbrun with Sanchez at Keller on August 1, 2023. They also discussed the need to see that the firearms were removed from Card's home. Klagsbrun called Sanchez asking him to ensure that the SAFE Act petition had indeed been filed as it was a very important safety concern.⁴³

After 19 days of treatment at Four Winds, Card was discharged, and he returned home to Maine on August 3, 2023.⁴⁴ Prior to his discharge, Card told the medical professionals that he would engage in treatment, take his medications, and reach out for help and support from family members and friends.⁴⁵ Despite these promises, he engaged in no treatment between August 3 and October 25, 2023, took almost none of his prescribed medication,⁴⁶ and did not answer or return calls or emails from treating professionals.⁴⁷ He also failed to make any appointments with a telemedicine service that was chosen for him. In an entry dated September 21, 2023, Keller records indicated that Card's case with the hospital would be closed due to his noncompliance.⁴⁸

On August 5, 2023, two days after his release from the hospital, Card went to Coastal Defense Firearms in Auburn, Maine, to pick up a silencer he had previously ordered. As

⁴³ In an earlier conversation, Sanchez told Klagsbrun he thought a SAFE Act petition had been filed but that he had to verify it.

⁴⁴ His friend and fellow Army Reservist Sgt. Sean Hodgson drove from Maine to New York to pick up Card. Hodgson had text message exchanges with Reamer before he left Maine, during the trip back and upon their return home. Despite Reamer's claims to Army investigators that he did not know about Card's discharge, text messages produced to the Commission demonstrate otherwise.

⁴⁵ Hospital records indicate that it was initially difficult for medical personnel to reach Card's mother, who was named as the only family point of contact. There was a family meeting via conference call where his discharge and follow-up were discussed. Testimony taken by the Commission demonstrated that Mrs. Card had limitations that would have made her unable to truly supervise or assist Card in his post-release treatment.

⁴⁶ After the Lewiston shootings, the Maine State Police obtained a search warrant for Card's home. They found a prescription for Olanzapine for 60 pills that was filled on August 3, 2023. The instructions were to take one pill in the morning and one at night. They found 53 pills left in the container. A postmortem examination and autopsy found no evidence of this or any other medication in Card's system.

⁴⁷ Card did have one conversation with a nurse from Keller on August 11, 2023. During that conversation, he reported he "was fine" but that he was not taking his medication and would not go for follow-up treatment. In all, that same nurse left eight voicemail messages for Card between August 7 and September 21, 2023, asking him to call. None of these calls was returned. It does not appear that this nurse took any steps to alert Reamer or Vazquez of Card's refusal to take his medications or participate in treatment.

⁴⁸The Army Reserve Medical Management Center (AR-MMC) did attempt to continue contact with Card. Its efforts are described later in this report.

mandated by federal law, the gun shop required Card to fill out and sign a form concerning his eligibility to purchase it. On that form, Card indicated that he had been committed to a mental health institution.⁴⁹ Based on that response, the gun shop refused to complete the transaction and Card left without the silencer.⁵⁰ In subsequent discussions with his fellow Army Reservists and his brother, he expressed anger about being denied the opportunity to purchase the silencer.

On August 9, 2023, Card texted his brother and told him he had “purchased a gun safe” for himself. This safe was located in his garage after the shooting. There were multiple other firearms inside.

On August 11, 2023, the PHP nurse case manager again reached out to Card and spoke to him by phone. She offered assistance to help him secure treatment services. She did not ask him about access to firearms, but Card volunteered that his access to firearms was limited. In responding to questions from the Commission, the nurse case manager described him as being frustrated by that. The nurse stated that Card told her that he had already been connected with care and that he did not need any additional resources. Per her employer’s standards of care in place at the time, she closed the case because the soldier declined services.⁵¹ The nurse case manager provided no report or other information to Card’s Commanders to let them know the outcome.

4. September 2023

The AR unit did not hold a battle assembly in August 2023. One was scheduled for September 16-17, 2023. During the early morning hours of September 13, 2023, Hodgson was traveling back from the casino in Oxford, Maine, with Card. Card, who was driving erratically, suddenly became very angry, pounded the steering wheel, and punched Hodgson in the face. Hodgson was able to exit the vehicle safely and walk home. Hodgson called Reamer when he got home and reported what happened. Reamer took no action. That same night, Hodgson also spoke to Reed and reported what happened.⁵²

⁴⁹ Card mistakenly thought that his voluntary admission met the criterion to answer yes to the question, “Have you ever been committed to a mental institution?” Only involuntary commitments meet that criterion. See Appendix R.

⁵⁰ There is no requirement in federal law for the gun shop owner to report the refusal to sell the silencer, or for that matter any other firearm, to local, state, or federal law enforcement.

⁵¹ This policy was changed after October 25, 2023.

⁵² Records recently obtained from First Fleet, the employer of both Card and Hodgson, show that they both had the day off on Tuesday, September 12. This corroborates information from other sources that the Casino trip was on September 12 and the assault and threatening occurred in the early morning hours of September 13.”

Then, on Friday September 15, in the early morning hours, Hodgson sent the following text message to Reamer and Mote:

Change the passcode to the unit gate and be armed if sfc card does arrive. Please. I believe he is messed up in the head. And threaten the unit other and other places. I love to death but do not know how to help him and he refuses to get help or continue help. I'm afraid he's going to fuck up his life from hearing things he thinks he heard. When I dropped him off, he was concerned his weapons were still in the car. I believe they were at the unit. And no one searched his vehicle on federal property. And yes he still has all his weapons. I'm not there I'm at my own place. I believe he is going to snap and do a mass shooting.

Mote testified that Hodgson's text again caused "the hairs to go up on the back of my neck." Later that morning, Mote discussed Hodgson's text with Reamer, and they decided to ask the SCSO to conduct a well-being check on Card at his residence in Bowdoin to gauge his mental health and determine if he was a threat to himself or others. Mote, himself a member of the Ellsworth Police Department, discussed the plan with his deputy chief, who told him to have an Ellsworth detective request a well-being check by the SCSO.⁵³

Later that day, Mote spoke with Ellsworth police detective Corey Bagley. Bagley opened an investigation into Card's threats against Mote and his AR unit. Mote prepared a detailed narrative outlining all that had happened with Card in the previous months.⁵⁴ Mote told the Commission he intended that narrative to be "a statement of probable cause" for the Sheriff's Office to use to begin securing a yellow flag order.⁵⁵ Mote had successfully obtained such an order in another matter the week before and was familiar with the procedure.

⁵³ Because Mote had been instrumental in initiating the hospitalization in New York and could be a potential target of Card's anger, his deputy chief believed it was best to have another officer initiate the contact with the Sagadahoc County Sheriff's Office.

⁵⁴ This detailed statement from Mote provided more than sufficient information for Skolfield to initiate the yellow flag law petition. It has been long established in Maine that a police officer may establish probable cause through the collective knowledge of all law enforcement officers involved in an investigation. See, *State v. Bradley*, 658 A.2d 236 (Me 1995), *State v. Baker*, 502 A.2d 489 (Me. 1985), *State v. Libby*, 453 A.2d 481, 485 (Me. 1982). This also includes information from private citizens who have spoken with or interacted with them. See, 34-B MRS §3862(1).

⁵⁵ Before October 25, 2023, no yellow flag petitions had been filed by the Sagadahoc County Sheriff's Office. Statewide, 81 petitions were filed between 2020 and late October 2023. As of July 31, 2024, records maintained by the Office of the Attorney General indicate that since October 25, 2023, 290 petitions have been filed statewide. SCSO filed 14 of them.

After receiving the information from Mote, Bagley attempted to reach Carleton. When he learned Carleton was not on duty, he asked for a supervisor because the matter “can’t wait” and was “time sensitive.” At 2:38 p.m., Bagley spoke to Sgt. Aaron Skolfield of the Sagadahoc County Sheriff’s Office. Bagley informed him of the contents of Mote’s statement and asked Skolfield to perform a welfare check on Card.

At 2:46 p.m., Skolfield notified his dispatch center that he would be attempting a welfare check. He downplayed the serious nature of Card’s mental health decline,⁵⁶ stating in this recorded telephone call that the matter “was not as pressing as they (the Ellsworth, Maine, Police Department)⁵⁷ made it sound” and stated, “He’s flagged in-house, known to be armed and dangerous, blah blah blah.”⁵⁸ When Skolfield arrived at Card’s home at 3:09 p.m., no one was home. After looking for but not finding Card at his father’s home, Skolfield returned to Card’s home at 3:24 p.m. Again, no one was home. Thirteen minutes later, Skolfield received an email that included Mote’s statement.

Despite his stated belief that the matter was not as pressing as the members of the AR unit made it seem, Skolfield broadcast the following “File 6” notice regarding Card to law enforcement agencies statewide at 5:11 p.m. on September 15th:

****CAUTION OFFICER SAFETY-KNOWN TO BE ARMED AND DANGEROUS*** ROBERT HAS BEEN SUFFERING FROM PSYCHOTIC EPISODES & HEARING VOICES. HE IS A FIREARMS INSTRUCTOR AND MADE THREATS TO SHOOT UP THE NATIONAL GUARD ARMORY IN SACO. HE WAS COMMITTED OVER THE SUMMER FOR TWO WEEKS DUE TO HIS ALTERED MENTAL HEALTH STATE, BUT THEN RELEASED.....IF LOCATED USE EXTREME CAUTION, CHECK MENTAL HEALTH WELLBEING AND ADVISE SAGADAHOC SD VIA SAGADAHOC COMMS 443-9711*

Other members of the AR unit were also concerned about Card. Yurek, who had been present in New York when Card’s behavior led to his command-directed evaluation and hospitalization, was also a lieutenant with the Brunswick Police Department. He reached out to Sgt. Monica Fahey of the Saco Police Department at 2:17 a.m. on September 16th to

⁵⁶ While Skolfield was aware of the warning Carlton posted in the SCSO internal records system in May regarding Card, he did not access or know of Carleton’s May 2023 report.

⁵⁷ In that conversation with Skolfield, Bagley specifically suggested that Card was a perfect candidate for a yellow flag law petition. During this same conversation, Skolfield reported to Bagley that he was going on vacation.

⁵⁸ The Sagadahoc County Sheriff’s Office provided a transcript of this telephone conversation early in the investigation. On May 7, 2024, Skolfield’s counsel provided a rebuttal to the Commission’s Interim Report, including an audio recording of this conversation, in which he discussed Card’s mental state. The recording demonstrates that Skolfield’s comments were made in a dismissive tone of voice.

advise her of the background of the case, the existence of the File 6 notice that Skolfield had issued the evening before, and of Card's threat to "shoot up the Armory" in Saco. At 7 a.m. a Saco police sergeant and three patrol officers were assigned to position themselves in the immediate area of the AR facility to respond if Card appeared for the battle assembly on September 16, 2023. Card did not appear.⁵⁹ The Saco officers spoke to Reamer later that morning. Reamer told them that he had spoken with Card and Card reported that he was not going to attend the battle assembly that weekend. He also downplayed the severity of the threat relayed by Hodgson despite his knowledge of Card's long hospitalization just eight weeks earlier and the fact that other members of the AR unit were deeply worried.

At 8:45 a.m. on September 16, 2023, while the Saco officers were awaiting Card's possible arrival at the Saco AR facility, Skolfield returned to Card's residence. He noticed that Card's vehicle was there and called the Kennebec County Sheriff's Office for a backup unit. A short while later, a Kennebec County deputy arrived, and the two deputies knocked on Card's door. Although they could hear someone moving around inside, no one answered. Skolfield expressed concern about "their exposure" at the front of the house so they left the residence. This attempt by Skolfield and the Kennebec County deputy sheriff to contact Card took approximately 16 minutes from start to finish.

Later that morning, Skolfield spoke with Card's father, who said he did not know where Card's guns were located. Skolfield was unable to reach Card's brother, Ryan Card, that day. At 10:46 a.m. on September 16th, Skolfield called Reamer. Reamer did not tell Skolfield that the providers at Keller and Four Winds recommended that Card not have access to weapons in the military or at home. Reamer did not suggest that Card needed to undergo a risk assessment, and despite acknowledging that "I don't think this is gonna get any better," he appeared to minimize the risk that Card posed to the community.⁶⁰ Shortly after this conversation, Skolfield was called away to a domestic violence call and did not return to Card's residence.

On September 17, 2023, Skolfield spoke briefly to Ryan Card and his wife Katie Card. Around noon, Katie told him the guns had not been removed. Two hours later, when Skolfield spoke

⁵⁹ During a phone conversation on September 15th, Card told Reamer he would not be appearing for the battle assembly that weekend and that he was "still mad" about what happened in New York. Reamer did not relay this information to Mote, Yurek, or other members of the unit who had been involved in getting Card to Keller in July.

⁶⁰ During the conversation Reamer gave very basic responses to Skolfield's questions. Skolfield briefly discussed the yellow flag process but then said "that um, obviously is a hurdle we have to deal with, but at the same time, we don't wanna throw a stick of dynamite into a pool of gas either and make things worse". Reamer replied "yea, yeah, I hear ya."

to Ryan and inquired about the status of the guns,⁶¹ Ryan responded that he would try to secure them. Skolfield also asked Ryan to determine whether Card needed a psychiatric evaluation and to report his observations back to Skolfield. Skolfield made no plans with Ryan for a follow-up conversation other than to state that if *Ryan* determined a psychiatric evaluation was needed, Ryan should call the Sheriff's Office, and personnel would "assist the family in arranging for Card to be evaluated."⁶² Skolfield made no plans to contact Card or to follow up to see if the firearms had indeed been removed.

At that point, Skolfield decided there was no need for him or the SCSO to be involved any further. He considered the matter "resolved," stating that no person expressly said that he or she "wanted to press charges."⁶³ Skolfield notified his supervisor, Lt. Brian Quinn, of his conclusions. Quinn deferred to his "judgment as an experienced officer" and did not undertake any further action or review other than notifying his supervisor, Chief Deputy Brett Strout. Strout did not take any further action and did not assign any other deputy sheriff to the matter.

Skolfield failed to follow up with Ryan Card, did not attempt another well-being check, did not consult with the District Attorney's Office about the possibility of a yellow flag order, and did not contact the AR unit or any of its members for further information. He failed to read Carleton's report from May. Skolfield left on vacation on September 18, 2023.

In September 2023, the SCSO and other area law enforcement agencies entered into a contract with a mental health specialist who was hired specifically to provide services, advise officers on mental health matters, and function as a liaison between the department and citizens. The goal of this contract was to assist officers handling mental health cases and to get citizens in distress the help they needed. The mental health specialist underwent training in September and was fully available in October but was never consulted or used in Card's case. Skolfield had received the National Alliance on Mental Illness (NAMI) weeklong Crisis Intervention Team training. He did not consult with NAMI, the Maine Office of

⁶¹ Skolfield apparently did not appreciate the seriousness of the situation. Card's paranoia and delusions were unchecked, he believed he was being reviled and persecuted, and he had access to multiple guns at two locations-his home and a gun safe located at the family farm. Skolfield did not inquire as to the number, location, and types of firearms at Card's home or in the family safe. Had he read Deputy Carleton's May report, he would have learned some of this information.

⁶² As the Commission previously stated in the Interim Report, these actions were an abdication of the duty of the SCSO.

⁶³ It is not up to private citizens to decide whether to "press charges." Prosecutors decide which charges to file based on their review of the information provided to them by investigating law enforcement officers.

Behavioral Health, or Sweetser, which all provide mental health services or information, or any other mental health resources.

5. October 1-25, 2023

After Skolfield returned from vacation on October 1, 2023, he did not attempt to meet with Card, check back with other members of the Card family, or attempt to call Card. He never called Hodgson or other members of the AR unit who could have provided him with first-hand information about Card and his declining mental health. Neither he nor anyone else in the Sheriff's Office consulted with the mental health liaison on ways to address the issue or seek assistance in contacting Card. He closed the case on October 1, 2023. Without taking any further action, Skolfield canceled the File 6 notice at 8:54 a.m. on October 18, 2023, just one week before Card committed Maine's deadliest mass shooting.

On October 19, 2023, Card made a delivery to a warehouse in Hudson, New Hampshire. While there, he told two employees that he knew they were talking about him. Card told them, "Maybe you will be the ones I snap on." Neither worker had said anything about him or to him, and nothing further occurred. They reported this information to the Hudson Police Department in the early morning hours of October 26, 2023, after one of the workers recognized Card's photograph on the news.

On October 23, 2023, Bagley spoke with Mote concerning the open Ellsworth Police Department case on Card. Mote told him that nothing had been done with Card. He stated that Card was not helping himself by failing to cooperate with the military and that he would be "forced out with a discharge" in the next few days.⁶⁴ Mote stated that he was unaware of any new threats against him; Bagley closed the case.

A post-shooting forensic analysis by the Maine State Police Computer Crime Unit (CCU) of Card's emails showed that between August 25, 2023, and October 26, 2023, Card received over 1200 emails to his personal email address. Of these, he opened fewer than 20. He received and opened five emails from personnel with the Army Reserve Medical Management Center (AR-MMC). In each email, AR-MMC personnel indicated they were attempting to reach him to update his behavioral health profile and provide various documents. In at least two of the emails, the AR-MMC personnel indicated that they had tried to reach Card by phone. Card did not respond to any of these emails. The last email

⁶⁴ Military records provided to the Commission indicate that initial retirement paperwork was sent to Card earlier in the summer. There was no pending retirement application, and Reamer failed to file any reports or other documents needed to begin the medical board review process or force a medical discharge. Card received computer-generated notices about his absences from the April, September, and October battle assemblies that could have resulted in discipline or discharge. The third notice, sent by registered mail, was returned undelivered on October 25, 2023.

that Card opened was from the AR-MMC on October 24, 2023. Reamer was copied on each of the five AR-MMC emails.⁶⁵ No documents were provided by the AR or the AR-MMC indicating that Reamer responded to or inquired about the contents of the emails.

Another post-shooting forensic analysis was conducted on Card's cell phone. On October 22, 2023, at 16 minutes past midnight, Card generated a note stating that he had "had enough" and was trained to "hurt people." It does not appear that this note was ever transmitted to anyone. The analysis also determined that the last message from Card's phone occurred at 11:01 a.m. on October 24, 2023, and was sent to an unknown number. Card was looking for the power cord for his griddle. The last instant message/text he received before the shootings was an automated message on October 24, 2023, at 11:21 a.m., from his house cleaning service. The last call to Mr. Card occurred on October 24, 2023. It was from the AR PHP program. When the caller identified herself, Card hung up. Card's phone last moved at 6:05 p.m. on October 25, 2023. He left it behind at his home before departing for Just-In-Time Recreation.⁶⁶

B. Robert Card II's Actions on October 25, 2023, and the Immediate Aftermath

Sometime after 6:05 p.m. on October 25, 2023, Card left his home in Bowdoin and traveled approximately 17 miles to Just-In-Time-Recreation in Lewiston. His precise route and whether he made any stops along the way are unknown.⁶⁷

Card entered Just-In-Time Recreation at 6:54:20 p.m. through a set of double glass doors at the front entrance. More than 60 patrons and employees, including 20 children, were present. Card was armed with a .308 Ruger SFAR rifle with a scope and a laser targeting device.

In 45 seconds,⁶⁸ he fired 18 rounds, killing eight people and wounding three others. Additional people suffered physical injuries while trying to hide or escape. Among those

⁶⁵ Reamer also failed to follow up with Card about these emails, whether via text, email, instant message, by phone or by arranging for a personal visit by him or others in the unit's command staff. He testified that his emails were "down" at the time they were originally sent, and that he did not read them until after the shooting. He did not explain why, as Card's commanding officer, he had not read any AR emails between July and October 2023.

⁶⁶ Both searches and analyses occurred only after applications for search warrants had been approved.

⁶⁷ Security videos secured from businesses immediately surrounding Just-in-Time Recreation show his arrival and departure.

⁶⁸ These times were determined by analysis of the security camera tapes at Just-in-Time Recreation.

killed at Just-In-Time were Tricia Asselin, Thomas Conrad, youth bowling league coach Robert Violette, his wife Lucille Violette, and 14-year-old Aaron Young and his father, William Young. Two patrons, Jason Walker and Michael Deslauriers II, were killed as they charged at and attempted to disarm Card. Their actions gave other patrons more time to flee or hide and saved many lives. There were numerous other acts of bravery and heroism.

Card departed Just-in-Time at 6:55:05 p.m. He got into his white Subaru and headed south on Main Street (US Route 202) toward Schemengees Bar and Grille.

At 6:55:31 p.m., a dispatcher received the first 911 call from Just-in-Time. Multiple other calls followed. Regional communications centers in Lewiston-Auburn, Cumberland County, and Augusta immediately dispatched law enforcement officers to respond to the scene. At 6:59 p.m., the first officers from the Lewiston Police Department and an Androscoggin County deputy sheriff arrived. Less than 20 seconds later,⁶⁹ they entered the building to search for Card and render aid to victims.⁷⁰ Emergency medical services also responded.

Meanwhile, Card drove approximately four miles from Just-in-Time Recreation to Schemengees Bar and Grille. He left his car running and entered the building at 7:07:34 p.m.⁷¹ During the next 78 seconds, he fired 36 rounds, killing ten people and wounding ten others. Bartender Joseph Walker was killed as he grabbed a knife and tried to stop Card. His actions distracted Card and saved lives. Others responded bravely and helped save lives.

The other persons killed at Schemengees were Arthur Strout, Joshua Seal, Ronald Morin, Stephen Vozzella, Keith Mcneir, Bryan MacFarlane, Maxx Hathaway, Peyton Brewer-Ross, and William Brackett. Seal, Vozzella, Brackett, and MacFarlane were members of Maine's Deaf community.

While Card was still shooting at people in Schemengees, a patron located the main power switch and shut off the power to the building. Because that action rendered the building pitch dark, it allowed others to flee or hide. Card left six seconds later.

⁶⁹ The Commission notes that the first responding officers did not hesitate to rush in to try and locate Card and render aid to the victims and survivors.

⁷⁰ The co-owner of the business, Samantha Juray, quickly locked the doors as soon as Card departed. She also unlocked the doors for law enforcement and provided them with a description of Card. Another employee escorted children into a safe area and was shot in the process. Another patron hustled several children, including one who was badly injured, into a storage closet and barricaded the door.

⁷¹ On his way in, he passed an unidentified individual standing outside next to the door and left him unharmed.

The first calls for help to 911 operators from Schemengees Bar and Grille were received at 7:08 p.m. Multiple calls followed. The first three officers arrived at 7:13 p.m. They were met by patrons in the parking lot, some screaming that the shooter was still inside while others shouted that he had left. Like the officers who responded to Just-in-Time Recreation, the first responding officers did not hesitate to rush inside, searching for Card and then rendering aid to victims. Realizing that there were many wounded individuals who needed immediate aid, first responders also stepped up to transport them in their cruisers and trucks, ensuring that they received medical attention as quickly as possible.⁷²

Eighteen .308 caliber cartridge casings, four live .308 caliber cartridges, multiple bullets, and bullet fragments, and one 25-round capacity magazine containing twenty-two live .308 caliber cartridges were recovered inside Just-In-Time. Thirty-six fired .308 cartridge casings, one empty 25-round capacity magazine, and multiple bullets and bullet fragments were recovered inside and outside Schemengees.

C. The Emergency Response - October 25-27, 2023

During the unprecedented manhunt and criminal investigation that followed Card's actions, over 400 law enforcement personnel responded to Lewiston and the surrounding communities in search of Card. They came from local, county, state, and federal agencies from across Maine, New England, and beyond. Additionally, 16 tactical teams, multiple aircraft and dive teams, and other specially trained evidence response teams from across the Northeast participated in the search and investigation.

Hundreds more emergency communication specialists, emergency medical technicians, police cadets, data analysts, victim witness coordinators, ASL interpreters, and hospital employees also responded. The precise number of responders or the number of responders from individual agencies cannot be reliably determined because no centralized list or database was established or maintained. Some came at the specific direction or orders of their agencies; others, on their days off or on vacation, simply appeared and went to work.⁷³

The emergency communication centers answered more than 900 calls, and the tipline entered over 861 calls into its database. Over 580 pieces of evidence were collected,

⁷² A private company provides ambulance services for the City of Lewiston. All its ambulances were tied up at Just-in-Time Recreation. While calls to other communities for ambulance response were made, first responders decided not to wait for their arrival and, instead, transported some of the injured persons in cruisers or game warden trucks. One unidentified private citizen was flagged down and took an injured person to the hospital.

⁷³ For example, a director of victim witness services from Iowa was on vacation in Maine when the shootings happened. She canceled her remaining vacation plans and came to Lewiston for three days to assist Maine's victim witness advocates.

cataloged, and stored. An additional 475 non-evidentiary personal effects were gathered by the Maine State Police and the Maine Office of Chief Medical Examiner, and, with the coordination of the FBI Victim Services Response team, all the items were cataloged and eventually returned to their owners or the next of kin. A few of the items were destroyed at the owners' request. Personal vehicles that had been parked at the two scenes were photographed, processed, and returned to their owners.⁷⁴

All law enforcement command-level officials candidly admitted that in the initial hours after the first 911 call, the response and the scenes were utter chaos. The sheer number of responding officers, the severity of the injuries at each location, the number of false reports in quick succession, and the need to quickly and effectively “clear the buildings” to ensure the shooter was still not inside and to render aid to the injured, created unprecedented challenges.

1. October 25, 2023

Lt. James Theiss of the Lewiston Police Department and Chief Jason Moen of the Auburn Police Department quickly determined that scene command and control was necessary at each location until the Maine State Police could assume control.⁷⁵ They directed responding officers and emergency medical personnel to enter and search, establish perimeters, provide security, render aid, and direct survivors/witnesses to centralized locations so that officers could begin gathering necessary identifying information and statements. They attempted to coordinate dispatch responses, control the scene, and communicate directions to officers. Other first-responding officers assisted in these matters.

Early in the process at the two crime scenes, survivors were instructed to gather in an area away from the buildings but in areas that were well lit and visible to responding officers.⁷⁶ Police officers searched for victims who had fled into adjoining wooded areas or along the

⁷⁴ In one of the unlocked vehicles, investigators observed a firearm and related equipment. The investigators needed to determine ownership and ensure that it was not related to the shootings. This caused a delay in the release of some of the other vehicles because they needed to process and document the scene. In some instances, owners did not have their keys because they had been left behind. Keys had to be retrieved, documented and matched to the owners before the cars could be moved.

⁷⁵ Under Maine law, the Attorney General is responsible for investigating and prosecuting all homicides. The Maine State Police are designated as the investigating agency statewide, except in Portland and Bangor. In those cities, the municipal police departments are so designated. Maine State Police troopers had to travel to Lewiston to establish the Command Center.

⁷⁶ Some survivors testified that being directed to an area directly under the illuminated business sign made them feel exposed and vulnerable. On the other hand, other survivors would have felt uncomfortable if they were told to stay in the shadows.

riverbank. An injured Deaf individual⁷⁷ was found in the woods along the riverbank and transported to the hospital. Eventually, survivors were taken to the Lewiston Armory, where officers from the Cumberland County Sheriff's Office and agents from the FBI conducted preliminary interviews and obtained information. The survivors were then transported from the Armory to a local school where a "family reunification center" was established.⁷⁸

When it was discovered that some of the victims were members of the Deaf community, an officer from the Lewiston Police Department who knew American Sign Language was assigned to the Armory. Certified American Sign Language interpreters were initially turned away from the Armory by officers providing security⁷⁹ and were not permitted entrance into the hospitals for several hours by security personnel.⁸⁰

Throughout the evening and nighttime hours of October 25, patrol officers saturated Lewiston and surrounding communities and responded to dozens of reported sightings.⁸¹ Officers went to local businesses that were open, advised them to close, and escorted patrons to their cars. They provided security at area hospitals and at the scenes of the crimes. When citizens reported strange noises or suspicious persons or vehicles, they searched area homes and yards. They patrolled neighborhoods and checked closed businesses and schools.

Initially, many of the officers responded to the Lewiston Police Department headquarters in downtown Lewiston. When it became clear that there was simply not enough space or parking, officers from outside Lewiston were directed to a staging area at the Colisée in

⁷⁷ An initial call to 911 by a hearing survivor relayed that he was with an injured person who appeared to be Deaf. It is not clear from the records if the presence of Deaf individuals was relayed to responding officers or EMS at that time. Command staff members were not initially made aware of the presence of Deaf individuals and victims.

⁷⁸ Notification of the creation of the family reunification center was broadcast, and many family members went to meet their loved ones. For some families, their loved ones were not there, and no reunification occurred, making the name of the center unfortunate.

⁷⁹ These ASL interpreters self-dispatched to the Armory and the hospitals as soon as they learned through social media that members of the Deaf community had been injured and killed. Because of lockdown and security policies, and because they could not verify that the Incident Command Center had requested them, the interpreters were turned away. There is no uniform statewide identification badge for certified interpreters.

⁸⁰ Coordination among law enforcement, emergency communication specialists, the ASL interpreters, and the hospitals could have prevented this.

⁸¹ The Maine Emergency Management Agency (MEMA) issued and broadcast a shelter-in-place advisory at 7:55 p.m. Eleven minutes later, MSP issued a social media alert on Facebook, Instagram, and X (formerly Twitter) advising citizens of the active shooter situation and asking them to stay off the street, shelter in place, and report any suspicious activity. The City of Lewiston issued a shelter-in-place order at 8:57 p.m.

Lewiston to await further directions. Some officers were immediately assigned to specific tasks, but some of those who were not immediately assigned did not comply with the request to wait for an order; many self-dispatched to scenes. These actions were sometimes helpful⁸² but in other situations, created confusion, blocked roads, and resulted in some duplication of efforts.⁸³

At 7:34 p.m., law enforcement obtained the video of Card entering Just-in-Time Recreation. Major Lucas Hare of the MSP established the Incident Command Center (ICC) at 7:42 p.m. at the Lewiston Police Department.⁸⁴ The Incident Management Team (IMT)⁸⁵ mapped duties and responsibilities, assigned responding officers to various patrols and searches, and coordinated investigative responses with members of the homicide investigation team. This included assigning personnel to security matters, interviewing witnesses and survivors, coordinating incoming messages, and establishing a tipline for citizens to call in possible leads.

Video surveillance from Schemengees Bar and Grille and other businesses in the area captured Card's white Subaru as he fled. The video images of Card from Just-in-Time Recreation were released to law enforcement at 7:52 p.m. and publicly disseminated seconds later. The image of his car⁸⁶ was publicly distributed at 8:06 p.m. At 8:57 p.m., a nationwide police bulletin was broadcast describing, but not naming, Card and his vehicle.

⁸² For instance, dozens of officers self-dispatched to the Walmart Distribution Center. Several officers stopped and confronted an armed private citizen who had decided to respond to the Center to "find the shooter," while others quickly organized themselves and conducted a security sweep of facility and determined the call was false.

⁸³ Col. William Ross, Chief of the Maine State Police, testified that this is a difficult balancing act. He explained that, when faced with an active shooter scene, all responding officers are wanted and necessary. Once the emergency response is over, however, self-dispatching officers could interfere with an organized, systematic, and well-executed operation.

⁸⁴ Prior to their arrival at the Lewiston PD, multiple Command team members began coordinating search and investigative matters with specialized teams from across Maine and New England. The MSP's participation in the New England State Police Compact and earlier training and contact with other local, county, and federal law enforcement agencies allowed the MSP to quickly connect with and request assistance from these other agencies.

⁸⁵ An Incident Command Center is part of the Incident Command System, comprising nationally recognized policies and procedures for managing large-scale disasters and crime scenes. Every law enforcement officer in Maine receives initial basic training on the incident command system while attending the Maine Criminal Justice Academy Basic Law Enforcement Training Program. The Incident Management Team runs the operations.

⁸⁶ Shortly after the description of the car was broadcast, multiple officers responded to a crash involving a vehicle similar to Card's that had just occurred on an entrance ramp to the Maine Turnpike. This crash turned out to be unrelated.

Between the arrival of the first responding officers to Just-in-Time and Schemengees and the distribution of the nationwide police bulletin, the Lewiston-Auburn Communication Center received calls of active shooters at three additional scenes. At 7:51 p.m., there was a report of an active shooter at DaVinci's Restaurant. At 8:11 p.m., there was a report that a man armed with a gun had entered the massive Walmart Distribution Center⁸⁷ and a third report that a shooter was seen on a nearby street. All these reports later proved to be unfounded, but each required an immediate response by dozens of law enforcement officers.⁸⁸

At 9:20 p.m., members of Card's family called the Lewiston Police Department and identified him as the shooter in the images from the video surveillance at Just-in-Time Recreation. Nicole Herling and Cara Lamb provided positive identification that police immediately verified through driver's license and vehicle registration information. With that confirmation in hand, law enforcement broadcast the information to all responding officers, many of whom immediately started patrolling Lewiston and other communities looking for Card.

Once Card's identity was established, the separate investigative and manhunt operations teams focused on learning about Card. Members of Card's family went to the Lewiston Police Department and gave detailed statements to investigators that allowed law enforcement to concentrate its efforts, provide security details to other potential targets, and focus on planning for and obtaining search warrants. This information also allowed investigators to seek and obtain cell phone location information, employment information, gun ownership information, and information from members of Card's AR unit. Their information also provided investigators with clues concerning Card's past actions, the type and number of his firearms, his mental health status and treatment, and possible course of travel.

Twelve minutes after the shooter was identified, the Maine State Police contacted Card's cellular service provider seeking location information for his cell phone. Four minutes later, the provider notified the State Police that the phone was at his residence in Bowdoin. It had last moved at 6:05 p.m.

Lisbon Police Chief Ryan McGee instructed his officers to concentrate their patrol in Lisbon, a town adjoining Lewiston. At 9:56 p.m., two officers spotted a car, apparently abandoned and not running, at the public Papermill Trail/Miller boat launch in Lisbon. A license plate

⁸⁷ This center is over 800,000 square feet in size.

⁸⁸ Two other individuals called the police and claimed that they were involved in the shootings. Extensive investigation that night and the next day proved that these reports were false and unrelated to the events. This tied up valuable investigative resources that could have been directed elsewhere.

check verified that the vehicle was registered to Card. The Lisbon officers notified the MSP of the car's discovery, and MSP dispatched tactical operators to the boat launch. The Lisbon officers, who were not equipped with any protective equipment, were instructed to park near the vehicle and train their weapons in that direction but not to approach the car until appropriately equipped officers arrived. A canine patrol officer from the Topsham Police Department arrived shortly thereafter and assisted in securing the scene.

Members of the MSP Tactical Team were immediately dispatched to the boat launch. Before the tactical team arrived, its members and Lisbon officers were in radio communications with a New Hampshire State Police helicopter and provided information and details that assisted in the helicopter's night vision search of the area. Another tactical team assumed a position on a bridge nearby.⁸⁹ However, dozens of other officers, some in uniform and some not, also responded to the scene. Many left their vehicles running, and some unidentified officers, who were not in uniform or equipped with appropriate safety gear, entered the woods surrounding the boat launch, using a paved recreational path that ran parallel to the boat launch.⁹⁰ MSP witnesses testified that these actions contaminated the scene and factored into the MSP tactical commander's determination that a canine search would be too dangerous and most likely futile.⁹¹

While all this activity was occurring in Lisbon, a press conference was held at Lewiston City Hall. This was recorded and made available on YouTube.⁹² Card's name had not yet been released. At 10:14 p.m., the Maine Information and Analysis Center (MIAC) disseminated a "law enforcement sensitive bulletin"⁹³ naming Card as the active shooter suspect. Very

⁸⁹ One member of this team issued a public statement accusing members of a third tactical team of being intoxicated. The respective law enforcement agencies investigated these allegations. This report did not affect the Commission's findings or the police response, making any further discussion unnecessary.

⁹⁰ A camera that was on the path was not working that evening. There were no video cameras around the boat launch.

⁹¹ Witnesses from the MSP testified that, due to the length of time that had passed since Card left Schemengees and the contamination of the scene, it was unlikely that such a search would have been fruitful. In addition, the lack of appropriate safety gear for patrol officers to enter a pitch-dark area in search of a man equipped with a high-powered rifle and, reportedly, a night vision scope, created unsafe conditions. A New Hampshire State Police helicopter equipped with thermal imaging cameras and spotlight had already flown above the area, and another tactical team with thermal imaging capabilities stood watch on a nearby bridge. Neither had seen any sign of Card. In addition to finding Card, it was a high priority of the Incident Command Team to prevent the death or injury of any responding law enforcement personnel.

⁹² At this first press briefing, no ASL interpreter was visible on the screen. This was frustrating for members of Maine's Deaf community as it had been reported over social media that four of their community members had been killed and additional members had been injured.

⁹³ All law enforcement officers in Maine are trained and are aware that these types of bulletins are not to be released or distributed further.

shortly thereafter, the confidential bulletin was leaked to the media. Within minutes, his name and image were posted and broadcast across social media and by local, state, national, and international news outlets.⁹⁴

After tactical teams secured the scene, they approached Card's car. At 10:37 p.m., they confirmed that Card was not inside. They found the Ruger firearm, with fourteen live cartridges in the magazine and one live cartridge in the chamber, and five more magazines containing sixty-three live .308 cartridges, inside the car. There was no evidence found in the car to assist in the search for Card. Police towed the car from the scene. They obtained a search warrant and analyzed the weaponry. It was later determined that the Ruger recovered from the car was the murder weapon.

During the night of October 25, Officers in two Lisbon cruisers decided to perform a sweep of the overflow trailer parking lot at Maine Recycling. Initially, they began inspecting the various trailers, including opening the rear doors but soon realized that given their lack of protective equipment, insufficient lighting, the height of the trailers⁹⁵ and the lack of appropriate backup, that it was not safe to continue the individual inspections of the trailers. They finished with a visual sweep of the lot. The Lisbon police chief told a state trooper about their abbreviated search and the existence of the overflow lot. Two other individuals- the manager of the Maine Recycling Center and Card's brother - also told police of the existence of the overflow lot. This information was not relayed to the commander of the manhunt team. Nearly two days passed before this lot was thoroughly searched and Card's body was found.

Operational briefings for law enforcement only were held at 11 p.m. on October 25 and again at 2 a.m. the next morning. The briefings provided the latest updates to the law enforcement officers in attendance, and it was expected that the chiefs or command staff of each agency would convey the law enforcement-sensitive materials to their officers. Numerous operational tasks were identified, discussed, and assigned during both briefings. Many of the assignments were investigative, involving personal or safety-sensitive matters that were not for public release.

⁹¹ According to the Maine State Police, the premature broadcast of this information and the additional leaking of law enforcement sensitive information interfered with the search for Card and potentially put investigators, witnesses, and responding officers in danger.

⁹⁵ The doors to the trailers were approximately four feet off the ground, putting the officers' upper bodies at trailer entrance level. Without protective gear, this positioning made the officers targets for anyone who might have been inside.

The search for Card continued through the night and into the next morning. Patrols scoured the area and officers responded to multiple calls.

2. October 26, 2023

After the 2 a.m. briefing, the ICC was moved to Lewiston High School. This permitted the IMT to establish separate and secure working areas for command staff, the manhunt and investigative teams, victim service representatives, Attorney General representatives, chaplains, the tipline staff, operational and food services, and space for law enforcement partners from local, county, state, and federal agencies. At 2:24 a.m., Card's vehicle was removed from the boat launch and secured at the State Police Crime Lab in Augusta pending the issuance of a search warrant.

At 6:13 a.m., a social media alert was posted announcing an expansion of the shelter-in-place order to include Bowdoin, Lisbon, Lewiston, all of Androscoggin County, and northern Sagadahoc County. More than 30 school districts in towns as far south as Wells and Ogunquit, as far east as Rockland, and as far north as Augusta, closed. The processing of the crime scenes began and continued for two days.

Another operational briefing was held at 8 a.m. on October 26. The Major Crimes Unit of the MSP coordinated this law enforcement-only briefing. Goals were outlined for the operational cycle from 8 a.m. to 10 p.m. and some limited tactical plans were reviewed so that those in attendance would understand the manhunt strategy and plans. Criminal investigative information was also shared, along with specific instructions for officers should they apprehend Card. A tipline, dedicated to this incident, was launched to take information from the public.⁹⁶ A standard confidential radio frequency was established for all law enforcement agencies.

Maine police cadets and troopers from the New Hampshire State Police took over 800 calls on the tipline, sorted and prioritized the information, and relayed pertinent tips to the IMT⁹⁷ for further dissemination to the manhunt and criminal investigative teams.

A second press conference was held at 10:30 a.m. ASL interpreters were present. Updates from the Governor and state and federal law enforcement were provided. An affidavit for an arrest warrant charging Card with 18 counts of murder was drafted, reviewed by a District

⁹⁶ The dispatch centers fielded over 900 calls during this incident.

⁹⁷ The Maine State Police have acknowledged that the tipline team should have included experienced local officers who knew the area and members of the homicide investigation and manhunt teams who could have coordinated and screened the information received. In their view, a more coordinated dissemination of information between the manhunt and criminal investigative teams would have been helpful.

Court judge, and issued at 10:00 a.m. The arrest warrant was entered into a nationwide wanted person database.⁹⁸

Throughout the day and into the evening of October 26, 2023, investigators drafted, judges issued, and law enforcement executed search warrants. This included warrants for searches of Card's home, multiple other locations where it was thought he might be, and his car. Investigators also conducted consent searches that did not require a search warrant at the homes of Card family members, businesses where he had worked, empty buildings or businesses, and other locations. Law enforcement officers conducted consensual safety sweeps of the homes of potential witnesses, neighbors, and businesses. They also provided security for and helped transport potential witnesses to safe locations.

An investigative briefing for law enforcement was held at 3:35 p.m. MSP shared information about the progress and the results of the various searches. Before the briefing was even completed, law enforcement-only information was leaked to the press. Because of the leaks, the IMT staff decided to limit the information shared at future briefings.⁹⁹ Another law enforcement-only briefing was held at 8:00 p.m. Attendees were specifically instructed that the information could only be shared with law enforcement and was not to be distributed further.

The manhunt for Card continued throughout the day and evening of October 26, 2023. The ICT, along with members of the Maine Warden Service, developed and implemented a detailed grid search plan that was used to extend the ground and water search for Card. Multiple search warrants were also obtained to search Card's residence and other locations. Patrol officers responded to hundreds of calls from concerned citizens who thought they had spotted Card or who heard suspicious sounds.

Police patrols looking for Card across multiple communities continued throughout the night. The IMT made plans for the next day's operations, including supporting the manhunt, extending the ground search, using dive teams and air support, and adding tactical team searches. The tipline continued and relevant information was passed on. Crime scene processing continued as well. Members of the MSP and FBI evidence response teams traced, cataloged, and collected over 500 pieces of evidence, thousands of photographs and videos, and extensive GPS mapping of each of the scenes. In addition, these teams managed the recovery, cleaning, and cataloging of 475 items of personal property.

⁹⁸ One victim survivor complained that her loved one's name was published in the charging documents and made public hours before she received official notification of his death.

⁹⁹ The existence of and contents of a note left at Card's home was leaked. The release of this information caused anguish to innocent individuals.

3. October 27, 2023

The first operational briefing of the day was held at 8 a.m. These operational briefings were open to law enforcement and, as had been the practice from the beginning, each agency lead was encouraged to pass the law enforcement sensitive information onto their respective officers. Some agency leads remained at the command center throughout the search, while others returned to their communities.

Lewiston's Chief of Police David St. Pierre and Maine Department of Public Safety Commissioner Michael Sauschuck conducted a press conference at 10 am. ASL interpreters were present, and Commissioner Sauschuck requested that any news organization that broadcast from the press conference ensure that the interpreters remain fully visible on the screen.

Patrols continued throughout the day. Shortly after noon, a search warrant was issued for Card's cell phone, including his voicemail messages, texts, emails, and instant messages. At 2:44 p.m., a separate search warrant for his cell phone records was issued.¹⁰⁰ The Maine State Police Computer Crimes Unit conducted a forensic examination of his phone.

To keep all agencies informed about the investigation and the manhunt, Col. Ross, chief of the MSP, conducted a virtual operations briefing with police chiefs and sheriffs from across the state at 2:30 p.m.

In the late afternoon of October 27, 2023, MSP determined that the trailers in the overflow lot of the Maine Recycling Company in Lisbon had never been adequately searched. Two specially trained tactical teams began searching and clearing the trailers just after 7 p.m. At 7:40 p.m., Card's body was found in the 55th and last trailer to be searched. The officers also found a Smith and Wesson .40 caliber handgun with a total of 45 live rounds in three magazines, a Smith and Wesson MP15 .556 mm rifle, and 242 live cartridges in eight magazines.¹⁰¹ Card died of a self-inflicted gunshot wound to the head from the handgun.

¹⁰⁰ A U.S. Supreme Court ruling requires law enforcement to obtain a search warrant before they can inspect or search the content of a person's cell phone. See *Riley v. California*, 573 U.S. 373 (2014). Records maintained by his cell phone provider are separate and require a second separate warrant. MSP was able to obtain initial location information within hours of the shootings that informed them that the phone was left behind at Card's home.

¹⁰¹ Card legally purchased both weapons: the Smith and Wesson handgun in July 2012 from Cabela's in Scarborough, Maine, and the Smith and Wesson rifle in November 2018 from Rideout's Gunworks in Richmond, Maine.

After Card's identity was confirmed, an operations briefing for law enforcement was held at 8:30 p.m. At 10:00 p.m., a public press conference with Governor Mills, Chief St. Pierre, Commissioner Sauschuck, and ASL interpreters was held, announcing that Card's body had been found.¹⁰²

Despite extensive investigation, neither law enforcement nor the Commission has been able to determine Card's whereabouts between the time he abandoned his vehicle at the Lisbon boat launch and when his body was discovered. Evidence gathered from the trailer yielded no clues. It is known that Card did not return to his home, the homes of his family members, or the family farm.¹⁰³ His exact location and movements after leaving his car have not and likely will never be determined.

Likewise, due to several variables, including the nature of Card's self-inflicted injury and the ambient air temperature in the box trailer where he was found, the Office of the Chief Medical Examiner was unable to determine the precise time of his death.

By the end, over 400 sworn law enforcement officers and hundreds more emergency dispatchers, emergency medical responders, victim witness advocates, doctors, nurses, medical technicians, ASL interpreters, prosecutors, judges, court clerks, volunteers, and support staff participated in the shooting response. Sixteen tactical teams undertook 29 separate tactical team missions. Local, county, state, and federal agents worked thousands of hours during these 49 hours. Thousands more hours were devoted to investigations, report writing, post-incident after-action analysis, and response to requests for reports and testimony before the Commission.

D. Victim Services Response - October 25-Present

On October 25, 2023, victim witness advocates (VWAs)¹⁰⁴ from across the state, advocates from the Maine Attorney General's Office, and Victim Witness Advocate Coordinator and

¹⁰² During this time, another search warrant was issued, this time for the infotainment center on Card's vehicle. Investigators were looking for GPS information that could have provided clues as to his whereabouts and his routes of travel before and after the shooting on October 25th. Because Maine's Crime Lab does not have the technology to conduct such examinations, it was sent to the New York State Police Crime lab. As of the date of this report, the results have not been received.

¹⁰³ The Card family cooperated fully with law enforcement investigators and has been of great assistance to the Commission.

¹⁰⁴ There are 46 VWAs who work in prosecutors' offices across the state. Three VWAs are assigned to the Attorney General's Office for the general homicide caseload. Two other agencies, the Elder Abuse Institute of Maine and the Portland Police Department, immediately allowed their respective VWAs to respond to Lewiston.

Director of Victim Services Cara Cookson attended the annual Maine Prosecutors' Conference in Bar Harbor, Maine.¹⁰⁵ Shortly after 7:30 p.m., they received word of the shootings in Lewiston. Some made plans to depart the conference immediately and go to Lewiston, while others planned for a departure at sunrise. Planning for services, contact with state and federal partners, and coordination with the homicide prosecutors began immediately and continued throughout the night.¹⁰⁶ Knowing the VWAs would be overwhelmed by the sheer number of victims and survivors, Cookson requested assistance from the FBI Victim Services Response Team. The FBI sent a team of approximately 50 people with specialized skills, including direct victim services, information technology, victim and survivor data collections, needs assessments and referrals, ASL interpretation, and the cataloging and return of personal effects.

During the 49-hour manhunt, VWAs were available, provided services, and answered hundreds of questions and inquiries from survivors, victims' families, and members of the public. They initiated processes to secure emergency funding for victims and survivors and provided grief support.¹⁰⁷ Each time law enforcement officers made a death notification, the VWAs initiated contact with the families.

The VWAs initially had trouble obtaining accurate contact information for witnesses and survivors of the shootings who had not required medical attention. In the first two days after the shootings, these challenges were compounded by the shelter-in-place orders and the fact that a Family Assistance Center had not yet been established.¹⁰⁸ A Family Assistance Center was eventually established at the Lewiston Armory and opened on the morning of

¹⁰⁵ Each year, the Maine Judicial Branch sets aside three days in October when only emergency court hearings are held. This allows prosecutors and their staff, judicial officers, and the criminal defense bar to hold separate conferences or meetings where continuing education and frank discussions can be held. Victim witness advocates have, for years, joined the prosecutors' conference, where they attend some joint sessions and hold their own training sessions to stay up to date on the latest research and programming for their profession.

¹⁰⁶ Cookson knew that crime victim services were not yet addressed in any state mass violence response plan or incident command program. However, prior to October 25th, she had initiated conversations with the Office of Chief Medical Examiner, MEMA, the U.S. Attorney's Office for Maine, and the FBI Boston division to learn about the resources available to begin addressing this gap.

¹⁰⁷ Kelly McGinnis and Kim Ward, victim compensation specialists with the Maine Attorney General's Office, also immediately responded and established a remote office to meet with victims and survivors and process short-form applications specially designed for mass casualty events. They were assisted by members of the victim services team from the Maine Department of Corrections.

¹⁰⁸A Family Assistance Center is a large physical space where anyone affected by a mass shooting or other calamitous event can come and receive a wide variety of services under one roof. Law enforcement personnel were concerned with the safety of opening such a center when Card was still at large.

October 28th.¹⁰⁹ A separate center for community members who felt the effect of the incident was established at the Ramada Inn. Members of the press were not permitted to enter either site.

Services provided to survivors and victims included assistance with victim compensation applications, gift cards for immediate financial needs, trauma-informed childcare that allowed adults to have separate conversations, psychological and spiritual first aid and care, legal services, and educational resources. The FBI and the Harvard, Massachusetts, Police Department provided two therapy dogs for psychological support. When requested, advocates assisted families in arranging funeral services.

The American Red Cross and the Salvation Army set up the site and coordinated services and financial assistance and offered three meals each day for all who came to the Family Assistance Center. Disability Rights Maine and the Maine Association for the Deaf rapidly built and deployed systems to facilitate communication with members of the Deaf community. The New Hampshire Department of Justice deployed three VWAs; victim specialists from the U.S. Attorney's Office for Maine and New Hampshire also assisted the Maine VWAs with their duties. Many of these individuals continued to provide services beyond the initial days following the shootings. Local VWAs from Androscoggin County teamed up with FBI specialists and met with victims and their families at the local hospitals and at their homes.

The Family Assistance Center remained open for six days, serving 200 individuals. It closed on November 2nd and was replaced by a Resiliency Center, which opened in record time on November 13, 2023, and remains open. This Center provides long-term continuing support and programming for survivors, their families, and any other member of the community affected by the tragedy.

When Card's body was found, VWAs scrambled to notify as many victims and survivors as possible before the discovery was publicly announced. Unfortunately, this news was once again leaked before the official press conference, and many victims and survivors learned about it through social media and unconfirmed news reports.¹¹⁰ Once the Incident Command Center was closed, the need for a consistent, secure, and private location where

¹⁰⁹ Many survivors expressed dismay over the selection of this location by the FBI, given that they had been transported to the Armory the night of the shooting, and returning there would be traumatic for them. However, after reviewing multiple sites in the city, the FBI Victim Services team determined it was the only site within the city boundaries that could provide the space for law enforcement, private meeting space, food services, and handicap accessibility for such a large operation. Some who needed the services stayed away because they did not feel psychologically safe at that location.

¹¹⁰ This continues today each time law enforcement, the press, or others release information.

VWAs could meet locally with families of the deceased developed. Bates College has provided the VWAs with an office building equipped with furniture and supplies.

As of July 31, 2024, the Victim Compensation Program has received 114¹¹¹ applications for assistance. The program reimbursed up to \$12,000 for each funeral. A separate \$5,000,000 Maine Mass Violence Care Fund was established and funded by an act of the Legislature to provide coverage for physical and mental health out-of-pocket expenses that are not covered by insurance. The funds will be managed by the Office of the State Treasurer with eligibility determined and proceeds distributed by the Maine Crime Victims Compensation Board within the Office of the Attorney General. An additional application for a non-competitive federal grant has been submitted through the U.S. Department of Justice Anti-Terrorism Emergency Assistance program. The Attorney General's Office anticipates receiving these additional federal funds in January 2025. These funds will be used to support the Resiliency Center.

Donations from across the nation flooded into Lewiston to help the victims and survivors of the tragedy. The Lewiston-Auburn Metro Chamber of Commerce, the City of Lewiston, the Maine Community Foundation, and Androscoggin Bank worked together and established two programs: the #One Lewiston Fund to address immediate unpaid bills and to create a lasting memorial in the area;¹¹² and a separate fund administered by the Maine Community Foundation called the Lewiston-Auburn Area Response Fund. The Response Fund distributed larger awards to victims and survivors.¹¹³ The Chamber also manages several other donor-advised funds that provide financial gifts to victims and survivors. VWAs worked with businesses and other entities that donated non-financial gifts.¹¹⁴

The work of the VWAs continues today and will continue for months to come. To date, the homicide VWA team has served at least 132 surviving family members and friends of those who were killed. The District Attorney's Office team has served at least 89 direct and

¹¹¹ This includes applications for deceased victims, via their families, those with gunshot injuries, those with other physical injuries and those with psychological injuries. The program also serves their family members as secondary victims which more than doubles the number of individuals seeking or inquiring about assistance from the program.

¹¹² See <https://onelewiston.org/>

¹¹³ This fund received 5,241 contributions from around the world. 100% of the 6.6 million dollars received were distributed to 162 individuals and 29 non-profits in the Lewiston- Auburn area. See <https://www.mainecef.org/initiatives-impact/additional-initiatives/lewiston-auburn-area-response-fund/broad-recovery-efforts-and-organizations-fund/>.

¹¹⁴ These gifts ranged from home heating fuel, Bruins, Patriots, and Gardens Aglow tickets, frozen turkeys, Christmas trees, gift cards for meals or services, and Build-A-Bear gift certificates.

secondarily injured victims.¹¹⁵ Victims who testified before the Commission universally praised the VWAs for their compassion, support, hard work, and dedication.

VI. WEAPONS RESTRICTION LAWS

A. New York's SAFE Act

The New York SAFE Act law, found at NY MHL 9.46 et seq., and enacted in 2013,¹¹⁶ requires that any time a mental health professional who is providing treatment services believes that a patient is likely to engage in conduct that would result in serious harm to self or others, the professional must report this information as soon as possible to the county's director of community services. If the director agrees with the determination, the director in turn must transmit this report to the New York Division of Criminal Justice Services (DCJS). DCJS will determine if the individual has a firearms license and, if so, will notify the appropriate local licensing official. The individual is required to surrender the license and all firearms. If the firearms are not surrendered, police are authorized to remove them. The State of New York has issued both a general guide¹¹⁷ and a hospital guide¹¹⁸ for SAFE Act reporting. It has also issued a detailed manual to assist mental health professionals in using the established Integrated SAFE Act Reporting System (ISARS).¹¹⁹ The report is submitted electronically using a one-page form.¹²⁰ The Act's reporting standard, i.e., that an individual is likely to engage in conduct that will cause serious harm to self or others, is consistent with the standard used in New York for an emergency "removal" of a person to a psychiatric hospital for an examination, see New York MHL Section 9.45, as well as emergency involuntary admissions for observation, care, and treatment. See New York MNH Section 9.39.¹²¹

¹¹⁵ While the press has repeatedly reported thirteen persons were injured, that number includes only those injured by gunshots that evening. According to records on file with the VWA programs, twenty other individuals suffered other kinds of physical injuries escaping the scenes, and many others have sought VWA services for their psychological injuries. Numerous others have chosen to address their needs without involving victim witness services. The exact number of those physically or emotionally injured is not known.

¹¹⁶ See Appendix I.

¹¹⁷ https://nics.ny.gov/system/files/documents/2023/07/mental_health_law_section_9.46_guidance-document_0.pdf

¹¹⁸ https://nics.ny.gov/system/files/documents/2023/07/hospital_guidance.pdf

¹¹⁹ https://nics.ny.gov/system/files/documents/2023/07/integrated_safe_act_reporting_system_user_guide.pdf

¹²⁰ <https://nysafe.omh.ny.gov/>

¹²¹ In many aspects, New York's involuntary commitment laws track the processes of Maine's involuntary commitment law. See Appendix E.

Dickison, the psychiatric nurse practitioner at Keller, testified that he did not initiate a SAFE Act petition because his research indicated that the law applied only to New York residents. The statute's language does provide that the petition is to be filed in the subject's "county of residence." It does not further define "residence," nor does it specifically provide that it applies only to residents of New York. Training materials obtained from the New York Division of Criminal Justice Services (NYDCJS) state that petitions may be filed against non-residents.¹²² Eleven such petitions have been filed against non-residents, and ten have been granted. Dickison was not aware of these NYDCJS training materials.

The discharge summary prepared by Four Winds and sent to Keller indicated that Keller personnel completed the SAFE Act report before Card was transferred to Four Winds. No copy of such a report exists in the Keller records provided by the United States Army. Dickison testified that he did not file such a petition or see one in Keller's records. Klagsburn asked Sanchez to verify that a SAFE Act petition was filed. According to the New York State Police, no such entry in the name of Robert Card II is in the New York SAFE Act registry.

B. New York's Extreme Risk Protection Act (Red Flag Law)

The statute creating New York's process for obtaining an Extreme Risk Protection Order (ERPO) is found at NY CPLR 6340, et seq. That law, which became effective in 2019 and is commonly referred to as a red flag law, permits a police officer, district attorney, family or household member, school administrator, physician, registered nurse, licensed clinical social worker, licensed clinical nurse or nurse practitioner, licensed mental health worker, or a licensed clinical marriage or family therapist to file a petition with the court¹²³ setting forth the facts and circumstances justifying the issuance of an order.¹²⁴ This process is separate from a SAFE Act petition. The court may initially grant an *ex parte* temporary order after considering seven relevant factors.¹²⁵ If the court grants the temporary order, the person is prohibited from purchasing, possessing, or attempting to purchase or possess a firearm, rifle, or shotgun. The temporary order must be served on the person, and the person is required to immediately surrender to law enforcement all firearms, rifles, or shotguns in the

¹²² See footnotes 113-117 above.

¹²³ The statute also states that the petition shall be "filed in the county where the respondent resides."

¹²⁴ The statute permits medical professionals to disclose otherwise confidential health care and treatment information related to the need for a petition and provides immunity to these professionals for their good faith reporting of the medical information. All filings are confidential and closed to public inspection.

¹²⁵ See Appendix H for a copy of this law. An *ex parte* order is one given after a petition is filed by just one side in an action, in other words the person who is subject to the request for a temporary order is not notified ahead of time.

person's possession. Law enforcement may search for the weapons in accordance with New York law or as directed by the court.

A second hearing is held within six business days after entry of the temporary order. At that hearing, the party who filed the petition must prove, by clear and convincing evidence, that the subject of the order is likely to engage in conduct that would result in serious harm to self or others. If the court finds that the party filing the petition has met the burden of proof, a permanent order is entered¹²⁶ and the subject of the order is prohibited from owning, possessing, or attempting to own or possess any rifle, firearm, or shotgun. Law enforcement is authorized to search for and seize firearms. The order is valid for one year and may be renewed by the court. There is no provision in this law that explicitly provides for enforcement of the order outside of New York.¹²⁷

Between 2021 and June 2024, eleven out-of-state residents were subject to a temporary extreme risk protection order in New York. A final extreme risk protection order was granted in ten of the eleven cases. One was denied in 2022 with the court's notation being "out of state address."¹²⁸

In the case of Card, none of the parties who could have filed a petition in New York for such an order did so.¹²⁹ Even if a red flag law petition had been filed in New York, however, it is questionable whether it could have been enforced in Maine. At that time, Maine's yellow flag

¹²⁶ Between 2021 and June 2024, eleven out-of-state residents were subject to a temporary extreme risk protection order in New York. A final extreme risk protection order was granted in ten of the eleven cases. One was denied in 2022, with the Court's notation being "out-of-state address." Telephone conversations with Adam Dean, New York Division of Criminal Justice Services, June 21 and 28, 2024.

¹²⁷ Some have questioned whether a New York court order could have been registered in Maine and then enforced under the Uniform Enforcement of Foreign Judgments Act, 14 M.R.S. §§ 8001-8008 (2024). This, however, would have required knowledge of the order and access by a nonparty to the court filings and judgment. Given the strict confidentiality provisions of the New York law, it is highly unlikely that this could have occurred. Unlike the federal Violence Against Women Act, 18 U.S.C. § 2265(a), which allows one state to enforce a domestic violence protection order issued in another state, no such provision exists in federal law for red or yellow flag law enforcement outside the state of issuance. In 2023, no such provision existed in Maine law. Maine's law has since been amended to permit enforcement of another jurisdiction's weapons prohibition orders. See Appendix D.

¹²⁸ Telephone conversations with Adam Dean, New York Division of Criminal Justice Services, June 21 and 28, 2024.

¹²⁹ The database that contains these orders is also confidential and not open to public inspection. It is only open to law enforcement and to federally licensed firearms dealers. NY State Police have queried the database, and no order exists.

law made no provision for the enforcement of out-of-state orders. That has since been changed.¹³⁰

C. Maine’s Protection from Substantial Threats Act (Yellow Flag Law)

The Maine Legislature passed a “protection from substantial threats” law in 2019 that took effect on July 1, 2020.¹³¹ Unlike red flag laws in other states, only a law enforcement officer is permitted to file a petition with a court requesting entry of an order that restricts an individual from possessing or obtaining a firearm, and an officer may do so only after placing the individual in protective custody. 34-B M.R.S. 3862-A. Once a law enforcement officer takes an individual into protective custody, the officer is required to “deliver the person immediately for examination by a medical practitioner” and provide the practitioner with the “information that led to the protective custody, including information that gave rise to the probable cause determination, the person’s pertinent criminal history and other known history, and recent or recurring actions and behaviors.” *Id.* After that assessment, which can be done either in person or by telemedicine, the medical practitioner determines if the individual presents “a likelihood of foreseeable harm.” *Id.*

After the assessment is completed, the medical practitioner must notify the officer in writing of the results. If the medical practitioner finds that the individual presents a likelihood of foreseeable harm, the officer then presents to a judge, justice, or justice of the peace, the results of the medical assessment, the officer’s declaration that the person was taken into protective custody, and that the officer has probable cause to believe that the individual possesses, controls, or may acquire a dangerous weapon. The judge or justice decides whether to endorse the assessment. If the judicial officer endorses the assessment, she enters an *ex parte* order that temporarily prohibits the person from possessing, controlling, acquiring, or attempting to possess, control, or acquire a dangerous weapon. A copy of the order is served on the person subject to the order, at which time the person is prohibited from possessing, controlling, or acquiring a dangerous weapon. The temporary order is entered into a database of persons prohibited from purchasing firearms. The officer may then seize and secure any firearms or other dangerous weapons within the possession or control of the now-prohibited person.

¹³⁰ See Appendix D.

¹³¹ See Appendix C for the law in effect in 2023 and Appendix D for the changes to the law effective on August 9, 2024. Maine’s law is commonly referred to as a “yellow flag law.” It is the only such law in the nation. After the Lewiston tragedy, legislation was passed that allows a law enforcement officer to petition the court for a warrant to take a person into protective custody to begin the evaluation and yellow flag process. It also specifically permits the law enforcement officer and the court to consider affidavits and reliable third-party reports in the process. This eliminates the “we couldn’t lay eyes on him” issue. See Appendix D.

Within five days after the date the person is notified of the order, the district attorney for the prosecutorial district where the individual resides is required to file a petition for judicial review of the initial restrictions in the District Court that has jurisdiction over the person's town of residence. Within 14 days after the notice of prohibition, the court must hold a hearing to determine whether to dissolve or extend the initial restrictions.¹³² At that hearing, the prosecuting attorney has the burden of proving by clear and convincing evidence that the restricted person presents a likelihood of foreseeable harm. If the court enters a final order, it is valid for up to one year and may be extended after another hearing. The court is required to send a copy of the permanent order to the Maine Department of Public Safety for transmission to the FBI National Instant Criminal Background Check System (NICS) for entry into the national database of persons prohibited from owning, possessing, or attempting to own a firearm.

No law enforcement officer in Maine filed a yellow flag petition either before or after Card's hospitalization in New York. Skolfield testified that because he was unable to "lay eyes on him," he could not begin the process.¹³³ Members of Maine law enforcement who were also in the AR unit believed that the SCSO was responsible for filing the petition. However, other than the contact previously discussed, none of them contacted their peers at the SCSO to inform them of Card's conduct and hospitalization in New York, his threatening and ominous statements, or his collection of firearms.¹³⁴

¹³² This 14-day time restriction has been amended to 30 days. Many prosecutors noted that the initial time frames were burdensome and often prevented them from securing the necessary paperwork in time.

¹³³ Law enforcement officers routinely rely upon the statements of other officers to establish the probable cause in criminal cases. That same practice can and should be used when an officer is considering whether to take a person into protective custody. Although the person must be physically taken into protective custody to start the yellow flag process, the Sheriff's Office had probable cause to take Card into protective custody.

¹³⁴ Multiple witnesses testified that they did not make suggestions or recommendations to their peers in other law enforcement agencies because their input would automatically be rejected. They testified that police officers in other agencies would resent any advice or suggestions.

VII. TIMELINE

05/03/2023	10:37	Sagadahoc County Deputy Sheriff Chad Carleton met with Colby Card & Cara Lamb at Mt. Ararat High School to address concerns regarding Robert Card II's (Card) declining mental health. Carleton contacted the Army Reserve (AR) Center in Saco and later spoke with AR Sgt. Kelvin Mote (an Ellsworth, Maine, police officer) and Card's brother, Ryan Card.
05/03/2023		Ryan Card and Nicole Herling (Card's sister) went to Card's home during the evening; Card met them at the door with a gun.
05/04/2023		Lamb informed Carleton that Ryan Card and Nicole Herling went to Card's home the evening before, and Card met them at the door with a gun. Carleton also followed up with Mote, who said there was an upcoming battle assembly and that he would contact Card to assess the situation. No such meeting took place.
05/04/2023		Carleton included in his report a caution for other officers to be aware of Card's paranoid behavior and that he was known to carry a firearm in his house and vehicle.
June 2023		Throughout June, Nicole Herling researched ways to get help for her brother. On June 3, 2023, she called the VA Crisis line. The worker advised her not to inform the AR command about her brother's delusions, as it could harm his career. Despite extensive online searches, she could not find helpful information on where to report her concerns; much of the online information was outdated. Between May and July 15, 2023, when Card reported to active duty at West Point, Herling attempted to reach someone at the AR unit in Saco to discuss the family's increasing concerns about Card. She left five voicemail messages at the Saco AR Armory. None of the messages was returned. She called 988 and other numbers and researched behavioral health programs for members of the AR. There is no evidence that she found the PHP website.
06/12/2023		Card voluntarily left employment at Maine Recycling. (His employment there started on 02-07-2023.)
July 2023		The AR ordered Card to conduct weapons training at West Point. The orders were originally for 14 duty days beginning 7/15/2023 and later extended to 8/3/2023.
07/03/2023		Card started working as a delivery driver for First Fleet of Auburn.
07/06/2023		Card purchased the murder weapon, a .308 Ruger rifle, and a 9mm Beretta pistol from Fine Line Gun Shop in Poland, Maine.
07/15/2023		Card arrived at West Point and told members of his unit that people were saying he was a pedophile. Later that evening, Card and fellow reservists Daryl Reed and Christopher Wainwright argued. Card clenched his fists at Reed, wanting to fight. Card locked himself in his room.
07/16/2023		Card refused to answer the door, and his commanders ordered him to go to Keller Army Community Hospital in West Point, New York, for a command-directed behavioral health examination. New York State Police also responded. His behavior was sufficiently concerning that two AR service

		members were assigned to watch him the entire way while a third drives and two NYSP cars follow. He was diagnosed with “unspecified psychosis not due to a substance or physiological condition.” Among other things, the clinician recommended to Card’s commander, Capt. Jeremy Reamer that he ensure that Card attends all follow-up appointments, increases the leader/supervisory support for Card to keep him engaged with unit members and other sources of support, and secures Card’s personal weapons. “It is also recommended that measures be taken to safely remove all firearms and weapons from [Card’s residence.” He further told Reamer that Card was not fit for duty. Card was then transferred to Four Winds Hospital in Katonah, New York, where he signed a voluntary admission acknowledgment form.
07/16/2023		At the start of his stay at Four Winds, Card was “notably paranoid and guarded with auditory hallucinations.” Upon admission, he received a psychosocial assessment during which he acknowledged having a “hit list.” He also stated that he had told a military peer that if he didn’t stop talking about him, he’d “be added to my list.” Card was assessed as having psychosis and thought disorder. During his stay, he was prescribed Olanzapine, attended group sessions, and by the end of his stay, “showed notable improvement with no further auditory hallucinations and decreased paranoid delusions, irritability, and anxiety.”
07/26/2023		Card underwent a psychodiagnostic evaluation to assist his treatment team in reaching a diagnosis and developing a treatment plan. The psychologist who conducted the evaluation stated that three aspects of Card’s personality were likely to cause him difficulty: inconsistent coping skills, poor emotional controls, and narcissism. This was apparently based partly on Card’s reporting that “he feels constantly persecuted, misunderstood, and underappreciated by others.” The psychologist also opined that Card’s paranoia “is of sufficient magnitude that it may reach delusional proportions at least part of the time.” The doctor further suggested that given all the factors involved, Card appeared to be a poor candidate for psychological treatment, and his prognosis for significant change was guarded. However, there might be some limited benefit from the use of psychotropic medications.
07/26/2023		A nurse case manager from the Army Reserve’s Psychological Health program emailed Card, introduced herself, and offered Card help in securing services when he got out of Four Winds. The only information provided to her about Card was the report that had been created as a result of Card’s command-directed behavioral health evaluation, the CCIR. She was never provided and never had access to any of Card’s medical records from either Keller or Four Winds, his psychological assessment results, or the report of mental status evaluation.
07/27/2023	17:00	A psychiatric nurse practitioner called Reamer. He reviewed the findings and the need for discharge planning for Card. He told Reamer that Reamer needed to consider starting a medical board process and determining Card’s

		medical disposition going forward. The practitioner also discussed with Reamer about taking steps to remove weapons from Card's home. The practitioner noted that Reamer "did not have any questions or concerns after our conversation."
07/28/2023		After Card announced that he intended to leave the hospital, Four Winds Hospital filed a petition for Card's involuntary hospitalization until it could complete a safe discharge plan. Card was assigned counsel under NY law. He filed a request for discharge.
08/01/2023		After a family meeting with Card's mother and completing a safety plan, Four Winds withdrew its petition for Card's involuntary hospitalization. Card withdrew his request for discharge.
08/03/2023	13:55	Card was released from Four Winds. Before his discharge, Card told the medical professionals that he would engage in treatment, take his medications, and reach out for help and support from family members and friends. Despite these promises, he engaged in no treatment between August 3 and October 25, 2023, took almost none of his prescribed medication, and did not answer or return calls or emails from treating professionals. He also failed to make any appointments with a telemedicine service that was chosen for him. Sean Hodgson, a close friend and fellow AR reservist, drove him to Maine. Four Winds gave Card a folder containing his discharge records and 60 Olanzapine 10 mg tablets. Hodgson remained in contact with Reamer via text throughout the trip and informed Reamer that they arrived safely in Maine. Reamer thanked Hodgson.
08/05/2023		Card attempted to purchase a silencer previously ordered from Coastal Defense Firearms in Auburn, Maine. He was denied the purchase after he incorrectly checked the box "Yes" on the ATF Form 4473, asking whether he had "ever been committed to a mental institution?" He had not been "committed" as defined under federal law.
08/07/2023		A registered nurse (GB) at Keller called Card and left a message to call her back. There was no return call.
08/08/2023		GB left another message for Card to call her. There was no return call.
08/11/2023	14:32	Four Winds sent Card's discharge summary to Keller, and a Four Winds physician left a voicemail message for a Keller physician to inform Keller of the discharge.
08/11/2023		GB spoke with Card on the phone, and he told her he was not taking his medication and he would not go to follow-up treatment.
08/15/2023		GB called and left a message for Card. No return call.
08/21/2023		GB called and left a message for Card. No return call.
08/23/2023		GB called and left a message for Card. No return call.
08/29/2023		GB called and left a message for Card. No return call.
08/30/2023		GB called and left a message for Card. No return call.
09/13/2023	02:04	Hodgson called Reamer to report that Card assaulted him after leaving the Oxford Casino, that Card had guns, and was going to "shoot up" the Saco AR facility. Reamer took no action and did not report this conversation to anyone else in the AR. Later that day, Hodgson told Reed about the assault.

09/15/2023	02:30	Hodgson sent text messages to Reamer and Mote reporting that Card assaulted him after leaving the casino, that Card had guns, and was going to “shoot up” the Saco AR facility.
09/15/2023		Hodgson spoke to Reamer and also Mote to report that Card assaulted him after leaving the casino, that Card had guns, and was going to “shoot up” the Saco AR facility. Reamer reviewed the situation with Lt. Col. Vazquez and Sergeant Major Tlumac. Card’s commanders decided to ask local law enforcement to do a “well-being” check on Card.
09/15/2023		Reamer spoke with Card by telephone, who told him he would not attend the battle assembly in Saco the weekend of 9/16/2023 because he had to work. Reamer replied, “Okay, that’s fine.” Card expressed lingering anger over the NY hospitalization and said he wanted to punch Reed. Reamer did not tell anyone else in the unit that Card did not plan to attend the battle assembly until he arrived at Saco that morning after Saco PD had stationed officers in the vicinity.
09/15/2023	14:28	Ellsworth Police Det. Corey Bagley telephoned the Sagadahoc County Sheriff’s Office to speak with Carleton about a “time-sensitive” matter. Carleton was not on duty.
09/15/2023	14:38	<p>Sagadahoc County Sgt. Aaron Skolfield conferred with Bagley, who provided a summary of longstanding concerns about Card’s mental health, including the confrontation between Card and Hodgson the night of 9/13-9/14/2023, Card’s threat to “shoot up” the Saco AR facility, and Card’s hospital commitment for two weeks earlier in the summer. Bagley requested that the Sheriff’s Office conduct a “welfare check” on Card, who was hearing voices calling him a pedophile. Bagley said he would email Skolfield a document prepared by Mote regarding concerns about Card’s behavior and the need for a mental health evaluation to determine if Card was dangerous to himself or others. Mote’s report summarized the relevant events for use as the basis for a yellow flag petition and requested that the SCSO conduct a well-being check “to gauge his mental health and determine if he is a threat to himself and/or others.” Hodgson’s text to Mote was also attached:</p> <p style="text-align: center;"><i>Change the passcode to the unit gate and be armed if sfc card does arrive. Please. I believe he is messed up in the head. And threaten the unit other and other places. I love to death but do not know how to help him and he refuses to get help or continue help. I’m afraid he’s going to fuck up his life from hearing things he thinks he heard. When I dropped him off, he was concerned his weapons were still in the car. I believe they were at the unit. And no one searched his vehicle on federal property. And yes he still has all his weapons. I’m not there I’m at my own place. I believe he is going to snap and do a mass shooting.</i></p>

9/15/2023	14:46	Skolfield notified Dispatch he would be attempting a welfare check on Card, although he did not think the matter “as pressing” as previously believed. While aware of an “armed and dangerous” flag in the Sheriff’s Office records system, Skolfield was unaware of Carleton’s contacts with Card’s son and ex-wife on May 3, 2023, because he did not access Carleton’s report.
09/15/2023	15:09	Skolfield arrived at Card’s residence in Bowdoin. Card was not home nor at his father’s house in Bowdoin.
09/15/2023	15:24	Skolfield returned to Card’s residence, but Card was still not there.
09/15/2023	15:47	Skolfield received an email message from Bagley that included the document prepared by Mote.
09/15/2023	17:11	Skolfield issued a statewide “File 6 attempt to locate” teletype broadcast regarding Card: <i>***Caution Officer Safety – KNOWN TO BE ARMED AND DANGEROUS***ROBERT HAS BEEN SUFFERING FROM PSYCHOTIC EPISODES & HEARING VOICES. HE IS A FIREARMS INSTRUCTOR AND MADE THREATS TO SHOOT UP THE NATIONAL GUARD ARMORY IN SACO. HE WAS COMMITTED OVER THE SUMMER FOR TWO WEEKS DUE TO HIS ALTERED MENTAL HEALTH STATE, BUT THEN RELEASED. HE ALSO DRIVES ME/MC 82MW BLUE 2020 YAMAHA WR250R. MULTIPLE ADDRESSES HAVE BEEN CHECKED WITH NEGATIVE CONTACT SO FAR. IF LOCATED, USE EXTREME CAUTION, CHECK MENTAL HEALTH WELLBEING AND ADVISE SAGADAHOC SD VIA SAGADAHOC COMMS 443-9711.</i>
09/15/2023		During the evening, Sagadahoc Sheriff’s Deputy Zach Kindelan looked for Card at Card’s and Card’s parents’ residences without success.
09/16/2023	02:17	Brunswick Lt. Ed Yurek (an AR member) telephoned Saco PD and spoke with Sgt. Monica Fahey (recorded). He told her that Card would be at the Saco AR facility at 7 a.m. and advised her of the information in the statewide “File 6” broadcast. Yurek’s call was apparently the first time Saco PD officers became aware of the threat to the AR facility.
09/16/2023	06:45	Saco PD units were positioned to intercept Card on his way to the Army Reserve facility. Card did not show.
09/16/2023	07:46	Saco PD officers spoke with Reamer at the Saco AR facility (recorded). They learned that Card had notified Reamer the day before that he would not be at the weekend drill. Reamer told them the AR only desired a “well-being check” on Card and questioned Hodgson’s credibility about the potential danger Card presented.
09/16/2023	08:45	Skolfield went to Card’s residence accompanied by a Kennebec County deputy sheriff. Although Card’s vehicle was there, no one answered the door. Skolfield believed Card was at home at that time.
09/16/2023	10:31	Skolfield telephoned Saco PD to confirm the PD had received the “File 6” broadcast regarding Card and was advised of Saco PD’s actions earlier that morning. He also asked Saco PD for the name of a contact for the AR Unit.
09/16/2023	10:46	Skolfield and Reamer spoke by telephone (recorded) regarding Card. Skolfield learned that Card had no access to military weapons. Reamer said he had no information regarding the outcome of Card’s hospitalization

		because of HIPAA. He told Skolfield that the family was supposed to secure Card's weapons. Reamer asserted that the military was only requesting a well-being check on Card to “confirm that he is alive and breathing” and asked Skolfield to “document” the check.
09/16/2023	11:09	Skolfield discussed with Lt. Brian Quinn, his supervisor, the attempts to contact Card and the discussion with Reamer. They decided to leave Card alone. Skolfield said he would ask Ryan Card to assist in securing Card’s firearms and would tell the family to contact the Sheriff’s Office if there was any reason to believe Card needed a psychiatric evaluation. Lt. Quinn concurred.
09/17/2023	11:34	Skolfield attempted to contact Ryan Card without success. At noon, he spoke briefly with Katie Card, who told him the guns had not been secured.
09/17/2023	14:42	Skolfield spoke by telephone with Ryan Card about securing Card’s firearms and having the family contact the Sheriff’s Office if there was a need for a psychiatric evaluation of Card. (Not recorded.) No member of Card’s family ever told Skolfield that they had successfully removed Card’s guns.
09/18/2023		Skolfield went on vacation, considering the case closed. Skolfield decided there was no need for him or the SCSO to be involved further. He considered the matter “resolved,” stating that no person expressly “wanted to press charges.” Skolfield notified his supervisor, Lt. Brian Quinn, of his conclusions. Quinn deferred to Skolfield’s “judgment as an experienced officer” and did not undertake further action or review other than notifying his supervisor, Chief Deputy Brett Strout. Strout did not take any further action or assign any other deputy sheriff to the matter.
09/21/2023	12:40	GB called and left a message for Card. She did not receive a return call, so she closed the case for noncompliance with communications.
10/01/2023		When Skolfield returned to work from vacation, he took no further action on the matter and did not follow up with Card or his family members.
10/18/2023	08:54	Skolfield canceled the “File 6” broadcast while leaving the “armed and dangerous” flag on Card in the Sheriff’s Office records management system.
10/19/2023		While delivering at a warehouse in Hudson, NH, Card told two workers there that he knew they were talking about him and stated, "Maybe you will be the ones I snap on." Neither worker had said anything about Card. (The workers did not report this information to the Hudson Police Department until the early morning of 10/26/2023, several hours after the shootings in Lewiston.)
10/22/2023	00:16	A note was generated on Card’s cell phone stating that he had had enough and was trained to hurt people. The entry was discovered post-shooting via forensic analysis.
10/23/2023	07:47	Bagley spoke with Mote concerning the open Ellsworth Police Department case on Card. Mote told him that nothing had been done with Card. He stated that Card was not helping himself by failing to cooperate with the military and that he would be “forced out with a discharge” in the next few days. Mote stated that he was unaware of any new threats against him; Bagley closed the Ellsworth case.

10/25/2023	18:05	The last time Card's cell phone was mobile, it was at his residence in Bowdoin.
10/25/2023	18:54:20	Card entered the Just-in-Time Recreation Center, where he shot and killed eight people and wounds three others. Others were physically or psychologically injured.
10/25/2023	18:55:05	Card departed Just-in-Time Recreation Center.
10/25/2023	18:56	The first 911 calls from Just-in-Time were received.
10/25/2023	18:59	The first Lewiston PD units and an Androscoggin County deputy sheriff arrived at Just-in-Time.
10/25/2023	19:00:13	Officers entered the Just-in-Time Recreation Center.
10/25/2023	19:07:34	Card drove into the parking lot of Schemengees Bar & Grille and entered the facility, where he shot and killed ten people and wounded ten others. Others are physically or psychologically injured.
10/25/2023	19:08	The first 911 calls were received from Schemengees Bar & Grille.
10/25/2023	19:08:46	A patron shut off power inside Schemengees Bar & Grill.
10/25/2023	19:08:52	Card departed Schemengees.
10/25/2023	19:13	The first law enforcement officers arrived at Schemengees.
10/25/2023	19:34	Law enforcement obtained an image of the shooter from Just-in-Time's surveillance footage.
10/25/2023	19:42	Maine State Police (MSP) established an initial command post at Lewiston PD.
10/25/2023	19:51	MSP received a call of another possible shooter at DaVinci's Restaurant, which was determined to be unfounded.
10/25/2023	19:52	Just-in-Time's image of the suspect was disseminated to law enforcement.
10/25/2023	19:55	Maine Emergency Management Agency (MEMA) issued a shelter-in-place advisory.
10/25/2023	20:06	Image of suspect publicly disseminated.
10/25/2023	20:06	Image of suspect's vehicle obtained from Schemengees surveillance footage publicly distributed.
10/25/2023	20:06	MSP issued a social media alert on Facebook, Instagram, and X (formerly Twitter) about an active shooter in Lewiston and asked people to shelter in place, stay off the streets, and report any suspicious activity.
10/25/2023	20:11	Lewiston-Auburn Communications Center received a call about a possible shooter at Walmart Distribution Center, a report of a shooter seen on a nearby street, and a later report that Card's vehicle was involved in an accident on the on-ramp to I-95; police dispatched to those locations; the reports were unfounded.
10/25/2023	20:33	The City of Lewiston announced a shelter-in-place order while the manhunt was underway.
10/25/2023	20:57	A nationwide police bulletin was broadcast describing Card and his vehicle.
10/25/2023	21:20	Nicole Herling and Cara Lamb contacted Lewiston PD and identified Card from the Just-in-Time image.
10/25/2023	21:32	Law enforcement contacts Card's cellular phone service provider for phone data.
10/25/2023	21:33	Cellphone data indicated that Card's cell phone was at his residence in Bowdoin.

10/25/2023	21:56	Lisbon PD found Card's abandoned vehicle at the Papermill Trail/Miller Park boat launch in Lisbon.
10/25/2023	22:00	A press conference and briefing were held at Lewiston City Hall.
10/25/2023	22:05	The MSP Tactical Team commander was notified of the discovery of Card's vehicle in Lewiston.
10/25/2023	22:14	The Maine Information & Analysis Center (MIAC) bulletin, identified as "law enforcement sensitive," and naming Card as an active shooter suspect was disseminated to law enforcement. Very shortly after, it was leaked to the media.
10/25/2023	22:37	The MSP Tactical Team determined no one was in Card's abandoned vehicle.
10/25/2023	23:00	MSP Major Crimes Unit conducted its first operations briefing at Lewiston PD.
10/25/2023	23:57	MSP issued a social media alert on Facebook, Instagram, and X naming Card as the suspected active shooter, announcing that his vehicle had been located and asking people to continue to shelter in place and to report any suspicious activity.
10/26/2023	02:00	MSP Major Crimes Unit conducted its second operations briefing at Lewiston PD, during which it was announced that the Command Post was moving to Lewiston High School and that an incident command model was being implemented.
10/26/2023	02:24	Card's vehicle was removed from the boat launch in Lisbon.
10/26/2023	03:00	Command Center relocated from Lewiston PD to Lewiston High School
10/26/2023	03:05	Card's vehicle was secured at the MSP Crime Lab in Augusta.
10/26/2023	06:13	MSP issued a social media alert on Facebook, Instagram, and X announcing an expansion of the shelter-in-place order, including school closings in Bowdoin.
10/26/2023	08:00	The incident management team coordinated the MSP operations briefing, which included Col. Bill Ross (Chief of MSP), Lewiston Police Chief David St. Pierre, Lt. Randall Keaten (MSP Major Crimes Unit), Sgt. Greg Roy (MSP Tactical Team commander), and Lt. Jodell Wilkinson (MSP Incident Management Assistance Team (IMAT) Commander). The team established a standard radio frequency for all law enforcement agencies.
10/26/2023	08:52	MSP issued a social media alert on Facebook, Instagram, and X asking the public for any information on Card or the Lewiston shootings and providing telephone numbers to call.
10/26/2023	09:38	Search warrants for Card's vehicle and residence were issued.
10/26/2023	10:00	An arrest warrant was issued for Card, charging knowing and intentional murder.
10/26/2023	10:30	Press conference with ASL interpreters at Lewiston City Hall with Governor Mills, Lewiston Police Chief St. Pierre, Maine Public Safety Commissioner Sauschuck, MSP Col. Ross, and FBI Special Agent-in-Charge Cohen.
10/26/2023	10:50	MSP searched Card's residence in Bowdoin.
10/26/2023	15:35	The Incident Management Team coordinated an investigative briefing at Lewiston High School, during which certain investigative information was relayed to law enforcement in attendance, including the discovery of a note left by Card at his residence. The information about the note was leaked to

		the media immediately after. Because of the leaks by law enforcement, the release of information at further briefings would be limited.
10/26/2023	15:50	An evidentiary search of Card's residence in Bowdoin began.
10/26/2023	16:50	A Card family property was searched on the Meadow Road in Bowdoin.
10/27/2023	08:00	An operations briefing coordinated by the Incident Management Team was held at Lewiston High School. Officers were reminded to wear visible law enforcement markings and respond when assigned to do so rather than "self-dispatch" or "self-deploy," and that information shared in the briefings was law enforcement sensitive and not to be further shared.
10/27/2023	10:00	Chief St. Pierre and Commissioner Sauschuck conducted a press conference with ASL interpreters at Lewiston City Hall.
10/27/2023	11:00	An investigative briefing coordinated by the Incident Management Team was held at the Lewiston High School.
10/27/2023	12:17	A search warrant for Card's cellular phone was issued.
10/27/2023	14:30	Col. Ross conducted a virtual operations briefing with police chiefs and sheriffs to update them on the investigation and the manhunt. He announced that sensitive information that could compromise the investigation and create safety issues for those involved in the manhunt had previously been leaked to the media.
10/27/2023	14:44	A search warrant for Card's cellphone records was issued.
10/27/2023	17:00	Chief St. Pierre and Commissioner Sauschuck conducted a press conference at Lewiston City Hall.
10/27/2023	19:08	Tactical teams began searches of box trailers in the Maine Recycling overflow lot.
10/27/2023	19:34	MSP issued a social media alert announcing the establishment of a Family Assistance Center at the Lewiston Armory where victims could get help and support.
10/27/2023	19:40	Card's body was found in a box trailer at Maine Recycling in Lisbon. The cause of death was suicide by gunshot to the head.
10/27/2023	20:10	A search warrant was issued for the infotainment center of Card's vehicle.
10/27/2023	20:30	Col. Ross, Chief St. Pierre, Commissioner Sauschuck, and MSP Major Scott Gosselin conducted an operations briefing at the Lewiston High School Command Post, during which it was announced that Card's body had been located.
10/27/2023	22:00	Governor Mills, Chief St. Pierre, and Commissioner Sauschuck conducted a press conference at Lewiston City Hall to announce the discovery of Card's body.
10/27/2023	23:34	MSP issued a social media alert announcing the discovery of Card's body. Shelter-in-place orders lifted.
10/28/2023		FBI Victim Services Response Team open the family assistance center at the Lewiston Armory. A separate site for individuals affected by the shootings was established at the Ramada Inn on Pleasant Street in Lewiston.
10/28- 10/30/2023		MSP issued seven more social media bulletins concerning donations to support victims and families, returning victims' personal effects and vehicles to families, and resources available at the Family Assistance Center.
10/30/2023	16:14	MSP launched a website to share investigative information with the public.

11/02/2023		The Family Assistance Center was closed.
11/13/2023		A Community Resilience Center was established in the Peck Building, 184 Main Street, Lewiston.
11//29/2023		The Ramada Inn site for individuals affected by the shootings was closed.

IV. Discussion and Observations

A. Law Enforcement Response Before October 25, 2023

As discussed previously, Robert Card is solely responsible for his actions on July 25, 2023. It is impossible to know whether this tragedy could have been prevented. Even if anyone had managed to remove the firearms from his home in the summer or fall of 2023, he could have acquired access to other firearms. Nevertheless, the Commission finds that authorities had several opportunities to reduce the risk.

First, the Sagadahoc County Sheriff's Office could have sought an involuntary commitment order (a "blue paper"). Law enforcement (or family member, social worker, or friend) may seek a person's involuntary commitment to a hospital qualified to provide mental health services if a mental health clinician certifies that the individual is mentally ill and poses a likelihood of serious harm. It does not appear that Skolfield considered obtaining a blue paper order to get Card treatment from a mental health provider. While the blue paper order would not have immediately prohibited Card from possessing a firearm in the future, law enforcement would have had time to pursue additional steps to reduce the risks.

Second, the Sheriff's Office missed an opportunity to pursue a "yellow flag" order against Card in September of 2023. Based on the information available to the Sheriff's Office from Card's family members and colleagues in the AR, as well as the historical information available within its own files, the Sheriff's Office had probable cause to believe that Card was mentally ill and that due to that illness, he posed a likelihood of serious harm.

Indeed, the available information concerning Card's declining mental health and threats of violence was greater than the information forming the basis for many "yellow flag" orders obtained by law enforcement officers in Maine before September of 2023.¹ Once they obtained the "yellow flag" order, the Sheriff's Office could have seized any firearms in Card's possession or over which he had control.

Third, the Sheriff's Office missed another opportunity in October 2023. At that time, its newly hired mental health liaison, who had been in training in September, was fully available. Had the Sheriff's Office followed up with Card's family in October, the officer and the liaison would have learned that there had been no improvement in Card's mental health and that he still had some or all his weapons. The mental health liaison could have reached out to Card and attempted to secure his cooperation. If Card had failed to cooperate, the Sheriff's Office would still have had probable cause to take him into protective custody and begin the yellow flag process. The Sheriff's Office had available a variety of other mental health

¹ It should be noted that the Commission's investigator monitors all Yellow Flag petitions and as part of that process reviews each probable cause statement. The Commission therefore has a basis for this conclusion.

resources from which it could have received assistance on approaching Card. They failed to avail themselves of these resources.

B. The Army Reserve Response Before October 25, 2023

The Army Reserve unit also missed several opportunities that might have reduced the risk of this tragedy occurring.

First, when contacted by Deputy Sheriff Carleton in May 2023, principal members of the unit failed to follow through on a plan to “sit down and talk” with Card during the May 2023 or even the June 2023 battle assemblies.

Second, none of the five individuals who received voicemail messages at the AR unit ever called Nicole Herling back. These calls were placed before the July 2023 New York training assignment. Had any of these officials returned her calls, Herling had a wealth of information about her brother she could have shared with them.

Third, AR officials failed to follow up with Card after his hospitalization in New York. The actions taken by various members of the AR unit on July 15 and 16, 2023, were the appropriate first steps in getting Card evaluated and helped. Calling for a command-directed behavioral evaluation, driving Card to the Keller Army Community Hospital with a safety and security plan in place, and then staying with him during his initial emergency room intake and evaluation were all necessary and appropriate.

The failure was due to the inaction of the company leadership and commander, Captain Jeremy Reamer. Reamer failed to follow the July 16, 2023, recommendations of the psychiatric nurse practitioner, Captain Mathew Dickison, to (1) ensure that Card attended all follow-up appointments, (2) increase leader/supervisory support with the intent of keeping [Card] engaged with unit members and other sources of support; and (3) encourage Card to temporarily secure his personal weapons in the AR unit’s arms room or another safe location.

On July 27, 2023, in a 5 p.m. phone call, Dickison again told Reamer he should ensure (1) that [Card] followed through with his treatment appointments, (2) that his weapons were removed from his home, and (3) that a medical review board process be initiated. Reamer led Dickison to believe that he would follow these recommendations, and never expressed concern that he lacked authority to enforce them. However, Reamer did nothing to follow them.

While Card was on active duty and under his command from July 16 through August 3, 2023, Reamer could have endeavored to arrange for Card to voluntarily turn over his weapons. Reamer was in contact with Hodgson on August 3, 2023, as Hodgson drove Card from New York to the unit’s headquarters in Saco, Maine. Reamer could have arranged for one of his

unit's officers to meet Card upon his arrival while Card was still on active duty orders and arranged to store Card's guns.

Reamer also failed to initiate the medical review board process or contact Keller or Four Winds to learn about Card's diagnosis, discharge plan, and prognosis. The Health Insurance Portability and Accountability Act (HIPAA) specifically provides an exception to the privacy rules that allow a commander to secure information about a soldier's diagnosis and treatment. See Appendix P for the military command exception.

Reamer failed to check with Card after Card's return to Maine on August 3rd, and he failed to order Card to appear for the September or October battle assemblies. Reamer said that it was "okay" for Card not to attend the battle assembly despite the fact that he later used it in the letter citing his unexcused absences. When Card was on active duty, such as during battle assemblies, he was subject to Reamer's command authority. Either in September or October, a plan could have been put in place to meet Card at the Army Reserve facility gate, evaluate him, and, if appropriate, initiate a second command-directed behavioral health evaluation.

Dickison recommended that Card be encouraged to store his weapons at the AR facility in Saco. The testimony regarding the AR's authority to store Card's personal firearms was inconsistent. Vazquez testified that the AR strongly discouraged the storage of service members' personal weapons. He referred to a memorandum he said was issued in May 2024 – seven months after the shooting – that he claimed makes storage of a service member's personal firearms "very challenging" and "very, very difficult" to do. He testified that "without certain permissions, it would have been impossible." Vazquez promised to provide the Commission with a copy of this memo, but, despite repeated requests from the Commission's executive director, the AR still has not produced it.

On the other hand, in his Report of Medical Status Evaluation (DA Form 3822, June 2019), Dickison checked the box recommending that Reamer encourage Card "to secure personal weapons with . . . unit arms rooms, or other trusted source." That recommendation was one of several options appearing on the Army's preprinted Evaluation form. Army Regulation 190-11, Physical Security of Arms, Ammunitions, and Explosives, specifically allows a commander of a facility to allow the storage of personal weapons in the facility's arms room. It is implausible that the Army's own preprinted form would present an option that is impermissible for AR commanders to follow.

Reamer testified that the AR could have stored Card's firearms, but he did not pursue the option because he expected Card's family to take them-even though Card's family never represented that they were able to do so. Nevertheless, he conceded that the AR can store service members' personal firearms. During his conversation with Dickison at Keller, Reamer led Dickison to believe he would follow through on the recommendation and did not

express any concerns about his authority to do so. It appears that the AR could have complied with Dickison's recommendation.

The AR also failed to avail itself of or educate Card or his family concerning the resources available through the PHP. The PHP is a specific program to assist reservists and their families in obtaining behavioral health services and to assist Command. When the Sagadahoc County Sheriff's Office contacted Mote about Card's family's quest for help dealing with Card's deteriorating mental health, Mote never informed the Sheriff's Office of the PHP. None of the soldiers who received Herling's voicemails availed themselves of the opportunity to provide this information to Card's family or to the Sheriff's Office. At no time did the Command staff at Card's AR contact the PHP for help in how to manage Card before his hospitalization at Keller and Four Winds or after his discharge.

It is evident that Reamer had inadequate support in a difficult situation. Vazquez testified that he and Reamer discussed Card's diagnosis, inpatient hospitalization, and the CCIR. However, it does not appear that Vazquez provided Reamer with any meaningful advice, guidance, or direction about Card. Further, neither Reamer nor Vazquez ordered a Line of Duty Investigation to determine Card's duty status.

C. Medical Personnel Response Before October 25, 2023

Medical staff at Keller Army Community Hospital failed to file a SAFE Act notice and/or initiate the New York red flag petition process. Staff apparently misunderstood the laws, believing that they applied only to New York residents. The Four Winds medical director did call a psychiatrist at Keller, asking him to ensure that a Safe Act petition had been filed.

After Card was discharged from Four Winds Hospital, staff at Keller Army Community Hospital, the Army Reserve Mental Health Program (PHP), and the Army Medical Management Center made multiple efforts to contact him. For the most part, Card did not acknowledge or return telephone messages or respond to email messages. He did participate in one phone call with a nurse case manager on the PHP staff but declined all services. The staff failed to reach out by telephone to Reamer or his superiors to follow through. Per established protocols at the time, the case was closed.

Given the severity of Card's symptoms, follow-up with Card's superiors was important both for Card's benefit and the safety of the AR and to ensure that Card's "not fit for duty" status was re-evaluated. When Reamer failed to respond, his superior officer should have been contacted.

D. The Law Enforcement Response on October 25, 2023

On the evening of October 25, 2023, and the days that followed, Maine law enforcement faced the largest and most complex challenge in its history. The first hours were admittedly chaotic. Once the Incident Command Center (ICC) was established, the tactical,

operational, and investigative operations improved. No additional civilian lives were lost, the citizens of Lewiston and surrounding communities were kept safe, and key witnesses were protected.

Members of the Deaf community and the interpreters who work with them encountered difficulties with access to information and other communication problems. They have requested an opportunity to work with law enforcement and other governmental actors to improve information sharing and communication with Maine's Deaf community. Such a project could also be helpful for all non-English-speaking members of the Maine population.

Communication between teams and among the various agencies responding to the tragedy was not always smooth or effective. Our charge does not include making recommendations for operational or policy changes, but we anticipate that the Maine State Police will follow through with an independent after-action review to address the challenges identified and any other needed changes.

Finally, some members of the judiciary and law enforcement expressed frustration with the yellow flag process. Law enforcement officers reported that the process was too burdensome and took too long, placing outsized burdens, especially on smaller law enforcement agencies forces. Judges were frustrated by the Judicial Branch's paper-based, court location-specific mental health involuntary commitment records system. For example, if a judge is presented with a petition for involuntary commitment and a yellow flag order in Portland, there is no centralized database available to determine if a similar petition or order has ever been filed in another court location. Absent separate phone calls to each of the 37 District Court locations and then a hand search of the paper records at each location, judges are unable to properly analyze all the information they need to make an appropriate decision. Again, it is not within the scope of our charge to make recommendations for administrative or operational change, but we anticipate that all branches of government will work together to address these concerns.

IX. Acknowledgment and Thanks

The Commission would like to thank and acknowledge the following individuals and organizations for their work, dedication, and amiable responses to our many requests for assistance. Their service and skills were instrumental in our operations. Without them, we would not have been able to conduct our investigation or public hearings.

Pine Tree Society- American Sign Language Interpreting: Ashlee Fitch, Joe Toledo, David Krueger, Meryl Troop, Marisa Zastrow, Shelly Parks, Cid Pollard, Maurita Marr, Margaret Haberman, Grace Cooney, Kevin Bohlin, Amy Richardson, Tristen Evah Hellewell, Amanda Eisenhardt, Stacey Bsullak, and Rebecca Breton for providing interpreting services.

Disability Rights Center of Maine: For providing interpreting services at the Family Assistance Center.

MVP Litigation Services-Court reporting services: Julia Varney, Angella Clukey, Peggy Stockford, Melinda Simon, and Veronica Morrill for their professionalism, willingness to work long days, and flexibility with multiple schedule changes.

Pro AV Systems: Jeff Souza and Jacob Audet for assistance in video technology matters.

Department of Administration and Financial Services-State of Maine: Elaine Clark, Marsha Alexander, Michael Koss, and Michael McPeak for coordinating meeting space and information technology services and for providing free office space for Chair Wathen.

Department of Health and Human Services-State of Maine, South Portland Office: Andrea Ray and Stephen DeKubber for providing free office space, office supplies, a desk telephone, photocopying and scanning machines. And to the entire Office of Family Independence staff for the kindness and genuine welcome shown to the Executive Director.

Department of Transportation -State of Maine: Michael Cole for information technology and video services.

Department of Public Safety-Capitol Police-State of Maine: Chief Matthew Clancy and his officers for providing security and assistance at public meetings at the Deering building. A special thanks to Officer Alden Weigelt for arranging free psychological first aid providers for victims and survivors who came to testify.

Department of Public Safety- Maine State Police-State of Maine: To the entire command staff, including Colonel William Ross, Lieutenant Colonel Brian Scott, Major Lucas Hare, and Major Scott Gosselin, for their offers of help and willingness to provide information and testimony in an organized and thorough manner. We express a special expression of gratitude to Lieutenant Thomas Pickering for his work assembling and transmitting thousands of reports, photographs, videos, and electronic information, for gathering

additional information sought by the Commission, and for his prompt responses to any inquiry or request from the Commission.

Lisbon Police Department: Chief Ryan McGee for arranging and conducting a tour of relevant locations in Lewiston and Lisbon for the Commission and its staff.

University of Maine Augusta: Dr. Jen Cushman, Noel March, Kera Synder, Greg Keneborus, Peter Starkey, and Richard Burns for coordinating and providing free meeting space and information technology services, and for their willingness to work with the Commission to ensure that live split-screen Zoom was available for every meeting.

City of Lewiston: Mayor Carl Sheline, Brian O'Malley, Dottie Perham-Whittier, Nicole Welch, Heather Hunter, David Gudas, Matt Charest, Moe Pelletier, Craig Starr, David Saucier, Bill Storm, Nate Cheevers, Janet Labbe, Martin Mujiba, and Ange Amores for providing and setting up meeting space, information technology services, and marketing/communications services and for their willingness to assist the Commission with last minute meeting needs so that we could better serve the victims and witnesses who testified.

Office of the Attorney General-State of Maine: Attorney General Aaron M. Frey for providing funding to conduct the investigation, Chief Deputy Attorney General Christopher Taub, Deputy Attorney General Thomas Knowlton, and Assistant Attorney General Jonathan Bolton for legal advice and contractual and legal filings on behalf of the Commission; Summer Carter and Paul Knowles for accounting services; Cara Cookson for coordination of victim witness services and answering endless emails; Kelly McGillis for providing Maine Crime Victims' Compensation Program information; and to the victim/witness advocates statewide who provided and continue to provide vital support to the victims of this tragedy.

The Androscoggin County District Attorney's Office: Deputy District Attorney Kate Bozeman and her staff for providing local victim witness advocate services.

Southern Maine Community College: Administrative Assistant Lorri Hall for her skillful assembly of the initial interim report.

Sagadahoc County Sheriff's Department: Sheriff Joel Merry and his staff for providing the Commission with police reports, dispatch records and logs, phone records, and transcripts of various phone calls.

The family members, survivors, victims, business owners, friends, and witnesses: Thank you for your courage and willingness to share your stories, as well as the poignant and loving memories you shared publicly or privately with the Commission. Your presence and participation reminded us of the importance of our mission.

The Maine Resiliency Center: For assisting victims and survivors with their presentations to the Commission.

New York State Division of Criminal Justice Services: Joseph Popcun and Adam Dean for tracking down and providing important background and data information regarding New York's red flag law.

The evening of October 25, 2023, and its aftermath was an unprecedented event for the citizens of Maine and one we hope never to experience again. This sad and tragic event has touched us all, and the memories will remain etched on our hearts forever. The dedication, responsiveness, and willingness of so many people to encounter danger, work long hours, and do whatever it took to bring an end to this tragedy, and the people, businesses, and community partners who immediately volunteered their time, talent, equipment, supplies and facilities to assist in this endeavor, and who continue to do so as we move forward, is acknowledged with deep gratitude and appreciation. Among those we must acknowledge are the following:

The hundreds of law enforcement officers, emergency medical responders, emergency communication specialists, hospital personnel, the FBI Victim Services Rapid Response Team, the Lewiston School Department, Bates College and its student volunteers, Bangor Savings Bank, Androscoggin Savings Bank, Community Concepts, the Lewiston Auburn Metropolitan Chamber of Commerce, youth and staff of the Tree Street Youth Center, the Maine Community Foundation, the Harvard Police Department Canine Unit, the FBI Crisis Response Canine Unit, Build-A Bear Workshops, L.L. Bean, Island Treasure Toys, Vermont Teddy Bear Company, U-Haul, Walmart, Amato's, Dunkin Donuts, Coke Northeast, Big Fish Promotions, Hannaford Supermarkets, Broadway Gardens, and all the individuals, businesses and community organizations that immediately responded and offered their time, talents, goods, and resources.

X. Internet Citation and Statement

The internet references cited in this report were valid as of the date of its printing. Given that URLs and websites constantly change, the Commission cannot vouch for their continuing validity after the publication of this report.

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Recommended citation:

The Commission to Study the Facts of the Lewiston Tragedy, 2024, *Final Report Of The Independent Commission To Investigate The Facts Of The Tragedy In Lewiston*

XI. APPENDICES

Appendix A: Governor's Executive Order



OFFICE OF
THE GOVERNOR

NO. 4 FY 23/24
DATE November 9, 2023

WHEREAS, on October 25, 2023, Robert Card shot and killed 18 people and wounded 13 more in Lewiston, Maine; and

WHEREAS, on October 27, 2023, nearly 48 hours after these horrendous acts and a massive manhunt by law enforcement, the perpetrator of the violence was found deceased of a self-inflicted gunshot wound; and

WHEREAS, from what is known thus far, on multiple occasions over the last ten months, concerns about Mr. Card's mental health and his behavior were brought to the attention of his Army Reserve Unit, as well as law enforcement agencies in Maine and in New York, raising crucial questions about actions taken and what more could have been done to prevent this tragedy from occurring; and

WHEREAS, the Maine State Police are conducting a criminal investigation of the shooting, but the gravity of the attack on Maine people – an attack that strikes at the core of who we are and the values we hold dear – demands a higher level of scrutiny; and

WHEREAS, a cornerstone of the ability to heal is to know the truth – in this case, the facts of what happened on that tragic night, of the months that led up to it, and of the police response to it; and

WHEREAS, this – the complete facts and circumstances, including any failures and omissions – must be brought to light and known by all because the families of the victims, those who were injured and the people of Maine and the nation deserve nothing less.

NOW, THEREFORE, I, Janet T. Mills, Governor of the State of Maine, pursuant to authority conferred by Me. Const. Art. V, Pt. 1, § 1 and § 12, do hereby Order the following.

I. ESTABLISHMENT AND PURPOSE

- A. The Independent Commission to Investigate the Facts of the Tragedy in Lewiston ("Independent Commission") is hereby established;

- B. The purpose of the Independent Commission is to determine the facts surrounding the tragedy in Lewiston on October 25th, including relevant facts and circumstances leading up to it and the police response to it. The Independent Commission should determine the full scope of its work, and should ask any question necessary of any person that is relevant to the charge of gathering the facts regarding Robert Card's mental health history, contact with State, Federal, or military authorities, access to firearms, the initial law enforcement response to the Lewiston shootings and the manhunt that ensued, and any other matters the Independent Commission determines are relevant to its purpose.

II. MEMBERSHIP, STAFFING AND SUPPORT

The Independent Commission shall consist of seven members, as follows:

A. Chair

1. The Honorable Daniel E. Wathen

B. Members

2. Dr. Deborah Baeder
3. George T. (Toby) Dilworth, Esq.
4. The Honorable Ellen A. Gorman
5. The Honorable Geoffrey A. Rushlau
6. The Honorable Paula D. Silsby
7. Dr. Anthony Ng

C. Funding and Staffing

1. The Office of the Attorney General is hereby requested to provide such funding to the Independent Commission as the Chair determines is necessary to hire sufficient staff or consultants on a contract basis to fulfill the Independent Commission's charge. The terms of such contracts must make clear that those hired will report directly to the Independent Commission;
2. The Chair and the members of the Commission shall serve without compensation.

III. PROCEEDINGS AND RECORDS

- A. **PROCEEDINGS AND RECORDS:** The Chair will preside at, set the agenda for, and schedule Independent Commission meetings. The Commission shall meet as often as it deems necessary to complete its work. Records, proceedings and deliberations of the Independent Commission are not subject to



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the requirements of 1 M.R.S. c. 13, in accordance with sections 402(2)(F), (3)(J) and § 403(6) of that Chapter. To the extent practical, and to the extent that its fact-finding mission is not hindered, the Independent Commission should conduct its work in a manner that is open and accessible to the public. The Independent Commission may conduct its work through subcommittees.

B. **REPORT:** The Independent Commission shall issue a public report of its findings. As it conducts its investigation and prepares its report, the Commission shall balance the need for an appropriately thorough inquiry with the public's interest in timely answers.

IV. EFFECTIVE DATE

The effective date of this Order is November 9, 2023.


JANET T. MILLS



Janet T. Mills
GOVERNOR

STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

November 8, 2023

Members of the Independent Commission to Investigate the Facts of the Tragedy in Lewiston:

On behalf of the people of Maine, we thank you for accepting this important appointment and its serious responsibilities.

Maine is on what will be a long and difficult road to healing. As we have said, a cornerstone of our ability to heal as a people and as a state is to know the truth – in this case, the full and unvarnished facts of what happened on October 25th, the months that led up to it, and the law enforcement response to it.

We have selected you for the Independent Commission because each of you brings a wealth of personal and professional legal, behavioral, investigatory, or other experiences that will help bring to light these facts for all to know and understand. Additionally, each of you is highly respected for your abilities, your expertise, your impartiality, your integrity, and your fair-mindedness. These qualities, and your experiences, will be fundamental to the discharge of the Independent Commission's duties.

We must recognize that, from what we know thus far, on multiple occasions over the last ten months, concerns about Robert Card's mental health and his behavior were brought to the attention of his Army Reserve Unit, as well as law enforcement agencies here in Maine and in New York. This raises crucial questions about actions taken and what more could have been done to prevent this tragedy from occurring.

In order to exercise your independence as a Commission, you should determine the full and complete scope of your work, and you should ask any question necessary of any person that is relevant to your charge in gathering the facts. All that we ask is that you follow the facts, wherever they may lead, and that you do so in an independent and objective manner, biased by no one and guided only by the pursuit of truth.

To that end, we should not – and we will not – presume to know the full extent of the staff and resources you may require to discharge your fact-finding responsibilities fully and properly. The Office of the Attorney General is providing funding for the Independent Commission. However, if the Independent Commission determines that it needs additional funding or additional investigatory power to discharge its fact-finding responsibilities fully and properly, then our Offices stand ready to seek any appropriate authorization from the Legislature on your behalf.



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Lastly, we encourage the Independent Commission to conduct its work in public to the greatest extent possible, insofar as it does not limit or hinder the ability of the Independent Commission to uncover the facts, and that the Independent Commission conduct its work with a due sense of urgency, guided by, above all else, the pursuit of facts and the necessary time that may take. Ultimately, we ask that the Independent Commission prepare a formal report discussing the results of the investigation to be released to the public.

As we have said, the complete facts and circumstances – including any failures or omissions – must be brought to light and known by all. The families of the victims, those who were injured, and the people of Maine and the nation deserve nothing less.

Sincerely,



Janet T. Mills
Governor



Aaron M. Frey
Attorney General



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**Resolve, to Ensure That the Independent Commission to Investigate the Facts of
the Tragedy in Lewiston Has Necessary Authority to Discharge Its Fact-finding
Mission**

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-FOUR

H.P. 1405 - L.D. 2192

**Resolve, to Ensure That the Independent Commission to Investigate the Facts of the
Tragedy in Lewiston Has Necessary Authority to Discharge Its Fact-finding Mission**

Emergency preamble. **Whereas**, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, Governor Janet T. Mills, by executive order of November 9, 2023, established the Independent Commission to Investigate the Facts of the Tragedy in Lewiston; and

Whereas, the independent commission was established for the purpose of conducting a thorough and objective investigation into the facts and circumstances of what happened on that tragic night in Lewiston, the months that led up to it and the police response to it; and

Whereas, the families of the victims and all people of the State deserve to know the truth about what happened; and

Whereas, in order to fulfill its fact-finding mission, the independent commission requires the ability to issue subpoenas to compel the testimony of witnesses and the production of documents and have access to agency records that may not otherwise be subject to disclosure under state law; and

Whereas, this legislation needs to take effect before the expiration of the 90-day period in order for the independent commission to complete its work in a timely fashion; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1. Definitions. Resolved: That, as used in this resolve, the following terms have the following meanings.

1. "Chair" means the chair of the independent commission.

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131st Maine Legislature

Resolve, to Ensure That the Independent Commission to Investigate the Facts of the Tragedy in Lewiston Has
Necessary Authority to Discharge Its Fact-finding Mission
L.D. 2192

2. "Independent commission" means the Independent Commission to Investigate the Facts of the Tragedy in Lewiston, established by executive order of Governor Janet T. Mills on November 9, 2023.

Sec. 2. Issuance of subpoenas. Resolved: That, by a majority vote of its members, the independent commission may issue subpoenas to compel the testimony of witnesses and the production of documents in accordance with this resolve.

Sec. 3. Notice to witnesses. Resolved: That a reasonable time before a witness testifies, a prospective witness must be notified of the investigation's subject matter and provided with a copy of this resolve. The information required by this section must be presented at the time of service of the subpoena.

Sec. 4. Oaths. Resolved: That all testimony of subpoenaed witnesses must be under oath administered by the chair or the chair's designee.

Sec. 5. Testimony of witnesses under subpoena. Resolved: That the independent commission's staff and its members may take testimony of witnesses under subpoena. All testimony of witnesses under subpoena must be taken in open session, except upon request of a witness or by a majority vote of the members of the independent commission, in which case testimony may be taken in executive session. Testimony may be taken in executive session upon a showing that confidentiality is necessary to fulfill the independent commission's fact-finding mission.

Sec. 6. Transcripts of testimony of witnesses under subpoena. Resolved: That the independent commission shall prepare a transcript of all testimony of witnesses taken under subpoena. A witness is entitled to obtain a copy of the transcript of the witness's own testimony, except that the independent commission may delay the release of a transcript until the independent commission determines that release will not compromise the integrity of its investigation.

Sec. 7. Release of testimony under subpoena. Resolved: That the independent commission, by a majority vote of its members, may release transcripts of witness testimony taken under subpoena, except that a transcript of the testimony may not be released without first affording the witness who gave the testimony or the witness's counsel an opportunity to object to the proposed release. The chair or the chair's designee shall rule on an objection. The ruling of the chair or the chair's designee may be overruled by a majority vote of the independent commission's members. The transcript of the testimony may be released over the objection of a witness upon a showing that the release of the transcript is necessary to the independent commission's fact-finding mission, outweighs the interests of the witness and is not in violation of any federal or state laws, rules or regulations.

Sec. 8. Request for court to compel compliance; legal representation. Resolved: That the independent commission, by a majority vote of its members, may apply to the Superior Court to compel compliance with a subpoena and may by lawful process seek to compel compliance in any state, federal or military court or tribunal. The Attorney General, the Attorney General's designee or private counsel approved by the Attorney General may represent the independent commission in such proceedings.

Sec. 9. Compliance with state law and the Maine Rules of Civil Procedure. Resolved: That any time the independent commission exercises its authority to issue a subpoena under this resolve, the independent commission shall comply with state law and the Maine Rules of Civil Procedure.

Sec. 10. Availability of counsel to witnesses under subpoena; objections; privileges. Resolved: That a witness appearing before the independent commission under subpoena may have counsel present to advise the witness at all times. The witness or counsel may, during the time the witness

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is giving testimony, object to any action of the independent commission that is detrimental to the witness's interests and is entitled to have a ruling by the chair or the chair's designee on the objection. The witness must be given the benefit of any privilege that the witness could claim in court as a party to a civil action, except that the chair or the chair's designee may direct compliance with any request for testimony to which an objection or claim of privilege has been made. The direction of the chair or the chair's designee may be overruled by a majority vote of the independent commission's members.

Sec. 11. Access to state agency records not otherwise subject to disclosure. Resolved: That, notwithstanding any provision of law to the contrary, the independent commission, by a majority vote of its members, is authorized to request and receive records in the possession of any state agency or instrumentality that the independent commission determines are necessary to fulfill its fact-finding mission, including confidential records and records not otherwise subject to public disclosure. The members of the independent commission and its staff are authorized to review records received under this section solely for the purpose of fulfilling the independent commission's fact-finding mission. During meetings of the independent commission, the contents of confidential records and records not otherwise subject to public disclosure may be reviewed only in executive session.

Sec. 12. Cooperation with State Archivist. Resolved: That the independent commission shall cooperate with the State Archivist to ensure that records of the independent commission are maintained in compliance with federal and state laws, rules and regulations.

Sec. 13. Report on use of subpoena issuance. Resolved: That the independent commission, in completing a final report of its work, shall include a detailed account of each subpoena issued.

Sec. 14. Establishment of precedent. Resolved: That nothing in this resolve may be used to establish a precedent authorizing independent commissions to issue subpoenas in the future.

Sec. 15. Sunset. Resolved: That the independent commission's authority to issue subpoenas under this resolve is effective until July 1, 2024. Any subpoena issued by the independent commission before July 1, 2024 remains valid after that date.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Title 34-B: BEHAVIORAL AND DEVELOPMENTAL SERVICES

Chapter 3: MENTAL HEALTH

Subchapter 4: HOSPITALIZATION

Article 3: INVOLUNTARY HOSPITALIZATION

§3861-A

§3861. Reception of involuntary patients

1. Nonstate mental health institution. The chief administrative officer of a nonstate mental health institution may receive for observation, diagnosis, care and treatment in the institution any person whose admission is applied for under any of the procedures in this subchapter. An admission may be made under the provisions of [section 3863](#) only if the certifying examination conducted pursuant to [section 3863, subsection 2](#) was completed no more than 2 days before the date of admission.

A. The institution, any person contracting with the institution and any of its employees when admitting, treating or discharging a patient under the provisions of [sections 3863](#) and [3864](#) under a contract with the department, for purposes of civil liability, must be deemed to be a governmental entity or an employee of a governmental entity under the Maine Tort Claims Act, [Title 14, chapter 741](#). [PL 1989, c. 906 (NEW).]

B. Patients with a diagnosis of mental illness or psychiatric disorder in nonstate mental health institutions that contract with the department under this subsection are entitled to the same rights and remedies as patients in state mental health institutes as conferred by the constitution, laws, regulations and rules of this State and of the United States. [PL 1989, c. 906 (NEW).]

C. Before contracting with and approving the admission of involuntary patients to a nonstate mental health institution, the department shall require the institution to:

(1) Comply with all applicable regulations;

(2) Demonstrate the ability of the institution to comply with judicial decrees as those decrees relate to services already being provided by the institution; and

(3) Coordinate and integrate care with other community-based services. [PL 1989, c. 906 (NEW).]

D. Beginning July 31, 1990, the capital, licensing, remodeling, training and recruitment costs associated with the start-up of beds designated for involuntary patients under this section must be reimbursed, within existing resources, of the Department of Health and Human Services. [PL 1989, c. 906 (NEW); PL 1995, c. 560, Pt. K, §82 (AMD); PL 1995, c. 560, Pt. K, §83 (AFF); PL 2001, c. 354, §3 (AMD); PL 2003, c. 689, Pt. B, §6 (REV).]

E. The chief administrative officer of a nonstate mental health institution shall provide notice to the department and such additional information as may be requested by the department when a

person who was involuntarily admitted to the institution has died, attempted suicide or sustained a serious injury resulting in significant impairment of physical condition. For the purposes of this paragraph, "significant impairment" includes serious injuries resulting from burns, lacerations, bone fractures, substantial hematoma and injuries to internal organs whether self-inflicted or inflicted by another person. The notice must be provided within 24 hours of occurrence and must include the name of the person; the name, address and telephone number of that person's legal guardian, conservator or legal representative and parents if that person is a minor; a detailed description of the occurrence and any injuries or impairments sustained; the date and time of the occurrence; the name, street address and telephone number of the facility; and the name and job title of the person providing the notice. [PL 2007, c. 89, §2 (NEW).]

[PL 2007, c. 89, §2 (AMD).]

2. State mental health institute. The chief administrative officer of a state mental health institute:

A. May receive for observation, diagnosis, care and treatment in the state mental health institute any person whose admission is applied for under [section 3831](#) or [3863](#) if the certifying examination conducted pursuant to [section 3863, subsection 2](#) was completed no more than 2 days before the date of admission; and [PL 2007, c. 319, §8 (AMD).]

B. May receive for observation, diagnosis, care and treatment in the state mental health institute any person whose admission is applied for under [section 3864](#) or is ordered by a court. [PL 2007, c. 319, §8 (AMD).]

Any business entity contracting with the department for psychiatric physician services or any person contracting with a state mental health institute or the department to provide services pertaining to the admission, treatment or discharge of patients under [sections 3863](#) and [3864](#) within a state mental health institute or any person contracting with a business entity to provide those services within a state mental health institute is deemed to be a governmental entity or an employee of a governmental entity for purposes of civil liability under the Maine Tort Claims Act, [Title 14, chapter 741](#), with respect to the admission, treatment or discharge of patients within a state mental health institute under [sections 3863](#) and [3864](#).

[PL 2007, c. 319, §8 (AMD).]

3. Involuntary treatment. Except for involuntary treatment ordered pursuant to the provisions of [section 3864, subsection 7-A](#), involuntary treatment of a patient at a designated nonstate mental health institution or a state mental health institute who is an involuntarily committed patient under the provisions of this subchapter may be ordered and administered only in conformance with the provisions of this subsection. For the purposes of this subsection, involuntary treatment is limited to medication for the treatment of mental illness and laboratory testing and medication for the monitoring and management of side effects.

A. If the patient's primary treating physician proposes a treatment that the physician, in the exercise of professional judgment, believes is in the best interest of the patient and if the patient lacks clinical capacity to give informed consent to the proposed treatment and the patient is unwilling or unable to comply with the proposed treatment, the patient's primary treating physician shall request in writing a clinical review of the proposed treatment by a clinical review panel. For a patient at a

state mental health institute, the request must be made to the superintendent of the institute or the designee of the superintendent. For a patient at a designated nonstate mental health institution, the request must be made to the chief administrative officer or the designee of the chief administrative officer. The request must include the following information:

- (1) The name of the patient, the patient's diagnosis and the unit on which the patient is hospitalized;
- (2) The date that the patient was committed to the institution or institute and the period of the court-ordered commitment;
- (3) A statement by the primary treating physician that the patient lacks capacity to give informed consent to the proposed treatment. The statement must include documentation of a 2nd opinion that the patient lacks that capacity, given by a professional qualified to issue such an opinion who does not provide direct care to the patient but who may work for the institute or institution;
- (4) A description of the proposed course of treatment, including specific medications, routes of administration and dose ranges, proposed alternative medications or routes of administration, if any, and the circumstances under which any proposed alternative would be used;
- (5) A description of how the proposed treatment will benefit the patient and ameliorate identified signs and symptoms of the patient's psychiatric illness;
- (6) A listing of the known or anticipated risks and side effects of the proposed treatment and how the prescribing physician will monitor, manage and minimize the risks and side effects;
- (7) Documentation of consideration of any underlying medical condition of the patient that contraindicates the proposed treatment; and
- (8) Documentation of consideration of any advance health care directive given in accordance with [Title 18-C, section 5-803](#) and any declaration regarding medical treatment of psychotic disorders executed in accordance with [section 11001](#). [PL 2017, c. 402, Pt. C, §96 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The provisions of this paragraph apply to the appointment, duties and procedures of the clinical review panel under [paragraph A](#).

- (1) Within one business day of receiving a request under [paragraph A](#), the superintendent of a state mental health institute or chief administrative officer of a designated nonstate mental health institution or that person's designee shall appoint a clinical review panel of 2 or more licensed professional staff who do not provide direct care to the patient. At least one person must be a professional licensed to prescribe medication relevant to the patient's care and treatment. At the time of appointment of the clinical review panel, the superintendent of a state mental health institute or chief administrative officer of a designated nonstate mental health institution or that person's designee shall notify the following persons in writing that the clinical review panel will be convened:
 - (a) The primary treating physician;
 - (b) The commissioner or the commissioner's designee;
 - (c) The patient's designated representative or attorney, if any;

(d) The State's designated federal protection and advocacy agency; and

(e) The patient. Notice to the patient must inform the patient that the clinical review panel will be convened and of the right to assistance from a lay advisor, at no expense to the patient, and the right to obtain an attorney at the patient's expense. The notice must include contact information for requesting assistance from a lay advisor, who may be employed by the institute or institution, and access to a telephone to contact a lay advisor must be provided to the patient.

(2) Within 4 days of receiving a request under [paragraph A](#) and no less than 24 hours before the meeting of the clinical review panel, the superintendent of a state mental health institute or chief administrative officer of a designated nonstate mental health institution or that person's designee shall provide notice of the date, time and location of the meeting to the patient's primary treating physician, the patient and any lay advisor or attorney.

(3) The clinical review panel shall hold the meeting and any additional meetings as necessary, reach a final determination and render a written decision ordering or denying involuntary treatment.

(a) At the meeting, the clinical review panel shall receive information relevant to the determination of the patient's capacity to give informed consent to treatment and the need for treatment, review relevant portions of the patient's medical records, consult with the physician requesting the treatment, review with the patient that patient's reasons for refusing treatment, provide the patient and any lay advisor or attorney an opportunity to ask questions of anyone presenting information to the clinical review panel at the meeting and determine whether the requirements for ordering involuntary treatment have been met.

(b) All meetings of the clinical review panel must be open to the patient and any lay advisor or attorney, except that any meetings held for the purposes of deliberating, making findings and reaching final conclusions are confidential and not open to the patient and any lay advisor or attorney.

(c) The clinical review panel shall conduct its review in a manner that is consistent with the patient's rights.

(d) Involuntary treatment may not be approved and ordered if the patient affirmatively demonstrates to the clinical review panel that if that patient possessed capacity, the patient would have refused the treatment on religious grounds or on the basis of other previously expressed convictions or beliefs.

(4) The clinical review panel may approve a request for involuntary treatment and order the treatment if the clinical review panel finds, at a minimum:

(a) That the patient lacks the capacity to make an informed decision regarding treatment;

(b) That the patient is unable or unwilling to comply with the proposed treatment;

(c) That the need for the treatment outweighs the risks and side effects; and

(d) That the proposed treatment is the least intrusive appropriate treatment option.

(5) The clinical review panel may make additional findings, including but not limited to findings that:

(a) Failure to treat the illness is likely to produce lasting or irreparable harm to the patient; or

(b) Without the proposed treatment the patient's illness or involuntary commitment may be significantly extended without addressing the symptoms that cause the patient to pose a likelihood of serious harm.

(6) The clinical review panel shall document its findings and conclusions, including whether the potential benefits of the proposed treatment outweigh the potential risks. [PL 2011, c. 657, Pt. DD, §1 (AMD).]

C. The provisions of this paragraph govern the rights of a patient who is the subject of a clinical review panel under [paragraph A](#).

(1) The patient is entitled to the assistance of a lay advisor without expense to the patient. The patient is entitled to representation by an attorney at the patient's expense.

(2) The patient may review any records or documents considered by the clinical review panel.

(3) The patient may provide information orally and in writing to the clinical review panel and may present witnesses.

(4) The patient may ask questions of any person who provides information to the clinical review panel.

(5) The patient and any lay advisor or attorney may attend all meetings of the clinical review panel except for any private meetings authorized under [paragraph B](#), subparagraph 3, division (b). [PL 2007, c. 580, §2 (NEW).]

D. If the clinical review panel under [paragraph A](#) approves the request for involuntary treatment, the clinical review panel shall enter an order for the treatment in the patient's medical records and immediately notify the superintendent of a state mental health institute or chief administrative officer of a designated nonstate mental health institution. The order takes effect:

(1) For a patient at a state mental health institute, one business day from the date of entry of the order; or

(2) For a patient at a designated nonstate mental health institution, one business day from the date of entry of the order, except that if the patient has requested review of the order by the commissioner under [paragraph F](#), subparagraph (2), the order takes effect one business day from the day on which the commissioner or the commissioner's designee issues a written decision. [PL 2011, c. 657, Pt. DD, §2 (AMD).]

E. The order for treatment under this subsection remains in effect for 120 days or until the end of the period of commitment, whichever is sooner, unless altered by:

(1) An agreement to a different course of treatment by the primary treating physician and patient;

(2) For a patient at a designated nonstate mental health institution, modification or vacation of the order by the commissioner or the commissioner's designee; or

(3) An alteration or stay of the order entered by the Superior Court after reviewing the entry of the order by the clinical review panel on appeal under [paragraph F](#). [PL 2011, c. 657, Pt. DD, §3 (AMD).]

F. The provisions of this paragraph apply to the review and appeal of an order of the clinical review panel entered under [paragraph B](#).

(1) The order of the clinical review panel at a state mental health institute is final agency action that may be appealed to the Superior Court in accordance with Rule 80C of the Maine Rules of Civil Procedure.

(2) The order of the clinical review panel at a designated nonstate mental health institution may be reviewed by the commissioner or the commissioner's designee upon receipt of a written request from the patient submitted no later than one business day after the patient receives the order of the clinical review panel. Within 3 business days of receipt of the request for review, the designated nonstate mental health institution shall submit the full clinical review panel record to the commissioner or the commissioner's designee. Within 3 business days of receipt of the request for review, the patient and the designated nonstate mental health institution may submit written arguments to the commissioner or the commissioner's designee. The commissioner or the commissioner's designee shall review the full clinical review panel record and any written arguments submitted pursuant to this subparagraph for abuse of discretion, error of law or findings not supported by substantial evidence in the record. Within 3 business days of the receipt of the full clinical review panel record and any written arguments, the commissioner or the commissioner's designee shall issue a decision. The decision of the commissioner or the commissioner's designee may affirm the order, modify the order or vacate the order. The decision of the commissioner or the commissioner's designee takes effect one business day after the commissioner or the commissioner's designee issues a written decision. The decision of the commissioner or the commissioner's designee is final agency action that may be appealed to the Superior Court in accordance with Rule 80C of the Maine Rules of Civil Procedure. [PL 2021, c. 165, §1 (AMD).]

[PL 2021, c. 165, §1 (AMD).]

4. Emergency involuntary treatment. Nothing in this section precludes a medical practitioner from administering involuntary treatment to a person who is being held or detained by a hospital against the person's will under the provisions of this subchapter, if the following conditions are met:

A. As a result of mental illness, the person poses a serious and immediate risk of harm to that person or others; [PL 2015, c. 309, §1 (NEW).]

B. The person lacks the decisional capacity either to provide informed consent for treatment or to make an informed refusal of treatment; [PL 2015, c. 309, §1 (NEW).]

C. A person legally authorized to provide consent for treatment on behalf of the person is not reasonably available under the circumstances; [PL 2015, c. 309, §1 (NEW).]

D. The treatment being administered is a currently recognized standard of treatment for treating the person's mental illness and is the least restrictive form of treatment appropriate in the circumstances; [PL 2015, c. 309, §1 (NEW).]

E. For purposes of evaluation for emergency involuntary treatment, the medical practitioner considers available history and information from other sources, including, but not limited to, family members, that are considered reliable by the examiner; and [PL 2015, c. 309, §1 (NEW).]

F. A reasonable person concerned for the welfare of the person would conclude that the benefits of the treatment outweigh the risks and potential side effects of the treatment and would consent to the treatment under the circumstances. [PL 2015, c. 309, §1 (NEW).]

[PL 2015, c. 309, §1 (NEW).]

§3862. Protective custody

1. Law enforcement officer's power. 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:

A. May take the person into protective custody; and [PL 1983, c. 459, §7 (NEW).]

B. If the law enforcement officer does take the person into protective custody, shall deliver the person immediately for examination by a medical practitioner as provided in [section 3862-A or 3863](#) or, for a person taken into protective custody who has an advance health care directive authorizing mental health treatment, for examination as provided in [Title 18-C, section 5-803, subsection 4](#) to determine the individual's capacity and the existence of conditions specified in the advance health care directive for the directive to be effective. [PL 2019, c. 411, Pt. C, §5 (AMD); PL 2019, c. 411, Pt. D, §3 (AFF).]

When formulating probable cause, the law enforcement officer may rely upon information provided by a 3rd-party informant 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 as defined in [section 3801, subsection 4-A, paragraph A, B or C](#).

[PL 2021, c. 377, §1 (AMD).]

1-A. Law enforcement officer's power.

[PL 1995, c. 62, §2 (RP).]

2. Certificate not executed. If a certificate relating to the person's likelihood of serious harm is not executed by the examiner under [section 3863](#), and, for a person who has an advance health care directive authorizing mental health treatment, if the examiner determines that the conditions specified in the advance health care directive for the directive to be effective have not been met or, in the absence of stated conditions, that the person does not lack capacity, the officer shall:

A. Release the person from protective custody and, with the person's permission, return the person forthwith to the person's place of residence, if within the territorial jurisdiction of the officer; [PL 1999, c. 423, §4 (AMD).]

B. Release the person from protective custody and, with the person's permission, return the person forthwith to the place where the person was taken into protective custody; or [PL 1999, c. 423, §4 (AMD).]

C. If the person is also under arrest for a violation of law, retain the person in custody until the person is released in accordance with the law. [PL 1999, c. 423, §4 (AMD).]

[PL 1999, c. 423, §4 (AMD).]

3. Certificate executed. If the certificate is executed by the examiner under [section 3863](#), the officer shall undertake forthwith to secure the endorsement of a judicial officer under [section 3863](#) and may detain the person for a period of time not to exceed 18 hours as may be necessary to obtain that endorsement.

[PL 2009, c. 651, §12 (AMD).]

3-A. Advance health care directive effect. If the examiner determines that the conditions specified in the advance health care directive for the directive to be effective have been met or, in the absence of stated conditions, that the person lacks capacity, the person may be treated in accordance with the terms of the advance health care directive.

[PL 1999, c. 423, §4 (NEW).]

4. Transportation costs. The costs of transportation under this section must be paid in the manner provided under [section 3863](#). Any person transporting an individual to a hospital under the circumstances described in this section shall use the least restrictive form of transportation available that meets the security needs of the situation.

[PL 1997, c. 422, §7 (AMD).]

SECTION HISTORY

Appendix D

Title 34-B: BEHAVIORAL AND DEVELOPMENTAL SERVICES

Chapter 3: MENTAL HEALTH

Subchapter 4: HOSPITALIZATION

Article 3: INVOLUNTARY HOSPITALIZATION

§3863

§3862-A. Protection from substantial threats

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Dangerous weapon" or "weapon" has the same meaning as in [Title 17-A, section 2, subsection 9, paragraph C](#), including a firearm as defined in [Title 17-A, section 2, subsection 12-A](#). [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

B. "Extended restrictions" means the continued threat-based restrictions imposed by the court pursuant to [subsection 6, paragraph D](#). [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

C. "Initial restrictions" means the immediate and temporary 14-day threat-based restrictions pursuant to [subsection 4](#). [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

D. "Judicial hearing" means a court hearing under [subsection 6](#). [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

E. "Law enforcement agency" has the same meaning as in [Title 25, section 3701, subsection 1](#). [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

F. "Law enforcement officer" means a person vested by law with the power to make arrests for crimes or serve criminal process, whether that power extends to all crimes or is limited to specific crimes, and who possesses a current and valid certificate issued pursuant to [Title 25, section 2803-A](#). [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

G. "Likelihood of foreseeable harm" means a substantial risk in the foreseeable future of serious physical harm to the person as manifested by recent behaviors or threats of, or attempts at, suicide or serious self-inflicted harm; or a substantial risk in the foreseeable future of serious physical harm to other persons as manifested by recent homicidal or violent behavior or by recent conduct or statements placing others in reasonable fear of serious physical harm. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

H. "Medical practitioner" has the same meaning as in [section 3801, subsection 4-B](#). [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

I. "Prohibited person" means a person subject to [Title 15, section 393, subsection 1, paragraph E-1 or E-2](#). [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

J. "Protective custody" means protective custody under [section 3862](#). [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

K. "Restricted person" means a person taken into protective custody by a law enforcement officer who the officer has probable cause to believe possesses or controls or may acquire a dangerous weapon and who is found by a medical practitioner to present a likelihood of foreseeable harm. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

L. "Threat-based restriction" means a prohibition on a restricted person from purchasing, possessing or controlling or attempting to purchase, possess or control a dangerous weapon during the period of the restriction. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

[PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

2. Assessment by a medical practitioner; security; immunity. This subsection applies when a law enforcement officer has taken a person into protective custody.

A. Notwithstanding any provision of law to the contrary, the law enforcement officer shall provide to the medical practitioner the information that led to the protective custody including, but not limited to, the information that gave rise to the probable cause determination, the person's pertinent criminal history record information and other known history and recent or recurring actions and behaviors. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

B. The medical practitioner under [paragraph A](#) shall assess whether the person presents a likelihood of foreseeable harm. In assessing the person, a medical practitioner may consult with other medical professionals as the medical practitioner determines advisable. If the medical practitioner finds that the person can benefit from treatment and services, the medical practitioner shall refer the person to treatment and services. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

C. Notwithstanding any provision of law to the contrary, an assessment pursuant to this section may be performed at a health care facility but, when available and as appropriate, must be performed at an alternative location. If the assessment is provided at a health care facility, law enforcement shall, upon request of the facility and consistent with [section 3863, subsection 2-A](#), absent compelling circumstances, assist the facility with the security of the person awaiting the assessment under this section. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

D. A juvenile, as defined in [Title 15, section 3003, subsection 14](#), who is subject to this section may be accompanied at the assessment by a parent, guardian, grandparent, aunt or uncle or a sibling who has attained the age of 18, whose company is requested by the juvenile, who is timely available and whose accompaniment is practicable. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

E. A medical practitioner and any other medical or mental health professional consulted by the medical practitioner are not liable in a civil action brought by any person for any act performed in good faith in execution of the obligations imposed on medical practitioners by this section, including any decision regarding the affirmative or negative assessment of the likelihood of foreseeable harm. The immunity provided in this paragraph also applies to a principal if the

medical practitioner or professional is acting as an agent or employee of the principal. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

[PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

3. Notification by medical practitioner and judicial endorsement. A medical practitioner shall notify in writing the law enforcement officer or law enforcement agency that, based on the assessment under [subsection 2, paragraph B](#), the person is found to present a likelihood of foreseeable harm. If so notified, the law enforcement officer or law enforcement agency shall as soon as practicable seek endorsement by a Superior Court Justice, District Court Judge, judge of probate or justice of the peace of the medical practitioner's assessment and law enforcement's declarations that the person was taken into protective custody and that the law enforcement officer has probable cause that the person possesses, controls or may acquire a dangerous weapon. The judge or justice shall promptly transmit to the law enforcement officer or agency the decision to endorse or not endorse. A decision transmitted electronically has the same legal effect and validity as a signed original. An endorsement must authorize law enforcement to execute the authority in [subsection 4](#). This section may not be construed to prevent law enforcement from accepting a voluntary surrender of dangerous weapons.

[PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

4. Initial restrictions; notice by law enforcement. A person whose assessment is endorsed by a judicial officer under [subsection 3](#) becomes, at the time of notice by a law enforcement officer under [paragraph B](#), a restricted person subject to initial restrictions and subject to the prohibitions in [Title 15, section 393, subsection 1, paragraphs E-1 and E-2](#) as follows:

A. The restricted person, after notice under [paragraph B](#):

- (1) Is prohibited from possessing, controlling, acquiring or attempting to possess, control or acquire a dangerous weapon pending the outcome of a judicial hearing;
- (2) Shall immediately and temporarily surrender any weapons possessed, controlled or acquired by the restricted person to a law enforcement officer who has authority in the jurisdiction in which the weapons are located pending the outcome of a judicial hearing; and
- (3) Has a right to a judicial hearing within 14 days of notice under [paragraph B](#); and [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

B. A law enforcement officer shall, as soon as practicable, but no later than 24 hours after the judicial endorsement:

- (1) Notify the restricted person that the restricted person:
 - (a) Is prohibited from possessing, controlling, acquiring or attempting to possess, control or acquire a dangerous weapon pending the outcome of a judicial hearing;
 - (b) Is required to immediately and temporarily surrender any weapons possessed, controlled or acquired by the restricted person to a law enforcement officer who has authority in the jurisdiction in which the weapons are located pending the outcome of a judicial hearing; and
 - (c) Has a right to a judicial hearing within 14 days of the notice under this paragraph;

(2) Notify the contact person, if any, disclosed by the restricted person to the medical practitioner and the district attorney in the district of the restricted person's residence of the person's restricted status; and

(3) Report the person's restricted status to the Department of Public Safety. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

[PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

5. Temporary surrender to law enforcement. A law enforcement agency may store, or make arrangements with another law enforcement agency or federally licensed firearms dealer to store, and care for the weapons surrendered by a restricted person in the manner provided in [subsection 7](#). A restricted person who makes all practical, immediate efforts to comply with a surrender notice under [subsection 4](#) is not subject to arrest or prosecution as a prohibited person under [Title 15, section 393, subsection 1, paragraph E-1](#) or E-2. If a law enforcement agency has probable cause to believe the restricted person possesses or controls but has not surrendered a weapon, law enforcement may, prior to or as part of a judicial hearing, search for and seize such a weapon when authorized by a judicially issued warrant or other circumstances approved by law.

[PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

6. Judicial hearing. A judicial hearing under this section is governed by this subsection.

A. Within 5 days of the date of the notice given to a restricted person under [subsection 4, paragraph B](#), the district attorney in the district of the restricted person's residence shall file a petition for judicial review of the initial restrictions by the district court. The district attorney shall provide to the restricted person written notice of the petition and hearing at least 7 days prior to the hearing. The restricted person has the right to be represented by counsel at the hearing, and the court may appoint counsel for an indigent party. Upon a showing of good cause, the court may extend the time to hold the hearing. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

B. Within 14 days of the notice given under [subsection 4](#), the court shall hold a hearing to determine whether to dissolve or extend the initial restrictions. In the hearing determining whether to dissolve or extend the initial restrictions, the district attorney has the burden to prove by clear and convincing evidence that the restricted person presents a likelihood of foreseeable harm. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

C. In determining whether there are grounds to extend the initial restrictions, the court shall consider all relevant evidence, including, but not limited to, recent threats or acts of violence by the restricted person directed toward other persons; recent threats or acts of violence by the restricted person directed toward the restricted person; recent acts of unlawful abuse of animals by the restricted person; the reckless use or threatening display of a dangerous weapon by the restricted person; a history of the use, attempted use or threatened use of physical force by the restricted person against other persons; a record of prior custodial events or restrictions under this section; prior involuntary confinement of the restricted person in a hospital for persons with psychiatric disabilities; prior protection from abuse and protection from harassment orders against the restricted person or violations regarding protection from abuse or protection from harassment by the restricted person; evidence of stalking behavior, severe obsession or sexual violence by the restricted person; the illegal use of controlled substances by the restricted person; and evidence of

alcohol or drug abuse by the restricted person. The court shall also consider whether the restricted person is receiving treatment responsive to that person's mental health or substance use needs. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

D. This paragraph governs court orders.

(1) If the court finds after hearing that there is not clear and convincing evidence to continue or extend the initial restrictions, the court shall dissolve the initial restrictions and order the return of any weapons surrendered or seized. The court shall direct the Department of Public Safety to remove the record of restrictions from the department's pertinent database when developed by the department.

(2) If the court finds after hearing that there is clear and convincing evidence to continue or extend the initial restrictions, the court shall inform the restricted person that the restricted person is prohibited for up to one year from purchasing, possessing or controlling any dangerous weapon or attempting to purchase, possess or control any dangerous weapon. The court shall further order the person to immediately surrender dangerous weapons possessed or controlled by that person to a law enforcement officer and notify the Department of Public Safety for entry in the pertinent database when developed by the department.

(3) Extended restrictions imposed under this paragraph expire according to the terms of the court's order. The court shall schedule a hearing within 45 days prior to the expiration of the order to determine if the order should be extended. The district attorney has the burden of proving that the restricted person continues to pose a likelihood of foreseeable harm. If, after a hearing, the court finds by clear and convincing evidence that the restricted person continues to pose a likelihood of foreseeable harm, the court shall renew the extended restrictions for up to one year. If the court does not so find, the court shall deny the petition and order the return of any weapons surrendered or seized. Upon motion by the State, the court may for cause shown order that the restricted person be examined for assessment of whether the restricted person continues to pose a likelihood of foreseeable harm. The fees or expenses for an assessment pursuant to this subparagraph may be paid from the Extradition and Prosecution Expenses Account established by [Title 15, section 224-A](#).

(4) A restricted person may file one motion for dissolution during an extended restriction. For that motion, the restricted person has the burden of proving by clear and convincing evidence that the restricted person no longer poses a likelihood of foreseeable harm.

(5) A court shall electronically update or transmit to the Department of Public Safety, Bureau of State Police an abstract of the order issued by the court pursuant to this section that includes a prohibition on the possession of a dangerous weapon. The abstract must include the name, date of birth and gender of the person who is the subject of the order; the court's order and the expiration date of that order; and a notation that the person has been notified by the court.

The abstract required by this subparagraph is confidential and is not a public record as defined in [Title 1, chapter 13](#); however, the information contained in the abstract or a copy of the abstract may be provided by the Department of Public Safety to a criminal justice agency for law enforcement purposes, to the Federal Bureau of Investigation, National Instant Criminal Background Check System or to an issuing authority for the purpose of processing concealed

firearm permit applications. The Department of Public Safety shall, when the pertinent database is developed, request that the Federal Bureau of Investigation ensure that, immediately after the order expires, the National Instant Criminal Background Check System no longer reflects that expired order as a ground for prohibiting the subject of the order from possessing or acquiring a firearm. For the purposes of this subsection, "criminal justice agency" means a federal, state, tribal, district, county or local government agency or any subunit of those entities that performs the administration of criminal justice under a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies, as is any equivalent agency at any level of Canadian government.

(6) Nothing in this subsection may be construed to prevent the restricted person, district attorney and court from accepting a court-ordered disposition to which each agrees. [PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

[PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

7. Weapons storage and return. A law enforcement agency may store, or make arrangements with another law enforcement agency or federally licensed firearms dealer to store, any weapon surrendered to or seized by law enforcement under this section for as long as the threat-based restrictions are in effect. The duties and liability of a law enforcement agency with respect to handling and storage of a weapon surrendered or seized are governed by [Title 25, section 2804-C, subsection 2-C](#). A weapon surrendered to or seized by a law enforcement agency must be returned to the restricted person when the threat-based restrictions expire. If a seized or surrendered weapon remains unclaimed for 6 months after the expiration or dissolution of threat-based restrictions, the law enforcement agency may dispose of the weapon consistent with [Title 25, section 3503-A](#).

[PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

8. Offense. Possession of a dangerous weapon by a restricted person is a Class D crime.

[PL 2019, c. 411, Pt. A, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

SECTION HISTORY

PL 2019, c. 411, Pt. A, §1 (NEW). PL 2019, c. 411, Pt. D, §3 (AFF).

**An Act to Strengthen Public Safety by Improving Maine's Firearm
Laws and Mental Health System**

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-FOUR

S.P. 953 - L.D. 2224

**An Act to Strengthen Public Safety by Improving Maine's Firearm Laws and
Mental Health System**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 15 MRSA §393, sub-§1, ¶E-1, as enacted by PL 2019, c. 411, Pt. C, §2 and affected by Pt. D, §3, is amended to read:

E-1. Is currently a restricted person under pursuant to Title 34-B, section 3862-A, subsection 2 4 or Title 34-B, section 3862-A, subsection 6, paragraph D or a similar order issued by another jurisdiction, except that the prohibition applies to possession and control, and not ownership. A permit issued pursuant to subsection 2 is not a defense to a violation of this paragraph. Violation of this paragraph is a Class D crime;

Sec. 2. 15 MRSA §394, sub-§1, ¶B-1 is enacted to read:

B-1. "Intentionally" has the same meaning as in Title 17-A, section 35, subsection 1.

Sec. 3. 15 MRSA §394, sub-§1, ¶B-2 is enacted to read:

B-2. "Knowingly" has the same meaning as in Title 17-A, section 35, subsection 2.

Sec. 4. 15 MRSA §394, sub-§1, ¶B-3 is enacted to read:

B-3. "Recklessly" has the same meaning as in Title 17-A, section 35, subsection 3.

Sec. 5. 15 MRSA §394, sub-§2, as enacted by PL 2023, c. 305, §1, is amended to read:

2. Sale or transfer prohibited. A person may not ~~knowingly or intentionally~~, knowingly or recklessly sell or transfer a firearm to a person who is prohibited from owning, possessing or having under that person's control a firearm pursuant to section 393 and who does not have a permit issued under section 393. This subsection does not apply to the sale or transfer of an antique firearm.

Violation of this subsection is a Class D C crime.

Sec. 6. 15 MRSA §395 is enacted to read:

§395. Background checks of firearms buyers

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Advertisement" means the presentation of a message regarding a firearm for sale by a seller that is:

- (1) Broadcast on television or radio;
- (2) Broadly disseminated over the Internet;
- (3) Printed in magazines or newspapers; or
- (4) Displayed on a handbill, poster, sign or placard.

B. "Buy" means to acquire ownership for monetary or other consideration.

C. "Buyer" means a person who buys from a seller.

D. "Family member" means a spouse, domestic partner, parent, stepparent, foster parent, child, stepchild, foster child or person related by consanguinity within the 2nd degree.

E. "Federally licensed firearms dealer" or "dealer" means a person who is licensed or is required to be licensed as a dealer under 18 United States Code, Section 923(a)(3).

F. "Firearm" has the same meaning as in Title 17-A, section 2, subsection 12-A.

G. "Gun show" means any gathering or exhibition at which any firearm is displayed that is:

- (1) Open to the public;
- (2) Not occurring on the permanent premises of a federally licensed firearms dealer; and
- (3) Conducted principally for the purposes of transactions.

H. "Sell" means to transfer ownership for monetary or other consideration.

I. "Seller" means a person who sells to a buyer.

J. "Transaction" means the transfer of ownership of a firearm from a seller to a buyer.

2. Transactions covered by this section. This section applies only to transactions in which:

- A. A seller sells to a buyer at a gun show; or
- B. A seller sells to a buyer as a result of an advertisement.

3. Transactions not covered by this section. This section does not apply to transactions in which:

- A. The buyer and seller are family members; or
- B. The transaction is for a firearm that is:

(1) A curio or relic, as defined in 27 Code of Federal Regulations, Section 478.11, as in effect on November 19, 2019, and the sale, transfer or exchange is between collectors as defined in 18 United States Code, Section 921(a)(13), as in effect on June 25, 2022, who each have in their possession a valid collector of curios and relics license issued by the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives; or

(2) An antique firearm, as defined in 18 United States Code, Section 921(a)(16), as in effect on June 25, 2022.

4. Requirement for transactions covered by this section. A seller who is not a federally licensed firearms dealer may not complete a transaction to which this section applies unless the seller facilitates the transaction through a federally licensed firearms dealer. The dealer shall perform a background check of the putative buyer by using the Federal Bureau of Investigation, National Instant Criminal Background Check System in the same manner as if the dealer were the seller of the firearm that is the subject of the transaction. If the background check reveals that the putative buyer is prohibited from purchasing a firearm, the dealer shall notify the seller of that fact and of the fact that the transaction may not proceed. The dealer may charge a reasonable fee for serving as the facilitator.

5. Violations. A person who sells a firearm in violation of this section commits a Class C crime.

Sec. 7. 22-A MRSA §203, sub-§2, as enacted by PL 2003, c. 689, Pt. A, §1, is amended to read:

2. Additional programs and services for children and families. The department shall provide children and families with additional programs and services to assist them in meeting their needs, including, but not limited to:

- A. Child welfare services;
- B. Head Start and child care services;
- C. Maternal and child health services, including home visiting programs;
- D. Paternity establishment and child support enforcement services; and
- E. Residential and long-term care services for children with disabilities; and

F. Injury and violence prevention programs, including data collection, synthesis and evaluation.

Sec. 8. 25 MRSA §2804-C, sub-§2-E, as enacted by PL 2019, c. 411, Pt. C, §4 and affected by Pt. D, §3, is amended to read:

2-E. Receipt of certain dangerous weapons; training; procedure; liability.

Beginning in 2020, the Maine Criminal Justice Academy Board of Trustees shall require training as part of its mandated training schedule for municipal, county and state law enforcement officers regarding the process for ~~protection from substantial threats by a restricted person~~ extreme risk protection orders and the proper handling, storage, safekeeping and return of dangerous weapons received pursuant to an endorsement or court order under Title 34-B, section 3862-A or 3873-A. The training must include education concerning the prohibitions on the purchase, control or possession of dangerous weapons. A law enforcement officer who receives custody of a dangerous weapon pursuant to Title 34-B, section 3862-A or 3873-A shall exercise reasonable care to avoid loss, damage or reduction in value of the weapon and may not permanently mark or fire the weapon unless there is reasonable suspicion that the weapon has been used in the commission of a crime. Any liability for damage or reduction in value to such a weapon is governed by Title 14, chapter 741.

Sec. 9. 34-B MRSA §3613 is enacted to read:

§3613. Crisis receiving centers

1. Definition. As used in this section, unless the context otherwise indicates, "crisis receiving center" means a center that provides immediate and short-term walk-in access to an array of both clinical and nonclinical mental health and substance use disorder crisis stabilization services to all individuals seeking care regardless of severity or insurance coverage and within bounds of licensing.

2. Department to develop plan and serve as coordinator. The department shall develop a plan for a network of community-based crisis receiving centers across the State to support both clinical and nonclinical mental health and substance use disorder crisis stabilization services. The department shall also coordinate meetings, technical assistance and training and provide other assistance to help create, maintain and, as necessary, expand the network.

3. Guidelines. In carrying out its duties under subsection 2, the department shall:

A. Consult with law enforcement agencies, municipalities, public health experts, behavioral health care providers, other states and others as appropriate;

B. Assess geographical locations for maximization of community impact;

C. Provide technical assistance to persons and entities across the State and providers interested in joining the network;

D. Coordinate regular meetings with crisis receiving centers and provide technical assistance to crisis receiving centers; and

E. Engage in continual process improvement and planning updates.

Sec. 10. 34-B MRSA §3862-A, as enacted by PL 2019, c. 411, Pt. A, §1 and affected by Pt. D, §3, is amended by amending the section headnote to read:

§3862-A. ~~Protection from substantial threats~~ Extreme risk protection orders

Sec. 11. 34-B MRSA §3862-A, sub-§1, ¶C, as enacted by PL 2019, c. 411, Pt. A, §1 and affected by Pt. D, §3, is amended to read:

C. "Initial restrictions" means the immediate and temporary ~~14-day~~ 30-day threat-based restrictions pursuant to subsection 4.

Sec. 12. 34-B MRSA §3862-A, sub-§2, ¶B, as enacted by PL 2019, c. 411, Pt. A, §1 and affected by Pt. D, §3, is amended to read:

B. The medical practitioner under ~~paragraph A~~ this subsection shall assess whether the person presents a likelihood of foreseeable harm. In assessing the person, a medical practitioner may consult with other medical professionals as the medical practitioner determines advisable. If the medical practitioner finds that the person can benefit from treatment and services, the medical practitioner shall refer the person to treatment and services. The medical practitioner may rely on information provided by a 3rd party if it reasonably appears that the 3rd party has had recent personal observations of or conversations with the person being assessed.

Sec. 13. 34-B MRSA §3862-A, sub-§2, ¶C, as enacted by PL 2019, c. 411, Pt. A, §1 and affected by Pt. D, §3, is amended to read:

C. Notwithstanding any provision of law to the contrary, an assessment pursuant to this section may be performed at a health care facility ~~but or~~, when available and as appropriate, ~~must~~ may be performed at an alternative location. The assessment may be facilitated using telehealth technology. If the assessment is provided at a health care facility, law enforcement shall, upon request of the facility and consistent with section 3863, subsection 2-A, absent compelling circumstances, assist the facility with the security of the person awaiting the assessment under this section.

Sec. 14. 34-B MRSA §3862-A, sub-§2, ¶C-1 is enacted to read:

C-1. The assessment required by this subsection must be performed while the person being assessed remains in protective custody, except that the assessment may be performed within 24 hours after the person is released from protective custody if:

(1) The protective custody stemmed from a law enforcement officer's probable cause to believe the person may be mentally ill and presents a likelihood of serious harm because the person possesses, controls or may acquire a dangerous weapon; and

(2) An examination under section 3863 has occurred.

Sec. 15. 34-B MRSA §3862-A, sub-§2-A is enacted to read:

2-A. Protective custody warrant for purposes of conducting an assessment. If a law enforcement officer is unable to take a person into protective custody to conduct an assessment under this section, the law enforcement officer may apply for a protective

custody warrant. The officer must submit an affidavit of probable cause for a protective custody warrant to a Justice of the Superior Court, a Judge of the District Court or a justice of the peace.

The justice, judge or justice of the peace shall issue a protective custody warrant and promptly transmit that warrant to the officer for execution upon finding the affidavit under this subsection is sufficient to establish:

A. Probable cause to believe that the person may be mentally ill and due to that condition presents a likelihood of serious harm;

B. Probable cause to believe that the person possesses, controls or may acquire a dangerous weapon; and

C. That the officer has made reasonable attempts to take the person into custody without a warrant.

A warrant transmitted by facsimile machine or an electronic warrant transmitted by secure electronic means has the same legal effect and validity as an original endorsement signed by the justice, judge or justice of the peace. The electronic protective custody warrant or paper protective custody warrant may be executed by a law enforcement officer authorized to take the person into protective custody as provided in section 3862, subsection 1, paragraph B.

Sec. 16. 34-B MRSA §3862-A, sub-§3, as enacted by PL 2019, c. 411, Pt. A, §1 and affected by Pt. D, §3, is amended to read:

3. Notification by medical practitioner and judicial endorsement. A medical practitioner shall notify in writing the law enforcement officer or law enforcement agency that took the person into protective custody under section 3862, subsection 1, paragraph B that, based on the assessment ~~under subsection 2, paragraph B~~, the person is found to present a likelihood of foreseeable harm. If so notified, the law enforcement officer or law enforcement agency shall as soon as practicable seek endorsement by a ~~Superior Court Justice, District Court Judge, judge of probate or~~ Justice of the Superior Court, a Judge of the District Court or a justice of the peace of the medical practitioner's assessment and law enforcement's declarations that the person was taken into protective custody and that the law enforcement officer has probable cause to believe that the person possesses, controls or may acquire a dangerous weapon. The ~~judge justice or justicee~~ judge shall promptly transmit to the law enforcement officer or agency the decision to endorse or not endorse. A decision transmitted electronically has the same legal effect and validity as a signed original. An endorsement must authorize law enforcement to execute the authority in subsection 4. This section may not be construed to prevent law enforcement from accepting a voluntary surrender of dangerous weapons.

Sec. 17. 34-B MRSA §3862-A, sub-§4, as enacted by PL 2019, c. 411, Pt. A, §1 and affected by Pt. D, §3, is amended to read:

4. Initial restrictions; notice by law enforcement. A person whose assessment is endorsed by a judicial officer under subsection 3 becomes, at the time of notice by a law enforcement officer under paragraph B, a restricted person subject to initial restrictions and

subject to the prohibitions in Title 15, section 393, subsection 1, paragraphs E-1 and E-2 as follows:

A. The restricted person, after notice under paragraph B:

(1) Is prohibited from possessing, controlling, acquiring or attempting to possess, control or acquire a dangerous weapon pending the outcome of a judicial hearing;

(2) Shall immediately and temporarily surrender any weapons possessed, controlled or acquired by the restricted person to a law enforcement officer who has authority in the jurisdiction in which the weapons are located pending the outcome of a judicial hearing; and

(3) Has a right to a judicial hearing within 44 30 days of notice under paragraph B; and

B. A law enforcement officer shall, as soon as practicable, ~~but no later than 24 hours after the judicial endorsement, unless the restricted person is medically incapacitated, in which case within 48 hours after the law enforcement officer has been notified that the person is no longer medically incapacitated:~~

(1) Notify the restricted person that the restricted person:

(a) Is prohibited from possessing, controlling, acquiring or attempting to possess, control or acquire a dangerous weapon pending the outcome of a judicial hearing;

(b) Is required to immediately and temporarily surrender any weapons possessed, controlled or acquired by the restricted person to a law enforcement officer who has authority in the jurisdiction in which the weapons are located pending the outcome of a judicial hearing; and

(c) Has a right to a judicial hearing within 44 30 days of the notice under this paragraph;

(2) Notify the contact person, if any, disclosed by the restricted person to the medical practitioner and the district attorney in the district ~~of the restricted person's residence~~ where the person was taken into protective custody of the person's restricted status; and

(3) Report the person's restricted status to the Department of Public Safety as soon as practicable; and

(4) Provide a copy to the court of the notification to the restricted person, including the date of notification.

Sec. 18. 34-B MRSA §3862-A, sub-§6, ¶A, as enacted by PL 2019, c. 411, Pt. A, §1 and affected by Pt. D, §3, is amended to read:

A. Within ~~5~~ 14 days of the date of the notice given to a restricted person under subsection 4, paragraph B, ~~the district attorney~~ the court shall schedule a hearing in the district ~~of the restricted person's residence shall file a petition for judicial review of the initial restrictions by the district court. The district attorney shall provide~~ where the

person was taken into protective custody and provide notice of the hearing to the restricted person ~~written notice of the petition and hearing~~ and the district attorney at least 7 days prior to the hearing. The restricted person has the right to be represented by counsel at the hearing, and the court may appoint counsel for an indigent party. Upon a showing of good cause, the court may extend the time to hold the hearing.

Sec. 19. 34-B MRSA §3862-A, sub-§6, ¶B, as enacted by PL 2019, c. 411, Pt. A, §1 and affected by Pt. D, §3, is amended to read:

B. Within 44 30 days of the notice given under subsection 4, the court shall hold a hearing to determine whether to dissolve or extend the initial restrictions. Upon a showing of good cause, the court may extend the time to hold the hearing. In the hearing determining whether to dissolve or extend the initial restrictions, the district attorney has the burden to prove by clear and convincing evidence that the restricted person presents a likelihood of foreseeable harm.

Sec. 20. 34-B MRSA §3862-A, sub-§6, ¶C, as enacted by PL 2019, c. 411, Pt. A, §1 and affected by Pt. D, §3, is amended to read:

C. In determining whether there are grounds to extend the initial restrictions, the court shall consider all relevant evidence, including, but not limited to, recent threats or acts of violence by the restricted person directed toward other persons; recent threats or acts of violence by the restricted person directed toward the restricted person; recent acts of unlawful abuse of animals by the restricted person; the reckless use or threatening display of a dangerous weapon by the restricted person; a history of the use, attempted use or threatened use of physical force by the restricted person against other persons; a record of prior custodial events or restrictions under this section; prior involuntary confinement of the restricted person in a hospital for persons with psychiatric disabilities; prior protection from abuse and protection from harassment orders against the restricted person or violations regarding protection from abuse or protection from harassment by the restricted person; evidence of stalking behavior, severe obsession or sexual violence by the restricted person; the illegal use of controlled substances by the restricted person; and evidence of alcohol or drug abuse by the restricted person. The court may consider affidavits and other reliable hearsay in making this determination. The court shall also consider whether the restricted person is receiving treatment responsive to that person's mental health or substance use needs.

Sec. 21. 34-B MRSA §3862-A, sub-§6, ¶D, as enacted by PL 2019, c. 411, Pt. A, §1 and affected by Pt. D, §3, is amended by amending subparagraph (5) to read:

(5) A court shall electronically update or transmit to the Department of Public Safety, Bureau of State Police an abstract of the order issued by the court pursuant to this section that includes a prohibition on the possession of a dangerous weapon within 72 hours of the order's being issued. The abstract must include the name, date of birth and gender of the person who is the subject of the order; the court's order and the expiration date of that order; and a notation that the person has been notified by the court.

The abstract required by this subparagraph is confidential and is not a public record as defined in Title 1, chapter 13; however, the information contained in the abstract

or a copy of the abstract may be provided by the Department of Public Safety to a criminal justice agency for law enforcement purposes, to the Federal Bureau of Investigation, National Instant Criminal Background Check System or to an issuing authority for the purpose of processing concealed firearm permit applications. The Department of Public Safety shall, when the pertinent database is developed, request that the Federal Bureau of Investigation ensure that, immediately after the order expires, the National Instant Criminal Background Check System no longer reflects that expired order as a ground for prohibiting the subject of the order from possessing or acquiring a firearm. For the purposes of this subsection, "criminal justice agency" means a federal, state, tribal, district, county or local government agency or any subunit of those entities that performs the administration of criminal justice under a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies, as is any equivalent agency at any level of Canadian government.

Sec. 22. Appropriations and allocations. The following appropriations and allocations are made.

**HEALTH AND HUMAN SERVICES, DEPARTMENT OF
Injury and Violence Prevention Program Z397**

Initiative: Provides one-time funding for a new injury and violence prevention program.

GENERAL FUND	2023-24	2024-25
All Other	\$0	\$1,032,000
GENERAL FUND TOTAL	<u>\$0</u>	<u>\$1,032,000</u>

Maine Center for Disease Control and Prevention 0143

Initiative: Establishes one limited-period Health Program Manager position and one limited-period Public Health Education III position through June 12, 2027 and provides funding for related All Other costs.

FEDERAL EXPENDITURES FUND	2023-24	2024-25
Personal Services	\$0	\$206,156
All Other	\$0	\$17,962
FEDERAL EXPENDITURES FUND TOTAL	<u>\$0</u>	<u>\$224,118</u>

FEDERAL BLOCK GRANT FUND	2023-24	2024-25
Personal Services	\$0	\$105,397
All Other	\$0	\$9,538
FEDERAL BLOCK GRANT FUND TOTAL	<u>\$0</u>	<u>\$114,935</u>

**HEALTH AND HUMAN SERVICES,
DEPARTMENT OF
DEPARTMENT TOTALS**

2023-24	2024-25
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GENERAL FUND	\$0	\$1,032,000
FEDERAL EXPENDITURES FUND	\$0	\$224,118
FEDERAL BLOCK GRANT FUND	\$0	\$114,935
DEPARTMENT TOTAL - ALL FUNDS	\$0	\$1,371,053

Title 15: COURT PROCEDURE -- CRIMINAL

Part 1: CRIMINAL PROCEDURE GENERALLY

Chapter 15: POSSESSION OF FIREARMS BY PROHIBITED PERSONS

§394

§393. Possession of firearms prohibited for certain persons

1. Possession prohibited. A person may not own, possess or have under that person's control a firearm, unless that person has obtained a permit under this section, if that person:

A. [PL 2001, c. 549, §2 (RP).]

A-1. Has been convicted of committing or found not criminally responsible by reason of insanity of committing:

(1) A crime in this State that is punishable by imprisonment for a term of one year or more;

(2) A crime under the laws of the United States that is punishable by imprisonment for a term exceeding one year;

(3) A crime under the laws of another jurisdiction that, in accordance with the laws of that jurisdiction, is punishable by a term of imprisonment exceeding one year. This subparagraph does not include a crime under the laws of another jurisdiction that is classified by the laws of that jurisdiction as a misdemeanor and is punishable by a term of imprisonment of 2 years or less;

(4) A crime under the laws of another jurisdiction that, in accordance with the laws of that jurisdiction, does not come within subparagraph (3) but is elementally substantially similar to a crime in this State that is punishable by a term of imprisonment of one year or more; or

(5) A crime under the laws of this State or another jurisdiction in a proceeding in which the prosecuting authority was required to plead and prove that the person committed the crime with the use of:

(a) A firearm against a person; or

(b) Any other dangerous weapon.

Violation of this paragraph is a Class C crime; [PL 2021, c. 608, Pt. B, §§1-3 (AMD).]

B. [PL 2001, c. 549, §2 (RP).]

C. Has been adjudicated in this State or under the laws of another jurisdiction to have engaged in conduct as a juvenile that, if committed by an adult, would have been a disqualifying conviction:

(1) Under [paragraph A-1](#), subparagraphs (1) to (4) and bodily injury to another person was threatened or resulted; or

(3) Under [paragraph A-1](#), subparagraph (5).

Violation of this paragraph is a Class C crime; [PL 2021, c. 608, Pt. B, §4 (AMD).]

D. Is subject to an order of a court of this State or another jurisdiction that restrains that person from harassing, stalking or threatening an intimate partner, as defined in 18 United States Code, Section 921(a), of that person or a child of the intimate partner of that person, or from engaging in other conduct that would place the intimate partner in reasonable fear of bodily injury to the intimate partner or the child, except that this paragraph applies only to a court order that was issued after a hearing for which that person received actual notice and at which that person had the opportunity to participate and that:

(1) Includes a finding that the person represents a credible threat to the physical safety of an intimate partner or a child; or

(2) By its terms, explicitly prohibits the use, attempted use or threatened use of physical force against an intimate partner or a child that would reasonably be expected to cause bodily injury.

Violation of this paragraph is a Class D crime; [PL 2021, c. 608, Pt. B, §5 (AMD).]

E. Has been:

(1) Committed involuntarily to a hospital pursuant to an order of the District Court under [Title 34-B, section 3864](#) because the person was found to present a likelihood of serious harm, as defined under [Title 34-B, section 3801, subsection 4-A, paragraphs A to C](#);

(2) Found not criminally responsible by reason of insanity with respect to a criminal charge; or

(3) Found not competent to stand trial with respect to a criminal charge.

Violation of this paragraph is a Class D crime; [PL 2015, c. 470, §1 (AMD).]

E-1. Is currently a restricted person under [Title 34-B, section 3862-A, subsection 2](#) or [subsection 6, paragraph D](#) except that the prohibition applies to possession and control, and not ownership.

Violation of this paragraph is a Class D crime; [PL 2019, c. 411, Pt. C, §2 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

E-2. Has been ordered to participate in a progressive treatment program pursuant to [Title 34-B, section 3873-A](#) and, as part of that order, directed not to possess a dangerous weapon pursuant to [Title 34-B, section 3873-A, subsection 7-A](#) for the duration of the treatment program, except that the prohibition applies to possession and control, and not ownership. Violation of this paragraph is a Class D crime; [PL 2019, c. 411, Pt. C, §2 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

F. Is a fugitive from justice. For the purposes of this paragraph, "fugitive from justice" has the same meaning as in [section 201, subsection 4](#). Violation of this paragraph is a Class D crime; [PL 2015, c. 470, §1 (AMD).]

G. Is an unlawful user of or is addicted to any controlled substance and as a result is prohibited from possession of a firearm under 18 United States Code, Section 922(g)(3). Notwithstanding the prohibition under 18 United States Code, Section 922(g)(3), the use, possession or transport of cannabis in accordance with [Title 22, chapter 558-C](#) or [Title 28-B](#) may not serve as the basis for the prohibition to own, possess or have under a person's control a firearm in this section. Violation of this paragraph is a Class D crime; [PL 2023, c. 381, §1 (AMD).]

H. Is an alien who is illegally or unlawfully in the United States or who was admitted under a nonimmigrant visa and who is prohibited from possession of a firearm under 18 United States Code, Section 922(g)(5). Violation of this paragraph is a Class D crime; [PL 2015, c. 470, §1 (AMD).]

I. Has been discharged from the United States Armed Forces under dishonorable conditions. Violation of this paragraph is a Class D crime; or [PL 2015, c. 470, §1 (AMD).]

J. Has, having been a citizen of the United States, renounced that person's citizenship. Violation of this paragraph is a Class D crime. [PL 2015, c. 470, §1 (AMD).]

For the purposes of this subsection, a person is deemed to have been convicted upon the acceptance of a plea of guilty or nolo contendere or a verdict or finding of guilty, or of the equivalent in a juvenile case, by a court of competent jurisdiction.

In the case of a deferred disposition, a person is deemed to have been convicted when the court imposes the sentence. In the case of a deferred disposition for a person alleged to have committed one or more of the offenses listed in [section 1023, subsection 4, paragraph B-1](#), that person may not possess a firearm during the deferred disposition period. Violation of this paragraph is a Class C crime.

For the purposes of this subsection, a person is deemed to have been found not criminally responsible by reason of insanity upon the acceptance of a plea of not criminally responsible by reason of insanity or a verdict or finding of not criminally responsible by reason of insanity, or of the equivalent in a juvenile case, by a court of competent jurisdiction.

[PL 2023, c. 381, §1 (AMD).]

1-A. Limited prohibition for nonviolent juvenile offenses. A person who has been adjudicated in this State or under the laws of another jurisdiction to have engaged in conduct as a juvenile that, if committed by an adult, would have been a disqualifying conviction under [subsection 1, paragraph A-1](#) or [subsection 1-B, paragraph A](#) but is not an adjudication under [subsection 1, paragraph C](#) or an adjudication under [subsection 1-B, paragraph B](#) in which bodily injury to another person was threatened or resulted may not own or have in that person's possession or control a firearm for a period of 3 years following completion of any disposition imposed or until that person reaches 18 years of age, whichever is later. Violation of this subsection by a person at least 18 years of age is a Class C crime.

[PL 2021, c. 608, Pt. B, §6 (AMD).]

1-B. Prohibition for domestic violence offenses. A person may not own, possess or have under that person's control a firearm if that person:

A. Has been convicted of committing or found not criminally responsible by reason of insanity of committing:

(1) A Class D crime in this State in violation of [Title 17-A, section 207-A, 209-A, 210-B, 210-C](#) or [211-A](#); or

(2) A crime under the laws of another jurisdiction that in accordance with the laws of that jurisdiction is elementally substantially similar to a crime in subparagraph (1).

Violation of this paragraph is a Class C crime; or [PL 2021, c. 608, Pt. B, §7 (AMD).]

B. Has been adjudicated in this State or under the laws of another jurisdiction to have engaged in conduct as a juvenile that, if committed by an adult, would have been a disqualifying conviction under this subsection. Violation of this paragraph is a Class C crime. [PL 2021, c. 608, Pt. B, §8 (AMD).]

Except as provided in [subsection 1-A](#), the prohibition created by this subsection for a conviction or adjudication of an offense listed in [paragraph A](#) or [B](#) expires 5 years from the date the person is finally discharged from the sentence imposed as a result of the conviction or adjudication if that person has no subsequent criminal convictions during that 5-year period. If a person is convicted of a subsequent crime within the 5-year period, the 5-year period starts anew from the date of the subsequent conviction. In the case of a deferred disposition, the 5-year period begins at the start of the deferred disposition period. If, at the conclusion of the deferred disposition period, the court grants the State's motion to allow a person to withdraw the plea and the State dismisses the charge that gave rise to the prohibition with prejudice, the 5-year period terminates.

For the purposes of this subsection, a person is deemed to have been convicted or adjudicated upon the acceptance of a plea of guilty or nolo contendere or a verdict or finding of guilty, or of the equivalent in a juvenile case, by a court of competent jurisdiction.

For the purposes of this subsection, a person is deemed to have been found not criminally responsible by reason of insanity upon the acceptance of a plea of not criminally responsible by reason of insanity or a verdict or finding of not criminally responsible by reason of insanity, or of the equivalent in a juvenile case, by a court of competent jurisdiction.

The provisions of this subsection apply only to a person convicted, adjudicated or placed on deferred disposition on or after October 15, 2015.

[PL 2021, c. 608, Pt. B, §§7, 8 (AMD).]

2. Application after 5 years. A person subject to the provisions of [subsection 1, paragraph A-1](#), subparagraphs (1) to (4) or [paragraph C](#) as a result of a conviction or adjudication may, after the expiration of 5 years from the date that the person is finally discharged from the sentences imposed as a result of the conviction or adjudication, apply to the Office of the Governor for a permit to carry a firearm subject to [subsection 4](#). That person may not be issued a permit to carry a concealed handgun pursuant to [Title 25, chapter 252](#). A permit issued pursuant to this subsection is valid for 4 years from the date of issue unless sooner revoked for cause by the Governor. For purposes of this subsection, "firearm" does not include a firearm defined under 18 United States Code, Section 921(a)(3).

[PL 2017, c. 475, Pt. A, §21 (RPR).]

3. Contents. An application under [subsection 2](#) must be on a form prepared by the Office of the Governor. The application must include the following: the applicant's full name; all aliases; date and place of birth; place of legal residence; occupation; make, model and serial number of the firearm sought to be possessed; date, place and nature of conviction; sentence imposed; place of incarceration; name and address of probation or parole officer; date of discharge or release from prison or jail or termination of probation, supervised release for sex offenders, parole or administrative release; the reason for the request; and any other information determined by the Governor to be of assistance. The application must be accompanied by certified or attested copies

of the indictment, information or complaint, judgment and commitment and discharge that are the subject of the conviction.

[PL 2017, c. 206, §2 (AMD).]

4. Notification, objection and decision. Upon receipt of an application, the Office of the Governor shall determine if the application is in proper form. If the application is proper, the Governor shall within 30 days notify in writing the sentencing or presiding judge, the Attorney General, the district attorney for the county where the applicant resides, the district attorney for the county where the conviction occurred, the law enforcement agency that investigated the crime, the chief of police and sheriff in the municipality and county where the crime occurred and the chief of police and sheriff in the municipality where the applicant resides as of the filing of the application. The Governor may direct any appropriate investigation to be carried out.

A. If, within 30 days of the sending of notice, a person notified objects in writing to the Governor regarding the initial issuance of a permit and provides the reason for the objection, the Governor may not issue a permit. The reason for the objection must be communicated in writing to the Governor in order for it to be the sole basis for denial. [PL 2017, c. 206, §3 (AMD).]

B. If, within 30 days of the sending of notice, a person notified objects in writing, including the reason for the objection, to the Governor regarding a 2nd or subsequent issuance of a permit, the Governor shall take the objection and its reason into consideration when determining whether to issue a 2nd or subsequent permit to the applicant, but need not deny the issuance of a permit based on an objection alone. [PL 2017, c. 206, §3 (AMD).]

The Governor may deny any application for a permit even if no objection is filed.

[PL 2017, c. 206, §3 (AMD).]

4-A. Application for relief. Except as otherwise provided, a person subject to the federal prohibition against possession of firearms pursuant to 18 United States Code, Section 922(g)(4) as a result of being adjudicated a mental defective may, after the expiration of 5 years from the date of final discharge from commitment, apply to the commissioner for relief from the disability.

Relief is not available under this subsection for a person found not criminally responsible by reason of insanity or incompetent to stand trial in a criminal case or a person adjudged by a Probate Court to lack the capacity to contract or manage the person's own affairs.

A. An application under this subsection must be on a form developed by the commissioner. The application must include the applicant's full name; all aliases; date and place of birth; place of legal residence; occupation; make and model of the firearm sought to be possessed; reason for the request; date, place and docket number of commitment; name of institution to which applicant was committed; names of providers that provided mental health treatment for the applicant; date of discharge from commitment; release for all mental health records; and any other information determined by the commissioner to be of assistance. The application must be accompanied by certified or attested copies of the commitment from which the applicant seeks relief and the report of an independent psychologist or psychiatrist licensed to practice in this State specifically addressing the factors set forth in [paragraph E](#). The commissioner may establish a roster of psychologists and psychiatrists qualified and interested in doing these evaluations. The

psychologist or psychiatrist must be available for cross-examination. The psychologist or psychiatrist listed on the roster is an employee for the purposes of the Maine Tort Claims Act for evaluations under this paragraph. [PL 2007, c. 670, §9 (NEW); PL 2007, c. 670, §24 (AFF).]

B. The commissioner has the independent authority to establish the following, to be paid by the applicant:

(1) Application fee; and

(2) Fees for evaluations required by [paragraph A](#). [PL 2007, c. 670, §9 (NEW); PL 2007, c. 670, §24 (AFF).]

C. Upon receipt of a completed application, the commissioner shall notify persons who received notice of the commitment pursuant to [Title 34-B, section 3864, subsection 3, paragraph A, subparagraph \(2\)](#) and the district attorney, chief of police and sheriff in the municipality and county where the applicant resides of the filing of the application, with a request to provide to the commissioner any information relevant to the factors in [paragraph E](#). [PL 2007, c. 670, §9 (NEW); PL 2007, c. 670, §24 (AFF).]

D. Upon receipt of a completed application, the commissioner shall review the application and determine whether the person has made a prima facie showing of the elements of [paragraph E](#). If the commissioner determines that the person has made a prima facie showing, the commissioner shall schedule a hearing. [PL 2007, c. 670, §9 (NEW); PL 2007, c. 670, §24 (AFF).]

E. The burden of proof is on the applicant to prove, by clear and convincing evidence, that the circumstances that led to the involuntary commitment to a hospital have changed, that the applicant is not likely to act in a manner dangerous to public safety and that granting the application for relief will not be contrary to the public interest. [PL 2007, c. 670, §9 (NEW); PL 2007, c. 670, §24 (AFF).]

F. If the commissioner finds by clear and convincing evidence that the circumstances that led to the involuntary commitment have changed, that the applicant is not likely to act in a manner dangerous to public safety and that granting the application for relief will not be contrary to the public interest, the commissioner may grant relief. [PL 2007, c. 670, §9 (NEW); PL 2007, c. 670, §24 (AFF).]

G. Notwithstanding any other provision of law, and except as indicated in this paragraph, all applications for relief pursuant to this subsection and documents made a part of the application, refusals and any information of record collected by the commissioner during the process of determining whether an applicant qualifies for relief are confidential and may not be made available for public inspection or copying unless:

(1) The applicant waives this confidentiality in writing or on the record of any hearing; or

(2) A court of record so orders. Proceedings relating to the grant or denial of relief are not public proceedings under [Title 1, chapter 13](#).

The commissioner shall make a permanent record, in the form of a summary, of the final decision regarding each application. The summary must include the name of the applicant and indicate whether the application for relief was granted or denied. The information contained in this

summary is available for public inspection. [PL 2007, c. 670, §9 (NEW); PL 2007, c. 670, §24 (AFF).]

H. An applicant may appeal the denial of an application for relief under this subsection within 30 days of receipt of the written notice of decision by filing a complaint in the District Court for de novo review in the district where the Department of Public Safety has its principal office. Hearings are closed unless otherwise agreed to by the applicant. A party aggrieved by a decision of the District Court may not appeal as of right. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule. [PL 2007, c. 670, §9 (NEW); PL 2007, c. 670, §24 (AFF).]

[PL 2011, c. 541, §1 (AMD).]

5. Appeal. Any person to whom a permit under [subsection 2](#) has been denied may file a petition for review pursuant to [Title 5, chapter 375, subchapter 7](#).

[PL 2007, c. 670, §10 (AMD).]

6. Filing fee. The commissioner may establish a reasonable filing fee not to exceed \$25 to defray costs of processing applications.

[PL 1977, c. 225, §2 (NEW).]

7. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Firearm" has the same meaning as in [Title 17-A, section 2, subsection 12-A](#). [PL 2001, c. 549, §4 (NEW).]

B. "Not criminally responsible by reason of insanity" has the same meaning as used in [section 103](#) and any comparable finding under the laws of the United States or any other state. [PL 2005, c. 527, §4 (AMD).]

C. [PL 2021, c. 608, Pt. B, §9 (RP).]

D. "Use of a dangerous weapon" has the same meaning as in [Title 17-A, section 2, subsection 9, paragraph A](#). [PL 2001, c. 549, §4 (NEW).]

E. "Commissioner" means the Commissioner of Public Safety or the commissioner's designee. [PL 2007, c. 670, §11 (NEW).]

F. "Another jurisdiction" has the same meaning as in [Title 17-A, section 2, subsection 3-B](#). [PL 2021, c. 608, Pt. B, §10 (NEW).]

[PL 2021, c. 608, Pt. B, §§9, 10 (AMD).]

8. Penalty.

[PL 2015, c. 470, §4 (RP).]

9. Prima facie evidence. Notwithstanding any other law or rule of evidence, a copy of a court abstract provided by a court to the Department of Public Safety, State Bureau of Identification pursuant to [Title 34-B, section 3864, subsection 12](#), if certified by the custodian of the records of that bureau, or the custodian's designee, is admissible in a criminal prosecution brought pursuant to this section as prima facie evidence that the person identified in the abstract has been involuntarily committed by the court issuing the abstract and has been provided the notice

required in [Title 34-B, section 3864, subsection 5, paragraph A-1](#) and [Title 34-B, section 3864, subsection 13](#).

[PL 2007, c. 670, §13 (NEW).]

10. Subpoena power. The commissioner is authorized to issue a subpoena in the name of the commissioner in accordance with [Title 5, section 9060](#), except that this authority applies to any stage of an investigation under this section and is not limited to an adjudicatory hearing. If a witness refuses to obey a subpoena or to give any evidence relevant to proper inquiry by the commissioner, the Attorney General may petition the Superior Court in the county where the refusal occurred to find the witness in contempt. The Attorney General shall cause to be served on that witness an order requiring the witness to appear before the Superior Court to show cause why the witness should not be adjudged in contempt. The court shall, in a summary manner, hear the evidence and, if it is such as to warrant the court in doing so, punish that witness in the same manner and to the same extent as for contempt committed before the Superior Court or with reference to the process of the Superior Court.

[PL 2007, c. 670, §14 (NEW).]

11. Rules. The commissioner may adopt rules to implement the provisions of [subsections 2 to 4-A](#). Rules adopted pursuant to this subsection are routine technical rules as defined by [Title 5, c](#)

Appendix G

US Department of Justice Model Red Flag Law

EXTREME RISK PROTECTION ORDER MODEL LEGISLATION

SEC. 1. EXTREME RISK PROTECTION ORDERS

(a) DEFINITIONS. –

(1) "Petitioner" means:

(A) A law enforcement officer or agency, including an attorney for the state;

(B) A member of the family of the respondent, which shall be understood to mean a parent, spouse, child, or sibling of the respondent;

(C) A member of the household of the respondent;

(D) A dating or intimate partner of the respondent;

(E) A health care provider [as defined by state law] who has provided health services to the respondent;

(F) An official of a school or school system in which the respondent is enrolled or has been enrolled within the preceding [six months/one year/two years/other appropriate time period specified by state law]; or

(G) [Any other appropriate persons specified by state law.]

(2) "Respondent" means the person against whom an order under Section 2 or 3 has been sought or granted.

(b) TYPES OF ORDERS. – The petitioner may apply for an emergency ex parte order as provided in Section 2 or an order following a hearing as provided in Section 3.

SEC. 2. EMERGENCY EX PARTE ORDER

(a) BASIS FOR ORDER. – The court shall issue an emergency ex parte extreme risk protection order upon submission of an application by a petitioner, supported by an affidavit or sworn oral statement of the petitioner or other witness, that provides specific facts establishing probable cause that the respondent's possession or receipt of a firearm will pose a [significant danger/extreme risk/other appropriate standard established by state law] of personal injury or death to the respondent or another person. The court shall take up and decide such an application on the day it is submitted, or if review and decision of the application on the same day is not feasible, then as quickly as possible but in no case later than [appropriate time period specified by state law].

(b) CONTENT OF ORDER. – An order issued under this section shall –

(1) prohibit the respondent from possessing, using, purchasing, manufacturing, or otherwise receiving a firearm;

(2) order the respondent to provisionally surrender any firearms in his or her possession or control, and any license or permit allowing the respondent to possess or acquire a firearm, to any law enforcement officer presenting the order or to a law enforcement agency as directed by the officer or the order; and

(3) inform the respondent of the time and place of the hearing under Section 3 to determine whether he or she will be subject to a continuing prohibition on possessing and acquiring firearms.

(c) SEARCH AND SEIZURE. –

(1) If the application and its supporting affidavit or statement establish probable cause that the respondent has access to a firearm, on his or her person or in an identified place, the court shall concurrently issue a warrant authorizing a law enforcement agency to search the person of the respondent and any such place for firearms and to seize any firearm therein to which the respondent would have access.

(2) The court may subsequently issue additional search warrants of this nature based on probable cause that the respondent has retained, acquired, or gained access to firearm while an order under this section remains in effect.

(3) If the owner of a firearm seized pursuant to this subsection is a person other than the respondent, the owner may secure the return of the firearm as provided in Section 3(c)(3)

(d) TIME FOR SERVICE AND SEARCHES. – The responsible law enforcement agency shall serve the order on the respondent, and carry out any search authorized under subsection (c)(1), [promptly/immediately/within other appropriate time period specified by state law] following issuance of the order. If a search is authorized under subsection (c)(1), the agency may serve the order on the respondent concurrently with or after the execution of the search.

SEC. 3. ORDER AFTER HEARING

(a) ORDER AFTER HEARING. – Upon application for an extreme risk protection order, supported by an affidavit or sworn oral statement of the petitioner or other witness that provides specific facts giving rise to the concern about the [significant danger/ extreme risk/other appropriate standard established by state law] described in Section 2, the court may issue an order under this section, which shall be effective for a period of up to [one year/other appropriate time period specified by state law], after a hearing. An order issued under this section shall –

(1) prohibit the respondent from possessing, using, purchasing, or otherwise receiving a firearm; and

(2) order the respondent to surrender any firearm in his or her possession or control, and any license or permit allowing the respondent to possess or acquire a firearm, to any law enforcement officer presenting the order or to a law enforcement agency as directed by the officer or the order.

(b) BASIS FOR ORDER. – The court shall issue such an order based on [a preponderance of the evidence/other appropriate standard specified by state law] that the respondent's possession or receipt of a firearm will pose a [significant danger/extreme risk/other appropriate standard specified by state law] of personal injury or death to the respondent or another person. In determining the satisfaction of this requirement, the court shall consider all relevant facts and circumstances after reviewing the petitioner's application and conducting the hearing described in Section 2(d). The court may order a psychological evaluation of the respondent, including voluntary or involuntary commitment of the respondent for purposes of such an evaluation, to the extent authorized by other law.

(c) SEARCH AND SEIZURE. –

(1) If the evidence presented at the hearing establishes probable cause that the respondent has access to a firearm, on his or her person or in an identified place, the court shall concurrently issue a warrant authorizing a law enforcement agency to search the person of the respondent and any such place for firearms and to seize any firearm therein to which the respondent would have access.

(2) The court may subsequently issue additional search warrants of this nature based on probable cause that the respondent has retained, acquired, or gained access to a firearm while an order under this section remains in effect.

(3) If the owner of a firearm seized pursuant to this subsection is a person other than the respondent, the owner may secure the prompt return of the firearm by providing an affidavit to the law enforcement agency affirming his or her ownership of the firearm and providing assurance that he or she will safeguard the firearm against access by the respondent. The law enforcement agency shall return the firearm to the owner upon its confirmation, including by a check of the National Instant Criminal Background Check System and the applicable state firearm background check system, that the owner is not legally disqualified from possessing or receiving the firearm.

(4) [Any provisions under state law permitting the transfer of seized firearms to a person not prohibited from possessing them.]

(d) TIME FOR HEARINGS AND SERVICE. –

(1) A hearing under this section shall be held within [appropriate time period specified by state law] days of the filing of the application, or within [appropriate time period specified by state law] days of the issuance of an emergency ex parte order under Section 2, if such an order is issued. The responsible law enforcement agency shall serve notice of the hearing on the respondent [promptly/immediately/within 72 hours/within an appropriate time period specified by state law] after the filing of the application or issuance of an emergency ex parte order, but notice may be provided by publication or mailing if the respondent cannot be personally served within the specified period. The respondent shall be entitled to one continuance of up to [appropriate time period specified by state law] days on request, and the court may thereafter grant an additional continuance or continuances for good cause. Any emergency ex parte order under Section 2 shall remain in effect until the hearing is held. The court may temporarily extend the emergency order at the hearing, pending a decision on a final order.

(2) The responsible law enforcement agency shall serve an order issued under this section on the respondent, and carry out any search authorized under subsection (c)(1), [promptly/immediately/within an appropriate time period specified by state law] following issuance of the order. If a search is authorized under subsection (c)(1), the agency may serve the order on the respondent concurrently with or after the execution of the search.

(e) TERMINATION AND RENEWAL OF ORDERS. –

(1) A respondent may file a motion to terminate an order under Section 3 one time during the effective period of that order. The respondent shall have the burden of proving, by the same standard of proof required for issuance of such an order, that he or she does not pose a [significant danger/extreme risk/other appropriate standard specified by state law] of personal injury or death to himself or herself or another.

(2) The petitioner may seek renewals of an order under this section for an additional [six months/one year/other appropriate time period specified by state law] at any time preceding its expiration. Renewals after the initial order shall be granted subject to the same standards and requirements as an initial order. The preceding order shall remain in effect until the renewal hearing is held and the court grants or denies a renewed order.

(3) If the respondent fails to appear at, or cannot be personally served in relation to, any hearing or renewal hearing under this section, the default does not affect the court's authority to issue an order or entitle the respondent to challenge the order prior to its expiration. The order will lapse after [the period established in Section 3(a)] if no eligible petitioner seeks its renewal.

SEC. 4. ENTRY INTO BACKGROUND CHECK SYSTEMS

The court shall forward any order issued under Section 2 or 3 to an appropriate law enforcement agency on the day it is issued. Upon receipt of an order under Section 3, the law enforcement agency shall make the order available to the National Instant Criminal Background Check System and any state system used to identify persons who are prohibited from possessing firearms.

SEC. 5. PENALTIES FOR VIOLATIONS

The following persons shall be subject to [appropriate criminal penalties specified by state law]:

(1) FILER OF FALSE OR HARASSING APPLICATION. – Any person filing an application under Section 2 or 3 containing information that he or she knows to be materially false, or for the purpose of harassing the respondent.

(2) RESPONDENT NOT COMPLYING WITH ORDER. – Any person who knowingly violates an order under Section 2 or 3, including by possessing or acquiring a firearm in violation of the order or failing to surrender a firearm as required by the order.

(3) PROVIDER OF PROHIBITED ACCESS TO RESPONDENT. – Any person who knowingly provides the subject of an order under Section 2 or 3 access to a firearm, in violation of an assurance the person has provided in an affidavit under Section 2(c)(3) or 3(c)(3) that he or she will safeguard the firearm against access by the respondent.

Appendix H

NY Extreme Risk Protection Law and Model Policy

NY CPLR 6340 et. seq.

SECTION 6340

Definitions

Civil Practice Law & Rules (CVP) CHAPTER 8, ARTICLE 63-A

§ 6340. Definitions. For the purposes of this article:

1. "Extreme risk protection order" means a court-issued order of protection prohibiting a person from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun.
2. "Petitioner" means: (a) a police officer, as defined in section 1.20 of the criminal procedure law, or district attorney with jurisdiction in the county or city where the person against whom the order is sought resides; (b) a family or household member, as defined in subdivision two of section four hundred fifty-nine-a of the social services law, of the person against whom the order is sought; (c) a school administrator as defined in section eleven hundred twenty-five of the education law, or a school administrator's designee, of any school in which the person against whom the order is sought is currently enrolled or has been enrolled in the six months immediately preceding the filing of the petition; or (d) a licensed physician, licensed psychiatrist, licensed psychologist, registered nurse, licensed clinical social worker, certified clinical nurse specialist, certified nurse practitioner, licensed clinical marriage and family therapist, registered professional nurse, licensed master social worker or licensed mental health counselor who has treated the person against whom the order is sought in the six months immediately preceding the filing of the petition. For purposes of this article, a school administrator's designee shall be employed at the same school as the school administrator and shall be any of the following who has been designated in writing to file a petition with respect to the person against whom

the order is sought: a school teacher, school guidance counselor, school psychologist, school social worker, school nurse, or other school personnel required to hold a teaching or administrative license or certificate, and full or part-time compensated school employee required to hold a temporary coaching license or professional coaching certificate.

3. "Respondent" means the person against whom an extreme risk protection order is or may be sought under this article.

4. "Possess" shall have the same meaning as defined in subdivision eight of section 10.00 of the penal law.

SECTION 6341

Application for an extreme risk protection order

Civil Practice Law & Rules (CVP) CHAPTER 8, ARTICLE 63-A

§ 6341. Application for an extreme risk protection order. In accordance with this article, a petitioner may file an application, which shall be sworn, and accompanying supporting documentation, setting forth the facts and circumstances justifying the issuance of an extreme risk protection order. Provided, however, that a petitioner who is a police officer or district attorney shall file such application upon the receipt of credible information that an individual is likely to engage in conduct that would result in serious harm to himself, herself or others, as defined in paragraph one or two of subdivision (a) of section 9.39 of the mental hygiene law, unless such petitioner determines that there is no probable cause for such filing. Such application and supporting documentation shall be filed in the supreme court in the county in which the respondent resides. The chief administrator of the courts shall adopt forms that may be used for purposes of such applications and the court's consideration of such applications. Such application form shall include inquiry as to whether the petitioner knows, or has reason to believe, that the respondent owns, possesses or has access to a firearm, rifle or shotgun and if so, a request that the

petitioner list or describe such firearms, rifles and shotguns, and the respective locations thereof, with as much specificity as possible.

SECTION 6342

Issuance of a temporary extreme risk protection order

Civil Practice Law & Rules (CVP) CHAPTER 8, ARTICLE 63-A

§ 6342. Issuance of a temporary extreme risk protection order. 1. Upon application of a petitioner pursuant to this article, the court may issue a temporary extreme risk protection order, ex parte or otherwise, to prohibit the respondent from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun, upon a finding that there is probable cause to believe the respondent is likely to engage in conduct that would result in serious harm to himself, herself or others, as defined in paragraph one or two of subdivision (a) of section 9.39 of the mental hygiene law. Such application for a temporary order shall be determined in writing on the same day the application is filed.

2. In determining whether grounds for a temporary extreme risk protection order exist, the court shall consider any relevant factors including, but not limited to, the following acts of the respondent:

(a) a threat or act of violence or use of physical force directed toward self, the petitioner, or another person;

(b) a violation or alleged violation of an order of protection;

(c) any pending charge or conviction for an offense involving the use of a weapon;

(d) the reckless use, display or brandishing of a firearm, rifle or shotgun;

(e) any history of a violation of an extreme risk protection order;

(f) evidence of recent or ongoing abuse of controlled substances or alcohol; or

(g) evidence of recent acquisition of a firearm, rifle, shotgun or other deadly weapon or dangerous instrument, or any ammunition therefor.

In considering the factors under this subdivision, the court shall consider the time that has elapsed since the occurrence of such act or acts and the age of the person at the time of the occurrence of such act or acts.

For the purposes of this subdivision, "recent" means within the six months prior to the date the petition was filed.

3. The application of the petitioner and supporting documentation, if any, shall set forth the factual basis for the request and probable cause for issuance of a temporary order. The court may conduct an examination under oath of the petitioner and any witness the petitioner may produce.

4. A temporary extreme risk protection order, if warranted, shall issue in writing, and shall include:

(a) a statement of the grounds found for the issuance of the order;

(b) the date and time the order expires;

(c) the address of the court that issued the order;

(d) a statement to the respondent: (i) directing that the respondent may not purchase, possess or attempt to purchase or possess a firearm, rifle or shotgun while the order is in effect and that any firearm, rifle or shotgun possessed by such respondent shall be promptly surrendered to any authorized law enforcement official in the same manner as set forth in subdivision five of section 530.14 of the criminal procedure law;

(ii) informing the respondent that the court will hold a hearing no sooner than three nor more than six business days after service of the temporary order, to determine whether a final extreme risk protection order will be issued and the date, time and location of such hearing, provided that the respondent shall be entitled to more than six days upon request in order to prepare for the hearing; and (iii) informing the respondent that he or she may seek the advice of an attorney and that an attorney should be consulted promptly; and

(e) a form to be completed and executed by the respondent at the time of service of the temporary extreme risk protection order which elicits a list of all firearms, rifles and shotguns possessed by the respondent and the particular location of each firearm, rifle or shotgun listed.

5. If the application for a temporary extreme risk protection order is not granted, the court shall notify the petitioner and, unless the application is voluntarily withdrawn by the petitioner, nonetheless schedule a hearing on the application for a final extreme risk protection order. Such hearing shall be scheduled to be held promptly, but in any event no later than ten business days after the date on which such application is served on the respondent, provided, however, that the respondent may request, and the court may grant, additional time to allow the respondent to prepare for the hearing. A notice of such hearing shall be prepared by the court and shall include the date and time of the hearing, the address of the court, and the subject of the hearing.

6. (a) The court shall, in the manner specified in paragraph (b) of this subdivision, arrange for prompt service of a copy of the temporary extreme risk protection order, if any, the application therefor and, if separately applied for or if a temporary extreme risk protection order was not granted, the application for an extreme risk protection order, any notice of hearing prepared by the court, along with any associated papers including the petition and any supporting documentation, provided, that the court may redact the address and contact information of the petitioner from such application and papers where the court finds that disclosure of such address or other contact information would pose

an unreasonable risk to the health or safety of the petitioner.

(b) The court shall provide copies of such documents to the appropriate law enforcement agency serving the jurisdiction of the respondent's residence with a direction that such documents be promptly served, at no cost to the petitioner, on the respondent; provided, however, that the petitioner may voluntarily arrange for service of copies of such order and associated papers through a third party, such as a licensed process server.

7. (a) The court shall notify the division of state police, any other law enforcement agency with jurisdiction, all applicable licensing officers, and the division of criminal justice services of the issuance of a temporary extreme risk protection order and provide a copy of such order no later than the next business day after issuing the order to such persons or agencies. The court also shall promptly notify such persons and agencies and provide a copy of any order amending or revoking such protection order or restoring the respondent's ability to own or possess firearms, rifles or shotguns no later than the next business day after issuing the order to restore such right to the respondent. The court also shall report such demographic data as required by the state division of criminal justice services at the time such order is transmitted thereto. Any notice or report submitted pursuant to this subdivision shall be in an electronic format, in a manner prescribed by the division of criminal justice services.

(b) Upon receiving notice of the issuance of a temporary extreme risk protection order, the division of criminal justice services shall immediately report the existence of such order to the federal bureau of investigation to allow the bureau to identify persons prohibited from purchasing firearms, rifles or shotguns. The division shall also immediately report to the bureau the expiration of any such protection order, any court order amending or revoking such protection order or restoring the respondent's ability to purchase a firearm, rifle or shotgun.

8. A law enforcement officer serving a temporary extreme risk

protection order shall request that the respondent immediately surrender to the officer all firearms, rifles and shotguns in the respondent's possession and the officer shall conduct any search permitted by law for such firearms. The law enforcement officer shall take possession of all firearms, rifles and shotguns that are surrendered, that are in plain sight, or that are discovered pursuant to a lawful search. As part of the order, the court may also direct a police officer to search for firearms, rifles and shotguns in the respondent's possession in a manner consistent with the procedures of article six hundred ninety of the criminal procedure law.

9. Upon issuance of a temporary extreme risk protection order, or upon setting a hearing for a final extreme risk protection order where a temporary order is denied or not requested, the court shall direct the law enforcement agency having jurisdiction to conduct a background investigation and report to the court and, subject to any appropriate redactions to protect any person, each party regarding whether the respondent:

(a) has any prior criminal conviction for an offense involving domestic violence, use of a weapon, or other violence;

(b) has any criminal charge or violation currently pending against him or her;

(c) is currently on parole or probation;

(d) possesses any registered firearms, rifles or shotguns; and

(e) has been, or is, subject to any order of protection or has violated or allegedly violated any order of protection.

SECTION 6343

Issuance of a final extreme risk protection order

Civil Practice Law & Rules (CVP) CHAPTER 8, ARTICLE 63-A

§ 6343. Issuance of a final extreme risk protection order. 1. In accordance with this article, no sooner than three business days nor later than six business days after service of a temporary extreme risk protection order and, alternatively, no later than ten business days after service of an application under this article where no temporary extreme risk protection order has been issued, the supreme court shall hold a hearing to determine whether to issue a final extreme risk protection order and, when applicable, whether a firearm, rifle or shotgun surrendered by, or removed from, the respondent should be returned to the respondent. The respondent shall be entitled to more than six business days if a temporary extreme risk protection order has been issued and the respondent requests a reasonable period of additional time to prepare for the hearing. Where no temporary order has been issued, the respondent may request, and the court may grant, additional time beyond the ten days to allow the respondent to prepare for the hearing.

2. At the hearing pursuant to subdivision one of this section, the petitioner shall have the burden of proving, by clear and convincing evidence, that the respondent is likely to engage in conduct that would result in serious harm to himself, herself or others, as defined in paragraph one or two of subdivision (a) of section 9.39 of the mental hygiene law. The court may consider the petition and any evidence submitted by the petitioner, any evidence submitted by the respondent, any testimony presented, and the report of the relevant law enforcement agency submitted pursuant to subdivision nine of section sixty-three hundred forty-two of this article. The court shall also consider the factors set forth in subdivision two of section sixty-three hundred forty-two of this article.

3. (a) After the hearing pursuant to subdivision one of this section, the court shall issue a written order granting or denying the extreme risk protection order and setting forth the reasons for such

determination. If the extreme risk protection order is granted, the court shall direct service of such order in the manner and in accordance with the protections for the petitioner set forth in subdivision six of section sixty-three hundred forty-two of this article.

(b) Upon issuance of an extreme risk protection order: (i) any firearm, rifle or shotgun removed pursuant to a temporary extreme risk protection order or such extreme risk protection order shall be retained by the law enforcement agency having jurisdiction for the duration of the order, unless ownership of the firearm, rifle or shotgun is legally transferred by the respondent to another individual permitted by law to own and possess such firearm, rifle or shotgun; (ii) the supreme court shall temporarily suspend any existing firearm license possessed by the respondent and order the respondent temporarily ineligible for such a license; (iii) the respondent shall be prohibited from purchasing or possessing, or attempting to purchase or possess, a firearm, rifle or shotgun; and (iv) the court shall direct the respondent to surrender any firearm, rifle or shotgun in his or her possession in the same manner as set forth in subdivision five of section 530.14 of the criminal procedure law.

(c) An extreme risk protection order issued in accordance with this section shall extend, as specified by the court, for a period of up to one year from the date of the issuance of such order; provided, however, that if such order was immediately preceded by the issuance of a temporary extreme risk protection order, then the duration of the extreme risk protection order shall be measured from the date of issuance of such temporary extreme risk protection order.

(d) A law enforcement officer serving a final extreme risk protection order shall request that the respondent immediately surrender to the officer all firearms, rifles and shotguns in the respondent's possession and the officer shall conduct any search permitted by law for such firearms. The law enforcement officer shall take possession of all firearms, rifles and shotguns that are surrendered, that are in plain sight, or that are discovered pursuant to a lawful search. As part of the order, the court may also direct a police officer to search for

firearms, rifles and shotguns in a respondent's possession consistent with the procedures of article six hundred ninety of the criminal procedure law.

4. (a) The court shall notify the division of state police, any other law enforcement agency with jurisdiction, all applicable licensing officers, and the division of criminal justice services of the issuance of a final extreme risk protection order and provide a copy of such order to such persons and agencies no later than the next business day after issuing the order. The court also shall promptly notify such persons and agencies and provide a copy of any order amending or revoking such protection order or restoring the respondent's ability to own or possess firearms, rifles or shotguns no later than the next business day after issuing the order to restore such right to the respondent. Any notice or report submitted pursuant to this subdivision shall be in an electronic format, in a manner prescribed by the division of criminal justice services.

(b) Upon receiving notice of the issuance of a final extreme risk protection order, the division of criminal justice services shall immediately report the existence of such order to the federal bureau of investigation to allow the bureau to identify persons prohibited from purchasing firearms, rifles or shotguns. The division shall also immediately report to the bureau the expiration of such protection order and any court order amending or revoking such protection order or restoring the respondent's ability to purchase a firearm, rifle or shotgun.

5. (a) If, in accordance with a temporary extreme risk protection order, a firearm, rifle or shotgun has been surrendered by or removed from the respondent, and the supreme court subsequently finds that the petitioner has not met the required standard of proof, the court's finding shall include a written order, issued to all parties, directing that any firearm, rifle or shotgun surrendered or removed pursuant to such temporary order shall be returned to the respondent, upon a written finding that there is no legal impediment to the respondent's possession of such firearm, rifle or shotgun.

(b) If any other person demonstrates that he or she is the lawful owner of any firearm, rifle or shotgun surrendered or removed pursuant to a protection order issued in accordance with this article, and provided that the court has made a written finding that there is no legal impediment to the person's possession of a surrendered or removed firearm, rifle or shotgun, the court shall direct that such firearm, rifle or shotgun be returned to such lawful owner and inform such person of the obligation to safely store such firearm, rifle, or shotgun in accordance with section 265.45 of the penal law.

6. The respondent shall be notified on the record and in writing by the court that he or she may submit one written request, at any time during the effective period of an extreme risk protection order, for a hearing setting aside any portion of such order. The request shall be submitted in substantially the same form and manner as prescribed by the chief administrator of the courts. Upon such request, the court shall promptly hold a hearing, in accordance with this article, after providing reasonable notice to the petitioner. The respondent shall bear the burden to prove, by clear and convincing evidence, any change of circumstances that may justify a change to the order.

SECTION 6344

Surrender and removal of firearms, rifles and shotguns pursuant to an extreme risk protection order

Civil Practice Law & Rules (CVP) CHAPTER 8, ARTICLE 63-A

§ 6344. Surrender and removal of firearms, rifles and shotguns pursuant to an extreme risk protection order. 1. When a law enforcement officer takes any firearm, rifle or shotgun pursuant to a temporary extreme risk protection order or a final extreme risk protection order, the officer shall give to the person from whom such firearm, rifle or shotgun is taken a receipt or voucher for the property taken, describing the property in detail. In the absence of a person, the officer shall leave the receipt or voucher in the place where the property was found, mail a copy of the receipt or voucher, retaining proof of mailing, to

the last known address of the respondent and, if different, the owner of the firearm, rifle or shotgun, and file a copy of such receipt or voucher with the court. All firearms, rifles and shotguns in the possession of a law enforcement official pursuant to this article shall be subject to the provisions of applicable law, including but not limited to subdivision six of section 400.05 of the penal law; provided, however, that any such firearm, rifle or shotgun shall be retained and not disposed of by the law enforcement agency for at least two years unless legally transferred by the respondent to an individual permitted by law to own and possess such firearm, rifle or shotgun.

2. If the location to be searched during the execution of a temporary extreme risk protection order or extreme risk protection order is jointly occupied by two or more parties, and a firearm, rifle or shotgun located during the execution of such order is owned by a person other than the respondent, the court shall, upon a written finding that there is no legal impediment to the person other than the respondent's possession of such firearm, rifle or shotgun, order the return of such firearm, rifle or shotgun to such lawful owner and inform such person of their obligation to safely store their firearm, rifle, or shotgun in accordance with section 265.45 of the penal law.

SECTION 6345

Request for renewal of an extreme risk protection order

Civil Practice Law & Rules (CVP) CHAPTER 8, ARTICLE 63-A

§ 6345. Request for renewal of an extreme risk protection order. 1. If a petitioner believes a person subject to an extreme risk protection order continues to be likely to engage in conduct that would result in serious harm to himself, herself, or others, as defined in paragraph one or two of subdivision (a) of section 9.39 of the mental hygiene law, such petitioner may, at any time within sixty days prior to the expiration of such existing extreme risk protection order, initiate a request for a renewal of such order, setting forth the facts and circumstances necessitating the request. The chief administrator of the

courts shall adopt forms that may be used for purposes of such applications and the court's consideration of such applications. The court may issue a temporary extreme risk protection order in accordance with section sixty-three hundred forty-two of this article, during the period that a request for renewal of an extreme risk protection order is under consideration pursuant to this section.

2. A hearing held pursuant to this section shall be conducted in the supreme court, in accordance with section sixty-three hundred forty-three of this article, to determine if a request for renewal of the order shall be granted. The respondent shall be served with written notice of an application for renewal a reasonable time before the hearing, and shall be afforded an opportunity to fully participate in the hearing. The court shall direct service of such application and the accompanying papers in the manner and in accordance with the protections for the petitioner set forth in subdivision six of section sixty-three hundred forty-two of this article.

SECTION 6346

Expiration of an extreme risk protection order

Civil Practice Law & Rules (CVP) CHAPTER 8, ARTICLE 63-A

§ 6346. Expiration of an extreme risk protection order. 1. A protection order issued pursuant to this article, and all records of any proceedings conducted pursuant to this article, shall be sealed upon expiration of such order and the clerk of the court wherein such proceedings were conducted shall immediately notify the commissioner of the division of criminal justice services, the heads of all appropriate police departments, applicable licensing officers, and all other appropriate law enforcement agencies that the order has expired and that the record of such protection order shall be sealed and not be made available to any person or public or private entity, except that such records shall be made available to:

(a) the respondent or the respondent's designated agent;

(b) courts in the unified court system;

(c) police forces and departments having responsibility for enforcement of the general criminal laws of the state;

(d) any state or local officer or agency with responsibility for the issuance of licenses to possess a firearm, rifle or shotgun, when the respondent has made application for such a license; and

(e) any prospective employer of a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law, in relation to an application for employment as a police officer or peace officer; provided, however, that every person who is an applicant for the position of police officer or peace officer shall be furnished with a copy of all records obtained under this subparagraph and afforded an opportunity to make an explanation thereto.

2. Upon expiration of a protection order issued pursuant to this article and upon written application of the respondent who is the subject of such order, with notice and opportunity to be heard to the petitioner and every licensing officer responsible for issuance of a firearm license to the subject of the order pursuant to article four hundred of the penal law, and upon a written finding that there is no legal impediment to the respondent's possession of a surrendered firearm, rifle or shotgun, the court shall order the return of a firearm, rifle or shotgun not otherwise disposed of in accordance with subdivision one of section sixty-three hundred forty-four of this article. When issuing such order in connection with any firearm subject to a license requirement under article four hundred of the penal law, if the licensing officer informs the court that he or she will seek to revoke the license, the order shall be stayed by the court until the conclusion of any license revocation proceeding.

SECTION 6347

Effect of findings and determinations in subsequent proceedings

Civil Practice Law & Rules (CVP) CHAPTER 8, ARTICLE 63-A

§ 6347. Effect of findings and determinations in subsequent proceedings. Notwithstanding any contrary claim based on common law or a provision of any other law, no finding or determination made pursuant to this article shall be interpreted as binding, or having collateral estoppel or similar effect, in any other action or proceeding, or with respect to any other determination or finding, in any court, forum or administrative proceeding.

SECTION 6348

Protections for health care providers applying for an extreme risk protection order

Civil Practice Law & Rules (CVP) CHAPTER 8, ARTICLE 63-A

§ 6348. Protections for health care providers applying for an extreme risk protection order. 1. (a) Notwithstanding the privileges set forth in article forty-five of this chapter, or any other provision of law to the contrary, a health care provider authorized under paragraph (d) of subdivision two of section sixty-three hundred forty of this article to file an application for an extreme risk protection order against a person such health care provider has examined shall, upon filing any application for an extreme risk protection order, be authorized to disclose protected health information, of the person against whom such order is sought as are necessary for the full investigation and disposition of such application for an extreme risk protection order under this article. When disclosing protected health information, such health care provider shall make reasonable efforts to limit protected health information to the minimum necessary to accomplish the filing of the application.

(b) Upon receipt of a petition by any health care provider identified

in paragraph (a) of this subdivision and for good cause shown, the court may issue orders as may be necessary to obtain any records or documents relating to diagnosis, prognosis or treatment, and clinical records, of the patient against whom the order is sought as are necessary for the full investigation and disposition of an application for an extreme risk protection order under this article. All such records and other health information provided shall be sealed by the court.

2. The decision of any health care provider described in subdivision one of this section to disclose or not to disclose records or documents relating to the diagnosis, prognosis or treatment, and clinical records of a patient under paragraphs (a) and (b) of subdivision one of this section, when made reasonably and in good faith, shall not be the basis for any civil or criminal liability with respect to such health care provider.

SECTION 9.40

Emergency observation, care and treatment in comprehensive psychiatric emergency programs

Mental Hygiene (MHY) CHAPTER 27, TITLE B, ARTICLE 9

* § 9.40 Emergency observation, care and treatment in comprehensive psychiatric emergency programs.

(a) The director of any comprehensive psychiatric emergency program may receive and retain therein for a period not to exceed seventy-two hours, any person alleged to have a mental illness for which immediate observation, care and treatment in such program is appropriate and which is likely to result in serious harm to the person or others. The director shall cause to be entered upon the program records the name of the person or persons, if any, who have brought the person alleged to have a mental illness to the program and the details of the circumstances leading the person or persons to bring the person alleged to have a mental illness to the program.

(a-1) The director shall cause triage and referral services to be provided by a psychiatric nurse practitioner or physician of the program as soon as such person is received into the comprehensive psychiatric emergency program. After receiving triage and referral services, such person shall be appropriately treated and discharged, or referred for further crisis intervention services including an examination by a physician as described in subdivision (b) of this section.

(b) The director shall cause examination of such persons not discharged after the provision of triage and referral services to be initiated by a staff physician of the program as soon as practicable and in any event within six hours after the person is received into the program's emergency room. Such person may be retained for observation,

care and treatment and further examination for up to twenty-four hours if, at the conclusion of such examination, such physician determines that such person may have a mental illness for which immediate observation, care and treatment in a comprehensive psychiatric emergency program is appropriate, and which is likely to result in serious harm to the person or others.

(c) No person shall be involuntarily retained in accordance with this section for more than twenty-four hours, unless (i) within that time the determination of the examining staff physician has been confirmed after examination by another physician who is a member of the psychiatric staff of the program and (ii) the person is admitted to an extended observation bed, as such term is defined in section 31.27 of this chapter. At the time of admission to an extended observation bed, such person shall be served with written notice of his status and rights as a patient under this section. Such notice shall contain the patient's name. The notice shall be provided to the same persons and in the manner as if provided pursuant to subdivision (a) of section 9.39 of this article. Written requests for court hearings on the question of need for immediate observation, care and treatment shall be made, and court hearings shall be scheduled and held, in the manner provided pursuant to subdivision (a) of section 9.39 of this article, provided however, if a person is removed or admitted to a hospital pursuant to subdivision (e) or (f) of this section the director of such hospital shall be substituted for the director of the comprehensive psychiatric emergency program in all legal proceedings regarding the continued retention of the person.

(d) If at any time it is determined that the person is no longer in need of immediate observation, care and treatment in accordance with this section and is not in need of involuntary care and treatment in a hospital, such person shall be released without regard to the provisions of section 29.15 of this chapter, unless such person agrees to be admitted to another appropriate hospital as a voluntary or informal patient.

(e) If at any time within the seventy-two hour period it is determined

that such person continues to require immediate observation, care and treatment in accordance with this section and such requirement is likely to continue beyond the seventy-two hour period, such person shall be removed within a reasonable period of time to an appropriate hospital authorized to receive and retain patients pursuant to section 9.39 of this article and such person shall be evaluated for admission and, if appropriate, shall be admitted to such hospital in accordance with section 9.39 of this article, except that if the person is admitted, the fifteen day retention period of subdivision (b) of section 9.39 of this article shall be calculated from the time such person was initially registered into the emergency room of the comprehensive psychiatric emergency program. Any person removed to a hospital pursuant to this paragraph shall be removed without regard to the provisions of section 29.11 or 29.15 of this chapter and shall not be considered to have been transferred or discharged to another hospital.

(f) Nothing in this section shall preclude the involuntary admission of a person to an appropriate hospital pursuant to the provisions of this article if at any time during the seventy-two hour period it is determined that the person is in need of involuntary care and treatment in a hospital and the person does not agree to be admitted to a hospital as a voluntary or informal patient. Efforts shall be made to assure that any arrangements for such involuntary admissions in an appropriate hospital shall be made within a reasonable period of time.

(g) If a person is examined and determined to be mentally ill the fact that such person suffers from alcohol or substance abuse shall not preclude receipt or retention under this section.

(h) All time periods referenced in this section shall be calculated from the time such person is initially registered into the emergency room of the comprehensive psychiatric emergency program.

* NB Repealed July 1, 2027

SECTION 9.43

Emergency assessment for immediate observation, care, and treatment; powers of courts

Mental Hygiene (MHY) CHAPTER 27, TITLE B, ARTICLE 9

* § 9.43 Emergency assessment for immediate observation, care, and treatment; powers of courts.

(a) Whenever any court of inferior or general jurisdiction is informed by verified statement that a person is apparently mentally ill and is conducting himself or herself in a manner which in a person who is not mentally ill would be deemed disorderly conduct or which is likely to result in serious harm to himself or herself, such court shall issue a warrant directing that such person be brought before it. If, when said person is brought before the court, it appears to the court, on the basis of evidence presented to it, that such person has or may have a mental illness which is likely to result in serious harm to himself or herself or others, the court shall issue a civil order directing his or her removal to any hospital specified in subdivision (a) of section 9.39 of this article or any comprehensive psychiatric emergency program specified in subdivision (a) of section 9.40 of this article, or to any crisis stabilization center specified in section 36.01 of this chapter when the court deems such center is appropriate and where such person voluntarily agrees; that is willing to receive such person for a determination by the director of such hospital, program or center whether such person should be received therein pursuant to such section.

(b) Whenever a person before a court in a criminal action appears to have a mental illness which is likely to result in serious harm to himself or herself or others and the court determines either that the crime has not been committed or that there is not sufficient cause to believe that such person is guilty thereof, the court may issue a civil order as above provided, and in such cases the criminal action shall terminate.

* NB Effective until July 1, 2027

* § 9.43 Emergency admissions for immediate observation, care, and treatment; powers of courts.

(a) Whenever any court of inferior or general jurisdiction is informed by verified statement that a person is apparently mentally ill and is conducting himself in a manner which in a person who is not mentally ill would be deemed disorderly conduct or which is likely to result in serious harm to himself or others as defined in section 31.39, such court shall issue a warrant directing that such person be brought before it. If, when said person is brought before the court, it appears to the court, on the basis of evidence presented to it, that such person has or may have a mental illness which is likely to result in serious harm to himself or others, the court shall issue a civil order directing his removal to any hospital specified in subdivision (a) of section 31.39 willing to receive such person for a determination by the director of such hospital whether such person should be retained therein pursuant to such section.

(b) Whenever a person before a court in a criminal action appears to have a mental illness which is likely to result in serious harm to himself or others and the court determines either that the crime has not been committed or that there is not sufficient cause to believe that such person is guilty thereof, the court may issue a civil order as above provided, and in such cases the criminal action shall terminate.

* NB Effective July 1, 2027

Title 25: INTERNAL SECURITY AND PUBLIC SAFETY

Part 8: MAINE CRIMINAL JUSTICE ACADEMY

Chapter 341: THE MAINE CRIMINAL JUSTICE ACADEMY

§2804-C. Basic law enforcement training; core curriculum requirements

1. Required. As a condition to the continued employment of any person as a full-time law enforcement officer by a municipality, a county, the State or any other nonfederal employer, that person must successfully complete, within the first 12 months of initial full-time employment, the basic training course at the Maine Criminal Justice Academy approved by the board. If a person's failure to comply with this requirement was a result of that person's failure to satisfy any of the admission standards applicable to the basic training course and that person is subsequently employed as a full-time law enforcement officer within 12 months of termination of the initial employment by a municipality, a county, the State or any other nonfederal employer, the person must have satisfied all the admission standards established by the board prior to the time of hire. As a condition of continued employment as a full-time law enforcement officer, the officer must satisfactorily maintain the basic certification by completing the recertification requirements prescribed by the board. The board, under extenuating and emergency circumstances in individual cases, may extend the 12-month period for not more than 180 days. The board also, in individual cases, may waive the basic training requirement when the facts indicate that an equivalent course has been successfully completed.

[PL 2013, c. 147, §29 (AMD).]

2. Core curriculum requirements.

[PL 1993, c. 744, §6 (RP).]

2-A. Probationary employment period. Upon being hired, a law enforcement officer shall complete an employment probationary period that lasts for at least one year after graduation from the academy or the date the board waives the basic training requirement.

[PL 1993, c. 744, §6 (NEW).]

2-B. Training regarding people who are homeless. The board shall include in the basic law enforcement training program a block of instruction aimed specifically at reducing barriers to reporting crimes against people who are homeless and dealing with the unique challenges posed by cases that involve victims or witnesses who are homeless.

[PL 2005, c. 393, §1 (NEW).]

2-C. Receipt of firearms; training; procedure; liability. The Maine Criminal Justice Academy shall provide training for municipal, county and state law enforcement officers regarding the proper handling, storage, safekeeping and return of firearms and firearm accessories received pursuant to a court order under [Title 19-A, section 4108, subsection 3](#) or [Title 19-A, section 4110,](#)

pursuant to a court order under [Title 19-A, section 4108, subsection 3](#) or [Title 19-A, section 4110, subsection 4](#). Such training must include education concerning the prohibitions on the purchase or possession of a firearm when a protection order has been obtained and communication with parties to protection orders concerning such prohibitions.

In developing materials for training in domestic violence issues, the Maine Criminal Justice Academy may consult with a statewide organization involved in advocacy for victims of domestic violence and with an organization having statewide membership representing the interests of firearms owners.

A law enforcement officer who receives custody of a firearm pursuant to [Title 19-A, section 4108, subsection 3](#) or [Title 19-A, section 4110, subsection 4](#) shall exercise reasonable care to avoid loss, damage or reduction in value of the firearm and may not permanently mark the firearm or fire the firearm unless there is reasonable suspicion that the firearm has been used in the commission of a crime. Any liability for damage or reduction in value to such a firearm is governed by [Title 14, chapter 741](#).

[PL 2021, c. 647, Pt. B, §57 (AMD); PL 2021, c. 647, Pt. B, §65 (AFF).]

2-D. Training regarding people who have mental illness and the involuntary commitment process. The board shall include in the basic law enforcement training program a block of instruction aimed specifically at the clinical, safety and procedural components of the involuntary commitment process, including the provision of a uniform checklist that includes reference to [Title 34-B, section 1207, subsection 7](#) for law enforcement officers to use in order to effectively describe the seriousness of a case to a mental health professional.

[PL 2009, c. 451, §6 (NEW).]

2-E. Receipt of certain dangerous weapons; training; procedure; liability. Beginning in 2020, the Maine Criminal Justice Academy Board of Trustees shall require training as part of its mandated training schedule for municipal, county and state law enforcement officers regarding the process for protection from substantial threats by a restricted person and the proper handling, storage, safekeeping and return of dangerous weapons received pursuant to an endorsement or court order under [Title 34-B, section 3862-A](#) or [3873-A](#). The training must include education concerning the prohibitions on the purchase, control or possession of dangerous weapons. A law enforcement officer who receives custody of a dangerous weapon pursuant to [Title 34-B, section 3862-A](#) or [3873-A](#) shall exercise reasonable care to avoid loss, damage or reduction in value of the weapon and may not permanently mark or fire the weapon unless there is reasonable suspicion that the weapon has been used in the commission of a crime. Any liability for damage or reduction in value to such a weapon is governed by [Title 14, chapter 741](#).

5. Application to currently certified law enforcement officers. This section does not apply to any law enforcement officer certified as meeting the law enforcement training requirements or to any full-time law enforcement officer employed by a state agency, including the University of Maine System, as of July 1, 1990 or to any person employed as a full-time law enforcement officer by a municipality on September 23, 1971 or by a county on July 1, 1972.

[PL 2013, c. 147, §32 (AMD).]

§2804-E. In-service law enforcement training

1. Required. As a condition to the continued employment of a person as a law enforcement officer with the power to make arrests or the authority to carry a firearm in the course of duty by a municipality, county, the State or other nonfederal employer, that person must successfully complete in-service training as prescribed by the board. Failure to successfully complete in-service training by a law enforcement officer as prescribed by the board constitutes grounds to suspend or revoke a certificate issued by the board pursuant to [section 2803-A](#).

[PL 2013, c. 147, §34 (AMD).]

2. Role of board. The board shall establish in-service recertification training requirements, consistent with [subsection 1](#), and coordinate delivery of in-service training. The in-service recertification training requirements must include information on new laws and court decisions and on new enforcement practices demonstrated to reduce crime or increase officer safety. The board shall consider and encourage the use of telecommunications technology in the development and delivery of in-service training programs. In establishing the recertification training requirements, the board shall cooperate with the state and local departments and agencies to which the in-service requirements apply to ensure that the standards are appropriate. In-service training may not be applied to satisfy in-service recertification training requirements unless it is approved by the board.

[PL 2013, c. 147, §34 (AMD).]

3. Additional certificates.

[PL 2013, c. 147, §34 (RP).]

4. Credit for continuing education. The board may grant in-service training credits to be applied to in-service recertification training requirements for courses completed at accredited colleges and universities.

[PL 1993, c. 744, §8 (NEW).]

5. Provision of in-service training. In-service training programs that meet the requirements established under [subsection 2](#) or other in-service training programs may be provided by the Maine Criminal Justice Academy or the agency employing the law enforcement officer.

[PL 2013, c. 147, §34 (NEW).]

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 qualified medical practitioner initially determines a person taken into protective custody by law enforcement 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.

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

NOTE: Provide the judicial officer with the original and a copy of the application and medical assessment; once endorsed, the judicial officer will return the original to law enforcement and will send the copy to the court.

METRO and District Attorney Notification of Issuance of Order

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.

STATE OF MAINE
APPLICATION FOR WEAPONS RESTRICTION ORDER
34-B MRS § 3862-A

Name (First, middle, last): _____

AKA _____

Address _____

DOB (mm/dd/yyyy): _____ Sex: _____

Race: _____ Height: _____ Weight: _____ Hair: _____ Eyes: _____

Scars, marks, tattoos _____

Driver's license # _____ Social Security # _____

Section 1. Application by Law Enforcement

A. Officer [Print name and rank] _____

Officer Contact Information _____

Agency and ORI _____

Agency Case # _____

B. On _____ at _____, law enforcement took the person named above into protective custody pursuant to 34-B MRS § 3862 based on the probable cause outlined in Appendix 1 of this Application.

C. Location where person taken into custody: _____

D. I believe that the person named above possesses, controls or may acquire a dangerous weapon(s) based on the probable cause outlined in Appendix 1 of this Application.

E. Description and location of weapon(s), if known:

_____ Signature of Officer	_____ Date
-------------------------------	---------------

Section 2. Assessment by Medical Practitioner

- A. Medical Practitioner (Print name): _____
License (Select one): MD DO PA NP RN, CS Psych, PhD.
Practitioner Contact Information: _____
Physical Address: _____
- B. My opinion is that _____ is a mentally ill person within the meaning of 34-B MRS § 3801(5) as a person having a psychiatric or other disease that substantially impairs that person's mental health or creates a substantial risk of suicide, including persons suffering effects from the use of drugs, narcotics, hallucinogens, or alcohol or other intoxicants. The patient is exhibiting the following symptoms (attach additional statement as needed):

- C. My opinion is that because of this illness, _____ poses a likelihood of foreseeable harm within the meaning of 34-B MRS § 3862-A(1)(G) as follows (check as applicable):
- i) The individual presents a substantial risk in the foreseeable future of serious physical harm to self as manifested by recent threats of, or attempts at, suicide or serious self-inflicted harm.
 - ii) The individual presents a substantial risk in the foreseeable future of serious 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.
- D. The likelihood of foreseeable harm is based on the following recent behaviors or threats (attach additional statement as needed):

- E. Location of person at time of assessment _____
 Check if telemedicine
- F. Referral for treatment or services
- Inpatient
 - Voluntary Hospitalization
 - Involuntary Hospitalization pursuant to 34-B MRS § 3863
 - Outpatient
- G. Other Medical Professionals consulted, if any (Name, License, Contact Info)

_____ Signature of Medical Practitioner	_____ Date
--	---------------

Section 3. Judicial Endorsement

- A. The law enforcement officer identified in Section 1 above has stated that _____ was taken into protective custody pursuant to 34-B M.R.S. § 3862, and that the officer has probable cause to believe that _____ possesses, controls, or is likely to acquire a dangerous weapon(s).

- B. The medical practitioner identified in Section 2 above has found that _____ is a mentally ill person within the meaning of 34-B M.R.S. § 3801(5) and poses a likelihood of foreseeable harm within the meaning of 34-B M.R.S. § 3862-A.

- C. Based on the above, and pursuant to 34-B MRS § 3862-A (4), I endorse this application and find that _____ is a restricted person pursuant to 34- B MRS § 3862-A(1)(K). This endorsement authorizes law enforcement to notify the restricted person as soon as possible, but no later than 24 hours from the time of this endorsement (1) that the person is prohibited from possessing, controlling, acquiring or attempting to acquire a dangerous weapon pending the outcome of a judicial 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 a judicial hearing, and (3) that the person has a right to a judicial hearing within 14 days of notice.

<p>_____ Superior Court Justice/District Court Judge/Judge of Probate/Justice of the Peace (Printed Name of Judicial Officer)</p>	
<p>_____ (Signature)</p>	<p>_____ (Date and Time)</p>

**METRO Entering Agency must enter information in METRO upon judicial endorsement.
Transmit Application with signed judicial endorsement to the District Attorney's Office with
jurisdiction over the restricted person's place of residence.**

METRO Entry made on _____	at _____	by _____
(Date)	(Time)	

Transmitted to DA's Office on _____	at _____	by _____
(Date)	(Time)	

STATE OF MAINE
APPLICATION FOR WEAPONS RESTRICTION ORDER
34-B MRS § 3862-A

APPENDIX 1
OFFICER'S STATEMENT OF PROBABLE CAUSE

Based on the probable cause outlined below, I took _____
into protective custody on _____ at _____ in _____
(Date) (Time) (Municipality)
pursuant to 34-B MRS § 3862, and I believe that _____
possesses, controls, or may acquire a dangerous weapon(s).

[Include the information that gave rise to the probable cause determination for protective custody and the belief that the person possesses, controls, or may acquire a dangerous weapon(s), as well as a description of recent or recurring actions and behaviors. Attach the person's pertinent criminal history record information (convictions and non-convictions), as well as all available pertinent investigative record information. Also, include a description and location of dangerous weapons, if known.]

Signature of Officer

Date

**STATE OF MAINE
WEAPONS RESTRICTION ORDER
34-B MRS § 3862-A**

NOTICE OF SERVICE ON RESTRICTED PERSON

TO: _____

1. Law enforcement took you into protective custody.
2. A qualified medical practitioner found that you currently present a likelihood of foreseeable harm, and a judicial official endorsed that determination.
3. You may not possess, control, or acquire or attempt to possess, control, or acquire a firearm or other dangerous weapon until a court dissolves the restriction. You must surrender to law enforcement any firearms or other dangerous weapons currently in your possession or control. If you immediately comply with the surrender order, you are not subject to arrest or prosecution as a person prohibited from possessing or controlling dangerous weapons.
4. If you do not comply with the surrender order or if you possess, control, or acquire or attempt to possess, control, or acquire a dangerous weapon during the period of restriction, you are subject to arrest and prosecution as a person prohibited from possessing or controlling dangerous weapons.
5. You have a right to a court hearing within 14 days of this notice during which you may engage legal counsel, which a court may appoint if you are indigent.
6. Any firearms or other dangerous weapons you surrendered to law enforcement will be returned to you if the court dissolves the restrictions.

_____	_____	_____
(Printed Name of Officer Making Service)	(Signature of Officer Making Service)	(Date & Time of Service)
_____	_____	
(Printed Name of Restricted Person)	(Signature of Restricted Person)	

**METRO Entering Agency must enter information in METRO upon service of order.
Transmit Service of Order to the District Attorney's Office with jurisdiction
over the restricted person's place of residence.**

METRO Entry made on _____	at _____	by _____	_____
(Date)	(Time)		

Transmitted to DA's Office on _____	at _____	by _____	_____
(Date)	(Time)		

Appendix L

Army laws- Reserve Components

Command Directed Mental Health Evaluations

10 U.S. Code § 12301 - Reserve components generally

(a)

In time of war or of national emergency declared by Congress, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit, and any member not assigned to a unit organized to serve as a unit, of a reserve component under the jurisdiction of that Secretary to active duty for the duration of the war or emergency and for six months thereafter. However a member on an inactive status list or in a retired status may not be ordered to active duty under this subsection unless the Secretary concerned, with the approval of the Secretary of Defense in the case of the Secretary of a military department, determines that there are not enough qualified Reserves in an active status or in the inactive National Guard in the required category who are readily available.

(b)

At any time, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit, and any member not assigned to a unit organized to serve as a unit, in an active status in a reserve component under the jurisdiction of that Secretary to active duty for not more than 15 days a year. However, units and members of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection without the consent of the governor of the State (or, in the case of the District of Columbia National Guard, the commanding general of the District of Columbia National Guard).

(c)

So far as practicable, during any expansion of the active armed forces that requires that units and members of the reserve components be ordered to active duty as provided in subsection (a), members of units organized and trained to serve as

units who are ordered to that duty without their consent shall be so ordered with their units. However, members of those units may be reassigned after being so ordered to active duty.

(d)

At any time, an authority designated by the Secretary concerned may order a member of a reserve component under his jurisdiction to active duty, or retain him on active duty, with the consent of that member. However, a member of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection without the consent of the governor or other appropriate authority of the State concerned.

(e)

The period of time allowed between the date when a Reserve ordered to active duty as provided in subsection (a) is alerted for that duty and the date when the Reserve is required to enter upon that duty shall be determined by the Secretary concerned based upon military requirements at that time.

(f)

The consent of a Governor described in subsections (b) and (d) may not be withheld (in whole or in part) with regard to active duty outside the United States, its territories, and its possessions, because of any objection to the location, purpose, type, or schedule of such active duty.

(g)

(1)

A member of a reserve component may be ordered to active duty without his consent if the Secretary concerned determines that the member is in a [captive status](#). A member ordered to active duty under this section may not be retained on active duty, without his consent, for more than 30 days after his [captive status](#) is terminated.

(2)

The Secretary of Defense shall prescribe regulations to carry out this section. Such regulations shall apply uniformly among the armed forces under the jurisdiction of the Secretary. A determination for the purposes of this subsection that a member is in a [captive status](#) shall be made pursuant to such regulations.

(3)

In this section, the term "[captive status](#)" means the status of a member of the armed forces who is in a missing status (as defined in [section 551\(2\) of title 37](#)) which occurs as the result of a hostile action and is related to the member's military status.

(h)

(1) When authorized by the Secretary of Defense, the Secretary of a military department may, with the consent of the member, order a member of a reserve component to active duty—

(A)

to receive authorized medical care;

(B)

to be medically evaluated for disability or other purposes; or

(C)

to complete a required Department of Defense health care study, which may include an associated medical evaluation of the member.

(2)

A member ordered to active duty under this subsection may, with the member's consent, be retained on active duty, if the Secretary concerned considers it appropriate, for medical treatment for a condition associated with the study or evaluation, if that treatment of the member is otherwise authorized by law.

(3)

A member of the Army National Guard of the United States or the Air National Guard of the United States may be ordered to active duty under this subsection only with the consent of the Governor or other appropriate authority of the State concerned.

10 U.S. Code § 1090b - Commanding officer and supervisor referrals of members for mental health evaluations

(a) **REGULATIONS.** —

The Secretary of Defense shall prescribe and maintain regulations relating to commanding officer and supervisor referrals of members of the armed forces for [mental health evaluations](#). The regulations shall incorporate the requirements set forth in subsections (b), (c), and (d) and such other matters as the Secretary considers appropriate.

(b)REDUCTION OF PERCEIVED STIGMA. —The regulations required by subsection (a) shall, to the greatest extent possible—

(1)

seek to eliminate perceived stigma associated with seeking and receiving mental health services, promoting the use of mental health services on a basis comparable to the use of other medical and health services; and

(2)

clarify the appropriate action to be taken by commanders or supervisory personnel who, in good faith, believe that a subordinate may require a [mental health evaluation](#).

(c)PROCEDURES FOR INPATIENT EVALUATIONS.—The regulations required by subsection (a) shall provide that, when a commander or supervisor determines that it is necessary to refer a member of the armed forces for a [mental health evaluation](#) or is required to make such a referral pursuant to the process described in subsection (e)(1)(A)—

(1)

the health evaluation shall only be conducted in the most appropriate clinical setting, in accordance with the [least restrictive alternative principle](#); and

(2)

only a psychiatrist, or, in cases in which a psychiatrist is not available, another [mental health professional](#) or a physician, may admit the member pursuant to the referral for a [mental health evaluation](#) to be conducted on an inpatient basis.

(d)PROHIBITION ON USE OF REFERRALS FOR MENTAL HEALTH EVALUATIONS TO RETALIATE AGAINST WHISTLEBLOWERS.—

The regulations required by subsection (a) shall provide that no person may refer a member of the armed forces for a [mental health evaluation](#) as a reprisal for making or preparing a lawful communication of the type described in [section 1034\(c\)\(2\) of this title](#), and applicable regulations. For purposes of this subsection, such communication shall also include a communication to any appropriate authority in the chain of command of the member.

(e)SELF-INITIATED REFERRAL PROCESS. —

(1) The regulations required by subsection (a) shall, with respect to a member of the armed forces—

(A)

provide for a self-initiated process that enables the member to trigger a referral for a [mental health evaluation](#) by requesting such a referral from a commanding officer or supervisor who is in a grade above E-5;

(B)ensure the function of the process described in subparagraph (A) by—

(i)

requiring the commanding officer or supervisor of the member to refer the member to a mental health provider for a [mental health evaluation](#) as soon as practicable following the request of the member (including by providing to the mental health provider the name and contact information of the member and providing to the member the date, time, and place of the scheduled [mental health evaluation](#)); and

(ii)

ensure [111](#) the member may request a referral pursuant to subparagraph (A) on any basis (including on the basis of a concern relating to fitness for duty, occupational requirements, safety issues, significant changes in performance, or behavioral changes that may be attributable to possible changes in mental status); and

(C)ensure that the process described in subparagraph (A)—

(i)

reduces stigma in accordance with subsection (b), including by treating referrals for [mental health evaluations](#) made pursuant to such process in a manner similar to referrals for other medical services, to the maximum extent practicable; and

(ii)

protects the confidentiality of the member to the maximum extent practicable, in accordance with requirements for the confidentiality of health information under the [Health Insurance Portability and Accountability Act of 1996 \(Public Law 104–191\)](#) and applicable privacy laws.

(2)In making a referral for an evaluation of a member of the armed forces triggered by a request made pursuant to the process described in paragraph (1)(A), if the member has made such a request on the basis of a concern that the member is a potential or imminent danger to self or others, the commanding officer or supervisor of the member shall observe the following principles:

(A)

With respect to safety, if the commander or supervisor determines the member is exhibiting dangerous behavior, the first priority of the commander or supervisor shall be to ensure that precautions are taken to protect the safety of the member, and others, prior to the arrival of the member at the location of the evaluation.

(B)With respect to communication, prior to such arrival, the commander or supervisor shall communicate to the provider to which the member is being referred (in a manner and to an extent consistent with paragraph (1)(C)(ii)), information on the circumstances and observations that led to—

(i)

the member requesting the referral; and

(ii)

the commander or supervisor making such referral based on the request.

(f) ANNUAL TRAINING REQUIREMENT.—

On an annual basis, each Secretary concerned shall provide to the members of the Armed Forces under the jurisdiction of such Secretary a training on how to recognize personnel who may require [mental health evaluations](#) on the basis of the individual being an imminent danger to self or others, as demonstrated by the behavior or apparent mental state of the individual.

(g) DEFINITIONS.—In this section:

(1)

The term "[mental health professional](#)" means a psychiatrist or clinical psychologist, a person with a doctorate in clinical social work, or a psychiatric clinical nurse specialist.

(2)

The term "[mental health evaluation](#)" means a psychiatric examination or evaluation, a psychological examination or evaluation, an examination for psychiatric or psychological fitness for duty, or any other means of assessing the state of mental health of a member of the armed forces.

(3) The term "[least restrictive alternative principle](#)" means a principle under which a member of the armed forces committed for hospitalization and treatment shall be placed in the most appropriate and therapeutic available setting—

(A)

that is no more restrictive than is conducive to the most effective form of treatment; and

(B)

in which treatment is available and the risks of physical injury or property damage posed by such placement are warranted by the proposed plan of treatment.

(Added [Pub. L. 112-81, div. A, title VII, § 711\(a\)\(1\)](#), Dec. 31, 2011, [125 Stat. 1475](#), § 1090a; renumbered § 1090b and amended [Pub. L. 117-81, div. A, title VII, §§ 701\(c\)\(1\)\(A\)](#), 704, Dec. 27, 2021, [135 Stat. 1778](#), 1780.)

Appendix M

Army Regulation AR-190 Paragraphs 4-5 (17 January 2019)

Applicable portions of this regulation were, by agreement, provided by the US Army, other non-related portions of this regulation were not provided.

.....(2) Unit Commanders will-

(a) Account for and inventory privately owned firearms and ammunition secured in unit arms.

(b) Ensure that a DA Form 3749 has been issued for each privately owned firearm secured in the arms room. Privately owned firearms will be inventoried in conjunction with and at the frequency of the inventory of military weapons.

(c) Establish limits on the quantity and type of privately owned ammunition stored in the arms room, based upon availability of space and safety considerations.

(3) Personnel keeping or storing privately owned firearms and ammunition (including authorized war trophy firearms) on an installation will-

(a) Comply with federal, state, and local laws and regulations on ownership, possession, registration, off-post transport, and use.

(b) Store both firearms and ammunition in the unit arms room or other locations authorized by the installation commander.

(c) Follow local security and safety regulations. Safeguard the unit issued DA Form for turn-in to the unit armorer, when the firearm is withdrawn from the arms room.

(d) Withdraw privately owned firearms and ammunition from the unit arms room only upon approval of the unit commander or representative.



Department of Defense INSTRUCTION

NUMBER 6490.04

March 4, 2013

Incorporating Change 1, Effective April 22, 2020

USD(P&R)

SUBJECT: Mental Health Evaluations of Members of the Military Services

References: See Enclosure 1

1. PURPOSE. In accordance with the authority in DoD Directive 5124.02 (Reference (a)), this instruction:

- a. Reissues DoD Instruction 6490.4 (Reference (b)), establishing policy, assigning responsibilities, and prescribing procedures for the referral, evaluation, treatment, and medical and command management of Service members who may require assessment for mental health issues, psychiatric hospitalization, and risk of imminent or potential danger to self or others.
- b. Incorporates and cancels DoD Directive 6490.1 (Reference (c)).
- c. Implements section 1090a of Title 10, United States Code (Reference (d)) and section 711(b) of Public Law 112-81, the National Defense Authorization Act for Fiscal Year 2012 (Reference (e)).

2. APPLICABILITY. This instruction:

- a. Applies to the OSD, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD.
- b. Does **not** apply to:
 - (1) Voluntary self-referrals.
 - (2) Required periodic pre- and post-deployment mental health assessments for Service members deployed in connection with a contingency operation in accordance with DoD Instruction 6490.03 (Reference (f)).

(3) Responsibility and competency inquiries conducted in accordance with the guidelines established in the Rule for Courts Martial 706 of the Manual for Courts-Martial (Reference (g)).

(4) Interviews conducted in accordance with guidelines established for the Family Advocacy Program in DoD Instruction 6400.01 (Reference (h)).

(5) Interviews conducted in accordance with guidelines established for drug or alcohol abuse rehabilitation programs in DoD Instruction 1010.04 (Reference (i)).

(6) Clinical referrals requested by other healthcare providers as a matter of clinical judgment and when the Service member consents to the evaluation.

(7) Evaluations under authorized law enforcement or corrections system procedures.

(8) Evaluations for special duties or occupational classifications and other evaluations expressly required by applicable DoD issuance or Service regulation that are not subject to commanders' discretion.

3. POLICY. It is DoD policy that:

a. It is the responsibility of the DoD to ensure that policy and procedures are implemented in a manner that removes the stigma associated with Service members seeking and receiving mental health services. The use of mental health services is considered, whenever possible, to be comparable to the use of other medical and health services. This extends to policy directed at ensuring fitness for duty, returning injured or ill Service members to full duty status after appropriate treatment, and managing medical conditions that may endanger the Service member, others, or mission accomplishment.

b. Commanders and supervisors who in good faith believe a subordinate Service member may require a mental health evaluation are authorized to direct an evaluation under this instruction or take other actions consistent with the procedures in Enclosure 3. In these circumstances, a command directed mental health evaluation (MHE) has the same status as any other military order.

c. Referral for a command directed evaluation (CDE) of a Service member to a mental healthcare provider (MHP) for a non-emergency MHE may be initiated only by a commander or supervisor as defined in the Glossary. Such evaluations may be for a variety of concerns, including fitness for duty, occupational requirements, safety issues, significant changes in performance, or behavior changes that may be attributable to possible mental status changes.

d. A commander or supervisor will refer a Service member for an emergency MHE as soon as is practicable whenever:

(1) A Service member, by actions or words, such as actual, attempted, or threatened violence, intends or is likely to cause serious injury to him or herself or others.

(2) When the facts and circumstances indicate that the Service member's intent to cause such injury is likely.

(3) When the commanding officer believes that the Service member may be suffering from a severe mental disorder.

e. No one may refer a Service member for an MHE as a reprisal for making or preparing a lawful communication of the type described in section 1034 of Reference (d) and in DoD Directive 7050.06 (Reference (j)).

f. A Service member may initiate a voluntary self-referral for mental health care. When self-initiated, the MHP will follow the policy and procedures of DoD Instruction 6490.08 (Reference (k)) with regard to both the presumption of non-notification, required notifications, and the extent of disclosure.

g. Training must be provided annually to all Service members by the Military Departments regarding the recognition of personnel who may require MHE for imminent dangerousness, based on the individual's behavior or apparent mental state.

h. Mental health assessments of Service members deployed in connection with a contingency operation will be conducted, for purposes other than CDEs, in accordance with the authority and procedures in Reference (f).

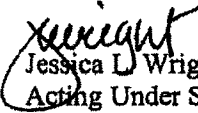
4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES. See Enclosure 3.

6. RELEASABILITY. **Cleared for public release.** This instruction is available on the Directives Division Website at <http://www.dtic.mil/whs/directives>.

7. SUMMARY OF CHANGE 1. The change to this issuance updates references and removes expiration language in accordance with current Chief Management Officer of the Department of Defense direction.

8. EFFECTIVE DATE. This instruction is effective March 4, 2013.


Jessica L. Wright,
Acting Under Secretary of Defense for
Personnel and Readiness

Enclosures

1. References
2. Responsibilities
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Glossary

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ENCLOSURE 1

REFERENCES

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- (b) DoD Instruction 6490.4, "Requirements for Mental Health Evaluations of Members of the Armed Forces," August 28, 1997 (hereby cancelled)
- (c) DoD Directive 6490.1, "Mental Health Evaluations of Members of the Armed Forces," October 1, 1997 (hereby cancelled)
- (d) Sections 1034 and 1090a of Title 10, United States Code
- (e) Section 711(b) of Public Law 112-81, "National Defense Authorization Act for Fiscal Year 2012," December 31, 2011
- (f) DoD Instruction 6490.03, "Deployment Health," June 19, 2019
- (g) Manual for Courts-Martial, United States, current version
- (h) DoD Instruction 6400.01, "Family Advocacy Program (FAP)," May 1, 2019
- (i) DoD Instruction 1010.04, "Problematic Substance Use by DoD Personnel," February 20, 2014
- (j) DoD Directive 7050.06, "Military Whistleblower Protection," April 17, 2015
- (k) DoD Instruction 6490.08, "Command Notification Requirements to Dispel Stigma in Providing Mental Health Care to Service Members," August 17, 2011
- (l) National Center for State Courts, "Guidelines for Involuntary Civil Commitment," 1986
- (m) DoD Instruction 1332.18, "Disability Evaluation System (DES)," August 5, 2014
- (n) DoD Instruction 1332.14, "Enlisted Administrative Separations," January 27, 2014, as amended

ENCLOSURE 2

RESPONSIBILITIES

1. ASSISTANT SECRETARY OF DEFENSE FOR HEALTH AFFAIRS (ASD(HA)). Under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness, the ASD(HA) monitors compliance with this instruction and develop additional guidance as required.

2. SECRETARIES OF THE MILITARY DEPARTMENTS. The Secretaries of the Military Departments:

a. Require departmental monitoring of compliance with this instruction.

b. Develop policy that ensures active duty Service member involuntary psychiatric hospitalization procedures at DoD inpatient facilities are modeled after guidance prepared by professional civilian mental health organizations that serve as credible sources of nationally recognized best practices and standards of care for emergency evaluation, hospitalization, and treatment for adults (e.g., guidance written by the American Psychiatric Association regarding emergency evaluation of adults).

c. Monitor the ability of commanders and supervisors, medical treatment facility personnel, emergency care providers, and MHPs to meet the requirements of this instruction to follow:

(1) Military Department involuntary emergency admission procedures.

(2) The State's civil commitment procedures, if the commitment occurs at a civilian facility, for the State in which the psychiatric emergency admission occurs, in accordance with National Center for State Courts, "Guidelines for Involuntary Civil Commitment" (Reference (1)).

(3) Military involuntary admission procedures, if the commitment occurs at an MTF.

d. Ensure that commanders and supervisors are proficient in fulfilling their responsibilities, as set forth by Military Department's policies and procedures, to:

(1) Initiate and follow procedures for both emergency and non-emergency CDEs and facilitating other MHE referrals.

(2) Execute emergency management and precautions in the referral and care of a potentially dangerous Service member.

(3) Provide the Service member with the resources, opportunity, and encouragement to seek non-directed mental health, social service, or other types of assistance, consistent with the promotion of well-being and maintenance of the Service member's health and readiness.

e. Ensure that MHPs follow Military Department procedures, policy, and clinical guidance for completing clinical risk assessment evaluations and related documentation.

f. Ensure periodic training is provided to all commanders, supervisors, and Service members regarding the recognition of personnel who may require MHE for dangerousness to self, others, or mission, based on the individual's behavior or apparent mental state. The training must meet the requirements in Enclosure 3 of this instruction.

g. Ensure medical quality management case review is completed for all cases that, subsequent to a CDE or other MHE, result in suicide, homicide, serious injury, or violence.

h. Develop and implement effective procedures, consistent with Reference (j), to enforce the prohibition on using CDEs to retaliate against whistleblowers and the other provisions in that directive concerning protected communications.

ENCLOSURE 3

PROCEDURES

1. TRAINING FOR COMMANDERS, SUPERVISORS, AND SERVICE MEMBERS

a. Periodic training provided to all commanders, supervisors, and Service members must provide instruction on how to recognize Service members who may require mental health evaluation for dangerousness to self, others, or mission based on the Service member's behavior or apparent mental state.

b. Such training must include:

- (1) The recognition of potentially dangerous behavior.
- (2) Appropriate use of security or civilian police authorities.
- (3) Management of emergencies pending the arrival of security or civilian police.
- (4) Administrative management of such cases.

c. Training must be specific to the needs, rank, and level of responsibility and assignment of commanders, supervisors, and Service members.

2. REFERRAL OF SERVICE MEMBER FOR COMMANDER OR SUPERVISOR DIRECTED MHE

a. The responsibility for determining whether or not referral for MHE should be made rests with the Service member's commander or supervisor at the time of the referral.

(1) A senior enlisted Service member may be designated by the commander or supervisor for ordering an emergency CDE for enlisted Service members.

(2) In cases involving a commissioned officer, a commissioned officer of rank senior to the officer to be referred may be designated.

b. When a commander or supervisor, in good faith, believes that a Service member may require a non-emergency MHE, he or she will:

(1) Advise the Service member that there is no stigma associated with obtaining mental health services.

(2) Refer the Service member to an MHP, providing both name and contact information.

(3) Tell the Service member the date, time, and place of the scheduled MHE.

c. When a commander or supervisor refers a Service member for an emergency MHE owing to concern about potential or imminent danger to self or others, the following principles should be observed:

(1) Safety. When a Service member is exhibiting dangerous behavior, the first priority of the commander or supervisor is to ensure that precautions are taken to protect the safety of the Service member and others, pending arrangements for and transportation of the Service member to the location of the emergency evaluation.

(2) Communication. The commander or supervisor will report to the MHP circumstances and observations regarding the Service member that led to the emergency referral either prior to or while the Service member is en route to emergency evaluation.

3. COMMAND PROMOTION OF CARE SEEKING FOR THE MAINTENANCE OF TOTAL WELL-BEING

a. Commanders or supervisors may make informal, non-mandatory recommendations for Service members under their authority to seek care from an MHP when circumstances do not require a CDE based on safety or mission concerns. Under such circumstances, the commander or supervisor will inform the Service member that he or she is providing a recommendation for voluntary self-referral and not ordering the care.

b. Commanders and supervisors will demonstrate leadership and direct involvement in development of a culture of total well-being of Service members by providing consistent and ongoing messaging and support for the benefits and value of seeking mental health care and voluntarily-sought substance abuse education.

c. Commanders and supervisors may educate Service members with respect to additional options for assistance, including confidential counseling from family support, Military OneSource resources, consultation from chaplains, and options for obtaining assistance with financial, legal, childcare, housing, or educational issues.

d. Commanders and supervisors will not substitute alternative approaches to CDE when there is significant concern regarding a Service member's safety or performance of duty or concern for the safety of others.

4. HOSPITALIZATION FOR PSYCHIATRIC EVALUATION AND TREATMENT

a. Pursuant to a referral, only a psychiatrist, or, when a psychiatrist is not available, a physician or another MHP with admitting privileges may admit a Service member for an inpatient MHE.

b. The evaluation will be conducted in the most appropriate clinical setting, in accordance with the least restrictive alternative principle.

c. Voluntary inpatient admission is appropriate when a psychiatrist, or, when a psychiatrist is not available, a physician or another MHP with admitting privileges, determines that admission is clinically indicated and the Service member has the capacity to provide and does provide informed consent regarding treatment and admission.

d. An involuntary inpatient admission to an MTF is appropriate only when a psychiatrist, or, when a psychiatrist is not available, a physician or another MHP with admitting privileges, makes an evaluation that the Service member has, or likely has, a severe mental disorder or poses imminent or potential danger to self or others. Guidelines include:

(1) Level of Care. Placement in a less restrictive level of care would result in inadequate medical care.

(2) Admission Criteria. Admission is consistent with applicable clinical practice guidelines.

(3) Re-evaluation Following Admission. The Service member will be re-evaluated, under the purview of the admitting facility, within 72 hours of admission by an independent privileged psychiatrist or other medical officer if a psychiatrist is not available.

(a) The independent medical reviewer will notify the Service member of the purpose and nature of the review and of the member's right to have legal representation during the review by a judge advocate or by an attorney of the member's choosing at the member's own expense if reasonably available within the required time period for the review.

(b) The independent medical reviewer will determine and document in the inpatient medical record whether, based on clear and convincing evidence, continued involuntary hospitalization is clinically appropriate. If so, the reviewer will document the clinical conditions requiring continued involuntary hospitalization and the circumstances required for discharge from the hospital, and schedule another review within 5 business days.

(c) The independent medical reviewer will notify the Service member of the results of each review.

(4) Medical Record Documentation. Documentation of the evaluation encounter, findings, and disposition must be consistent with applicable standards of care and will additionally:

(a) Document information pertaining to the inpatient admission in the Service member's MTF electronic health record including at a minimum communication of the assessment of risk for dangerousness, treatment plan, medications, progress of treatment, discharge assessment, and recommendations to commanders or supervisors regarding continued

fitness for duty and actions the MHP recommends be taken to assist with the continued treatment plan.

(b) Upon discharge, MHPs will provide, consistent with Reference (k), memorandums or copies of consultation reports to the commander or supervisor with sufficient clinical information and recommendations to allow the commander or supervisor to understand the Service member's condition and make reasoned decisions about the Service member's safety, duties, and medical care requirements.

(5) Additional Patient Rights. The Service member has the right to contact a relative, friend, chaplain, attorney, any office of Inspector General (IG), and anyone else the member chooses, as soon as the Service member's condition permits, after admission to the hospital.

e. When a physician who is not an MHP admits a Service member pursuant to the referral for an MHE to be conducted on an inpatient basis, the physician will:

(1) Make reasonable attempts to consult with an MHP with admitting privileges prior to and during the admission (e.g., by telecommunications).

(2) Arrange for transfer to an MHP with admitting privileges as soon as practicable.

f. In the case of referral for an involuntary inpatient admission to a civilian facility, guidelines in Reference (l) will be considered and the process established under the law of the State where the facility is located will be followed. If in a foreign country, the applicable laws of the host nation will be followed.

5. FITNESS AND SUITABILITY FOR SERVICE

a. MHPs will report to commanders or supervisors who make CDEs, but in doing so will make the minimum necessary disclosure and, when applicable, will advise how the commander or supervisor can assist the Service member's treatment. Additional information may be disclosed consistent with Enclosure 2 of Reference (k) as justified by other circumstances described there.

b. The providers will advise the commander or supervisor of any duty limitations or recommendations for monitoring or additional evaluation, recommendations for treatment, referral of the Service member to a Medical Evaluation Board for processing through the Disability Evaluation System in accordance with DoD Instruction 1332.18 (Reference (m)), or administrative separation of the Service member for personality disorder or unsuitability for continued military service under DoD Instruction 1332.14 (Reference (n)). Any referral for consideration of potential separation from Military Service will be in accordance with Military Department procedures.

6. DUTY TO TAKE PRECAUTIONS TO PROTECT OTHERS FROM HARM

a. In any case in which a Service member has communicated to a privileged healthcare provider an explicit threat to kill or seriously injure a clearly identified or reasonably identifiable person, or to destroy property under circumstances likely to lead to serious bodily injury or death, and the Service member has the apparent intent and ability to carry out the threat, the responsible healthcare provider will make a good faith effort to take precautions against the threatened injury. Such precautions include, but are not limited to:

(1) Notifications. Privileged healthcare providers will notify:

(a) The Service member's commander or supervisor that the Service member is imminently or potentially dangerous.

(b) Military or civilian law enforcement authorities where the threatened injury may occur.

(c) Law enforcement of specifically named or identified potential victim(s).

(d) The Service member's commander or supervisor and any identifiable individuals who had been harmed or threatened harm by the Service member immediately before hospitalization about the Service member's pending discharge from inpatient status.

(2) Recommendations and Referrals. The MHP will recommend as appropriate:

(a) Appropriate precautions to the Service member's commander or supervisor.

(b) Referral of the Service member's case to the Service's physical evaluation board.

(c) Admission of the Service member to an inpatient psychiatric or medical unit for evaluation and treatment.

(d) Administrative separation of the Service member to the commander or supervisor.

b. The provider will inform the Service member and document in the medical record that precautions have been taken.

7. MEDICAL QUALITY MANAGEMENT CASE REVIEW

a. Every MHE or treatment case in which a Service member ultimately commits an act resulting in suicide, homicide, serious injury, or significant violence will be systematically reviewed. The findings will be used to inform patient care processes, risk management, and technical competence of staff members.

b. Reviews will focus upon the assessment, treatment, and clinical progress of the Service member, as well as the administrative recommendations and follow-through. Quality reviews will be documented in the risk management record and, if appropriate, the credentials record.

c. The disposition and outcomes of Service members identified as being at increased risk of danger to self or others will be included in on-going quality management activities. This will include review of a Service member's treatment over time, level of resolution, and ability to return to full duty.

8. COMPLAINTS OF REPRISAL FOR PROTECTED COMMUNICATION. Any Service member who believes a CDE is a reprisal for the Service member having made a protected communication may file a complaint with the DoD IG Hotline or a Military Department IG in accordance with Reference (j).

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

ASD(HA)	Assistant Secretary of Defense for Health Affairs
CDE	command directed evaluation
IG	Inspector General
MHE	mental health evaluation
MHP	mental healthcare provider

PART II. DEFINITIONS

These terms and their definitions are for the purpose of this instruction.

CDE. An MHE ordered by a commander or supervisor.

commander. Any commissioned officer who exercises command authority over a Service member. The term includes a military member designated in accordance with this instruction to carry out any activity of a commander under this instruction.

emergency. Any situation in which a Service member is found or determined to be a risk for harm to self or others.

good faith. A sincere belief without improper purpose.

least restrictive alternative principle. A principle under which a Service member committed for hospitalization and treatment will be placed in the most appropriate and therapeutic setting available:

That is no more restrictive than is conducive to the most effective form of treatment; and

In which treatment is available and the risks of physical injury or property damage posed by such placement are warranted by the proposed plan of treatment.

MHE. A psychiatric examination or evaluation, a psychological examination or evaluation, an examination for psychiatric or psychological fitness for duty, or any other means of assessing the mental health of a Service member.

MHP. A psychiatrist or clinical psychologist, a person with a doctorate in clinical social work, or a psychiatric nurse practitioner. In cases of outpatient MHEs only, licensed clinical social workers who possess a master's degree in clinical social work will also be considered MHPs.

privileged healthcare provider. A MHP or other healthcare provider whose credentials for practice have been verified and have been granted permission to practice within the scope and defined limits of their current licensure, relevant education and clinical training.

supervisor. A commissioned officer within or out of a Service member's official chain of command, or civilian employee in a grade level comparable to a commissioned officer, who:

Exercises supervisory authority over the Service member owing to the Service member's current or temporary duty assignment or other circumstances of the Service member's duty assignment; and

Is authorized due to the impracticality of involving an actual commanding officer in the member's chain of command to direct an MHE.

voluntary self-referral. The process of seeking information about or obtaining an appointment for an MHE or treatment initiated by a Service member without being ordered or directed by a commander or supervisor.



U.S. ARMY

Command Directed Behavioral Health Evaluation (CDBHE) Process



Commander maintains non-stigmatizing Unit BH education program

Signs of BH Condition

- Change in behavior
- Unusual behavior
- Intense sadness
- Report of BH concerns

Indicators of Risk

- Threatening statements
- Statements re: self-harm
- Concentration problems
- Distracting behavior

Indicators of Emergency

- Threatening behavior
- Threatens self-harm
- Disoriented/disorganized
- CDR concerned about risk to Soldier

Conditions NOT considered a CDBHE:

- Voluntary self-referral
- Deployment Health or Periodic Health Assessment
- Family Advocacy Program or ASAP Assessment
- Clinical referrals by health care providers
- Law enforcement/corrections evaluations
- Competency inquiry
- Evaluations required by regulation not subject to CDR's discretion

CDR suspects a BH condition

Yes → Risk to safety or unit mission

No → Sustain Unit BH education efforts

Risk to safety or unit mission

Yes → Is this an emergency?

No → Informal recommendation that SM seek BH support
Consult Psychological Health Program for assistance
www.usar.army.mil/zhhp/

Is this an emergency?

Yes → Emergent Evaluation Process

No → Non-Emergent CDBHE Process

Emergent Evaluation Process

Ensure Safety

- Contain Situation (Escort SM)
- Use Community First Responders

Use Local Resources

- Closest ER
- If on base may use MTF

Communicate with Provider

- Reason for referral/situation
- Ensure release of info to unit
- Assume provider will be civilian

Ensure Duty Status for Accountability

- If during BA, payment covered
- If not BA, insurance, out of pocket

Documentation/Notification

- Initiate SIR/CCIR
- Initiate 2173, MMSO, LOD if duty related
- TRICARE one-off if needed

Follow Up

- Follow through on treatment recommendations
- After resolution of acute episode schedule non-emergent CDBHE for admin documentation/actions

Non-Emergent CDBHE Process

Notify SM

- Intent to refer for CDBHE
- Normalize (no stigma)

Use MTF

- Contact nearest MTF BH
- Communicate reason for CDBHE
- Obtain appointment time, loc.

Direct SM to CDBHE

- Provide appointment information
- Communicate directly with SM
- No waiting time or counseling

Ensure Duty Status for Accountability & Pay

- Place on orders for movement and for evaluation time
- Escort if required by MTF or if there is perceived risk

Documentation

- MTF completes DA 3822
- Risk/dangerousness
- Treatment plan incl. meds
- Fitness for duty

Follow Up

- Engage PHP for assistance on access to care
- Any administrative actions related to fitness for duty

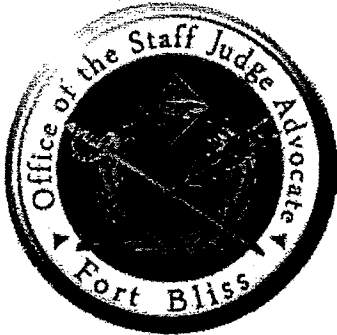
DODI 6490.04, "Mental Health Evaluations of Members of the Military Services," 4MAR13
 MEDCOM 17-031 CDBHE, 31MAY07
 MEDCOM 19-010, DoA Form 3822, Mental Status Exam

March 2021

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THE MILITARY COMMAND EXCEPTION TO THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

12/29/22, 2:40 PM



The Military Command Exception to the Health Insurance Portability and Accountability Act

By Capt. Kayli Ragsdale, Fort Bliss Legal Assistance Office

The Health Insurance Portability and Accountability Act is a federal law that requires national standards to protect sensitive patient health information from being disclosed without the patient's consent or knowledge. HIPAA permits protected health information of service members to be disclosed under special circumstances. Under the Military Command Exception, a healthcare provider may disclose the PHI of service members for authorized activities to appropriate military command authorities. An appropriate military command authority includes commanders who exercise authority over the service member, or another person designated by a commander. The exception does not require healthcare providers to disclose PHI to commanders. It only permits the disclosure. If the disclosure is made, then only the minimum amount of information necessary should be provided. Furthermore, the exception does not permit a commander's direct access to a service member's electronic medical record, unless otherwise authorized by the service member or the HIPAA Privacy Rule.

Authorized activities for which PHI may be disclosed to a commander include but are not limited to fitness for duty determinations, fitness to perform a particular assignment, or the service member's ability to carry out any other activity essential for the military mission. Once PHI has been disclosed to military command authorities, it is no longer subject to HIPAA. However, it remains protected under the Privacy Act of 1974.

To dispel stigma around service members seeking mental health care or voluntary substance misuse education, Department of Defense Instruction 6490.08 was issued to balance patient confidentiality rights with the commander's need to make informed operational and risk management decisions. DoD healthcare providers are not permitted to notify a service member's commander when the member obtains these services unless certain conditions are met. However, if one of the below conditions or circumstances apply, the healthcare provider is required to notify the commander:

- **Harm to self.** The provider believes there is a serious risk of self-harm by the service member either as a result of the condition itself or medical treatment of the condition.
- **Harm to others.** The provider believes there is a serious risk of harm to others either as a result of the condition itself or medical treatment of the condition. This includes any disclosure concerning child abuse or domestic violence.
- **Harm to mission.** The provider believes there is a serious risk of harm to a specific military operational mission. Such serious risk may include disorders that significantly impact impulsivity, insight, reliability, and judgment.
- **Special personnel.** The service member is in the Personnel Reliability Program or is in a position that has been pre-identified by Service regulation or the command as having mission responsibilities of such potential sensitivity or urgency that normal notification standards would significantly risk mission accomplishment.
- **Inpatient care.** The service member is admitted or discharged from any inpatient mental health or substance abuse treatment facility, as these are considered critical points in treatment and support nationally recognized patient safety standards.
- **Acute medical conditions interfering with duty.** The service member is experiencing an acute mental health condition or is engaged in an acute medical treatment regimen that impairs the service member's ability to perform assigned duties.
- **Substance misuse treatment program.** The service member has entered into, or is being discharged from, a formal outpatient or inpatient treatment program for the treatment of substance abuse or dependence.

- **Command-directed mental health evaluation.** The mental health services are obtained as a result of a command-directed mental health evaluation.
- **Other special circumstances.** The notification is based on other special circumstances in which proper execution of the military mission outweighs the interests served by avoiding notification, as determined on a case-by-case basis by a health care provider.

In making a disclosure pursuant to the circumstances described above, healthcare providers shall provide the minimum amount of information to satisfy the purpose of the disclosure. In general, this shall consist of: (1) the diagnosis; a description of the treatment prescribed or planned; impact on duty or mission; recommended duty restrictions; the prognosis; any applicable duty limitations; and implications for the safety of self or others; and (2) ways the command can support or assist the service member's treatment.

Commanders must protect the privacy of information provided pursuant to the Privacy Act. Information provided shall be restricted to personnel with a specific need to know; that is, access to the information must be necessary for the conduct of official duties. Such personnel shall also be accountable for protecting the information. Commanders must also reduce stigma through positive regard for those who seek mental health assistance to restore and maintain their mission readiness, just as they would view someone seeking treatment for any other medical issue.

If you have more questions about this topic, please schedule an appointment to speak with an attorney at the Fort Bliss Legal Assistance Office by either calling (915) 568-7141 during office hours or emailing USARMY.BLISS.HQDA-OTJAG.MESG.BLISS-LEGAL-ASSISTANCE-OFFICE@MAIL.MIL anytime.

Appendix Q

18 U.S. Code § 922(9) - Unlawful acts

(a) It shall be unlawful—

(9)

for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes.

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver.....

(2)

any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;.....

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person, including as a juvenile—

(1)

is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2)

is a fugitive from justice;

(3)

is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4)

has been adjudicated as a mental defective or has been committed to any mental institution at 16 years of age or older;....

Appendix R

27 CFR § 478.11 - Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this subpart. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms “includes” and “including” do not exclude other things not enumerated which are in the same general class or are otherwise within the scope thereof.

Act. 18 U.S.C. Chapter 44.

Committed to a mental institution. A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

Mental institution. Includes mental health facilities, mental hospitals, sanitariums, psychiatric facilities, and other facilities that provide diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

27 C.F.R. 478.1-Definitions

Adjudicated as a mental defective.

1. A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:
 1. Is a danger to himself or to others; or
 2. Lacks the mental capacity to contract or manage his own affairs.

Committed to a mental institution.

A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

Mental institution.

Includes mental health facilities, mental hospitals, sanitariums, psychiatric facilities, and other facilities that provide diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

FEDERAL FIREARMS PROHIBITION UNDER 18 U.S.C. § 922(g)(4)
PERSONS ADJUDICATED AS A MENTAL DEFECTIVE OR COMMITTED TO A MENTAL INSTITUTION

Any person who has been “adjudicated as a mental defective” or “committed to a mental institution” is prohibited under Federal law from shipping, transporting, receiving, or possessing any firearm or ammunition. Violation of this Federal offense is punishable by a fine of \$250,000 and/or imprisonment of up to ten years. See 18 U.S.C. §§ 922(g)(4) and 924(a)(2). The terms enumerated below are located in 27 C.F.R. § 478.11.

A person is “**adjudicated as a mental defective**” if a court, board, commission, or other lawful authority has made a determination that a person, as a result of marked subnormal intelligence, mental illness, incompetency, condition, or disease:

- ❖ Is a danger to himself or to others;
- ❖ Lacks the mental capacity to contract or manage his own affairs;
- ❖ Is found insane by a court in a criminal case; **or**
- ❖ Is found incompetent to stand trial, or not guilty by reason of lack of mental responsibility, pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. §§ 850a, 876b.

A person is “**committed to a mental institution**” if that person has been formally committed to a mental institution by a court, board, commission, or other lawful authority.

The term *includes* a commitment:

- ❖ To a mental institution involuntarily;
- ❖ For mental defectiveness or mental illness; or
- ❖ For other reasons, such as for drug use.

The term *does not include* a person in a mental institution for observation or by voluntary admission.

The term “**lawful authority**” means an entity having legal authority to make adjudications or commitments.

The term “**mental institution**” includes mental health facilities, mental hospitals, sanitariums, psychiatric facilities, and other facilities that provide diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

AFFIRMATIVE DEFENSES

A person is *not prohibited* under 18 U.S.C. § 922(g)(4) if:

The person received relief from Federal firearms disabilities under 18 U.S.C. § 922(g)(4) by:

- ❖ The Bureau of Alcohol, Tobacco, Firearms and Explosives under 18 U.S.C. § 925(c); **or**
- ❖ A proper Federal or State authority under a relief from disabilities program that meets the requirements of the NICS Improvement Amendments Act of 2007, Public Law 110-180.

The mental health adjudication or commitment was imposed by a Federal department or agency, **and** the:

- ❖ Adjudication or commitment was set aside or expunged;
- ❖ Person was fully released from mandatory treatment, supervision, or monitoring;
- ❖ Person was found to no longer suffer from the disabling mental health condition;
- ❖ Person has otherwise been found to be rehabilitated; or
- ❖ Adjudication or commitment was based solely on a medical finding without opportunity for hearing by the Federal department or agency with proper jurisdiction.

For further information about section 922(g)(4) or other firearms prohibitions, please contact your local field office of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) by calling (800) 800-3855.

Appendix S

Subpoenas Issued by the Commission

This Appendix is included in this report pursuant to the provisions of Resolves 2023, ch. 129, Section 13, which requires the Commission to include in its final report a detailed account of each subpoena the Commission issued.

Resolves (2023), ch. 129 was passed unanimously by the Legislature and signed into law on February 13, 2024. Because it was emergency legislation, the law went into immediate effect.

Following passage, the members of the Commission voted unanimously to issue subpoenas to the following individuals and entities:

For Records and Documents

1. Maine State Police – In addition to police reports from various local, county, state, and federal police agencies, the Maine State Police had in its possession medical and Army records that the Commission sought but that the State Police could not release without a duly authorized subpoena due to various federal and state confidentiality laws. The subpoena was issued on Friday, February 16, 2024, and served on Tuesday, February 20, 2024. It should be noted that February 19, 2024, was a holiday. The State Police promptly provided the Commission with copies of all the records requested.
2. Four Winds Hospital - Katonah, NY. A subpoena for medical records was served on hospital counsel on April 11, 2024. Due to NY law and concerns expressed by hospital counsel of potential administrative penalties under federal HIPAA regulations, it was agreed that all parties would file a motion in Superior Court to enforce the subpoena with all parties consenting to the Court order. The Maine Office of the Attorney General, through Chief Deputy Attorney General Christopher C. Taub, filed the motion on April 12, 2024. It was presented to the Court that same afternoon and the motion was promptly granted without objection. The Court ordered Four Winds Hospital to provide the records within seven days. Four Winds Hospital provided the records in a very timely manner.

For both records requests, the Commission voted unanimously to request a subpoena for the production of records be served on the respective party.

For Testimony and Records

Many members of Robert Card's Army Reserve Unit, 3rd Training Battalion, 304th Regiment, Saco, Maine, had relevant testimony and records related to this investigation. Due to various

federal privacy, national security, and HIPAA laws, the U.S. Army would not allow individual soldiers to testify in their capacity as reservists without a subpoena. Federal law and regulations also required that the Army issue Authorization to Testify letters for each witness.

Counsel from the U.S. Army JAG Office, Civil Division, worked with the Commission to issue testimonial authorization letters and assisted in confirming the availability of each Army witness. For each of the following witnesses, the Commission voted unanimously to issue subpoenas for their testimony and to produce relevant records. All but two of the witnesses listed below consented to acceptance of service of their respective subpoenas by mail. Two of the witnesses requested personal service, which occurred at their civilian workplaces, due to requirements of their civilian employers. Subpoenas were issued to the following individuals:

1. Sean Hodgson
2. Jeremy Reamer
3. Kelvin Mote
4. Samuel Tlumac
5. Jordan Jandreau
6. Matthew Noyes
7. Edward Yurek
8. Daryl Reed
9. Ryan Vazquez
10. Matthew Dickison
11. Mark Ochoa
12. Patricia Moloney-civilian Army contract employee

The testimony of all the above individuals, except for Ryan Vazquez, Mark Ochoa, Patricia Moloney, and Matthew Dickison, was taken under oath at a live in-person hearing. These hearings were live-streamed, had simultaneous ASL Interpreters, and the recordings were later posted on the Commission's website. Due to scheduling issues and long-distance travel concerns, it was agreed by all parties to take the testimony of Ryan Vasquez, Matthew Dickison, Patricia Moloney, and Mark Ochoa by Zoom. The hearings were recorded, had simultaneous ASL interpretation and/or closed captioning followed by ASL interpretation added to the recording where simultaneous ASL interpretation was not available, and the respective videos were then posted to the Commission's website.

Transcripts of each of the above Army witnesses' testimony were prepared and sent to them for review and signature. As of the date of this report, Kelvin Mote, an Army reservist and an officer of the Ellsworth Police Department; Samuel Tlumac, a Maine state trooper, and an Army reservist; Jeremy Reamer, an officer with the Nashua, New Hampshire, Police Department and commander of the Saco, Maine, AR unit; and Lt. Col. Ryan Vazquez signed and returned their transcripts. None of the other individuals who were subpoenaed signed

or returned their transcripts despite multiple requests. Two people's transcripts were received as this report went to print and were forwarded to counsel for review and signature.

Dickinson had been transferred to an overseas post and testified via Zoom.

A formal *Touhy* request for the testimony of Patricia Moloney, a civilian contracted employee with the US Army, was provided to the Army in early June 2024. The Army JAG office reported it was required to go through its contracting office to contact Ms. Moloney's employer. On June 25, 2024, via an email from the Army JAG Office, it was reported that her employer would not permit her to testify, citing federal OMB laws. Thus, a subpoena to compel her testimony was electronically served on Ms. Moloney's legal representative on June 26, 2024. Her testimony was scheduled for July 11, 2024. Ms. Moloney failed to appear. Shortly thereafter, new legal counsel contacted the Commission, and her testimony was taken under oath on July 18, 2024. It was not helpful or informative.

When it was discovered that the information thought to rest with Patricia Moloney actually belonged to civilian PHP contractor Cari Sanford, it was arranged through counsel to have her appear and testify. This was necessary due to the delay in securing Ms. Moloney's testimony (over six weeks) and the expiration of the subpoena authority.

One other subpoena was issued to a local law enforcement officer. After further investigation, the Commission voted unanimously to withdraw the subpoena, and the officer and the department's counsel were informed that testimony was no longer needed. The witness fee check was returned to the Commission.

Four Winds Hospital agreed to extend the authority of the subpoena previously issued to provide for Dr. Sara Klagsbrun's testimony. The testimony was taken on August 1, 2024, and conducted in a private meeting due to HIPAA concerns. Four Winds stated on the record that voluntary participation in the process did not constitute a waiver of any future jurisdictional defenses should lawsuits be filed.

Appendix T

Studies, Websites and Reports reviewed

1. *Report of the Task Force on Accessibility to Appropriate Communication Methods for Deaf and Hard-of-hearing Patients*, State of Maine 131st Legislature, First Regular and First Special Session, Office of Policy and Legal Analysis, January 2024. [Task Force Report on Interpretation Deficiencies in the Medical Setting Jan. 2024.pdf](#),
2. *Preventing Suicide in the US Military, Recommendations from the Suicide Prevention and Response Independent Review Committee*, (2022) [Army Suicide prevention and Intervention Report 2022.pdf](#)
3. *Guidance for Emergency Responses to People with Behavioral Health or Other Disabilities*, (May 2023), U.S. Department of Justice and Department of Health and Human Services.
https://www.justice.gov/d9/2023-05/Sec.%2014%28a%29%20-%20DOJ%20and%20HHS%20Guidance%20on%20Emergency%20Responses%20to%20Individuals%20with%20Behavioral%20Health%20or%20Other%20Disabilities_FINAL.pdf
4. *Critical Incident Review: Active Shooter at Robb Elementary School*. Washington, DC: U.S. Department of Justice. 2024, Office of Community Oriented Policing Services. (2024).
<https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-r1141-pub.pdf>
5. *National Incident Management System Training Program*, U.S. Department of Homeland Security, Federal Emergency Management Agency, Summer 2020, <https://www.fema.gov/emergency-managers/nims/implementation-training>
6. *National Incident Management System Basic Guidance for Public Information Officers*, (December 2020) <https://www.fema.gov/emergency-managers/nims/implementation-training>
7. *How to Conduct an After Action Review*, National Police Foundation, Washington, D.C., Office of Community Policing Services, U.S. Department of Justice (2020).
<https://portal.cops.usdoj.gov/resourcecenter/Home.aspx?item=cops-w0878>
8. *Community Driven Crisis Response: A Workbook For Coordinators*, Council of State Governments, Justice Center (January 2023),

<https://csgjusticecenter.org/publications/community-driven-crisis-response-a-workbook-for-coordinators/>

9. Office of Justice- Mass Violence Resources, National Criminal Justice Association Learning Lunch, Washington, D.C. (April 2024)
10. National Mass Violence Victimization Resource Center: Multiple resource articles addressing victims, community, law enforcement and recovery needs and planning, suggested reading lists and information and resources addressing the impact of the media response on victims and communities. These resources include QR Codes for accessing various materials. <https://nmvvc.org/>
11. *Reporting a Traumatic Community Event-Resources For Media Workers*, and *Dart Center Style Guide for Trauma-Informed Journalism*, (2021), Dart Center for Journalism and Trauma, Columbia University Graduate School of Journalism, <https://dartcenter.org/resources>
12. The Crime and Justice Research Alliance-Extensive listing of various crime and justice topics, research experts: <https://crimeandjusticeresearchalliance.org/explore-research/>
13. Incidents of Mass Violence Resources, SAMHSA <https://www.samhsa.gov/find-help/disaster-distress-helpline/disaster-types/incidents-mass-violence>
14. National Child Traumatic Stress Net Work-Mass Violence Resources <https://www.nctsn.org/what-is-child-trauma/trauma-types/terrorism-and-violence/mass-violence>
15. Victims First- A national victim centered network that provides best practices, advocacy and tracks donations and groups to ensure the funds go to the victims. <https://www.victimfirst.org>
16. *Boston One Fund: Lessons for Leaders*: <https://hdl.handle.net/2144/8943>
17. *The 14th Biennial Report of the Maine Domestic Abuse Homicide Review Panel: The Power of Collaboration: From Intervention to Prevention* [14th DAHRP Report Final word 1.23.24 - accessible.pdf \(maine.gov\)](#)

18. *U.S Troops Still Train on Weapons With Known Risk of Brain Injury*, N.Y. Times, November 26, 2023, updated November 28, 2023, <https://www.nytimes.com/2023/11/26/us/military-brain-injrocket-launcher.html>
19. *Gun Violence in the US 2013*, The Gun Violence Archive is an evidence based, non-profit non-political organization that has maintained a verified comprehensive data base of gun violence in the United States since 2013. <https://www.gunviolencearchive.org/past-tolls>
20. *Public Mass Shootings Research: Special Report*, National Institute of Justice, US Department of Justice, December 2023. <https://nij.ojp.gov/library/publications/nij-special-report-public-mass-shootings-research> .
21. *Statement of the National Shattering Silence Coalition-Maine Chapter, Maine's PTP Program*. This statement was presented to the Commission on June 13, 2024.
22. *Traumatic Brain Injury Center Of Excellence: 2023 Annual Report*, US Defense Health Agency, <https://www.health.mil/Reference-Center/Reports/2024/03/29/2023-TBICoE-Annual-Report> .
23. *Military Health System Mental Health Hub*, <https://www.health.mil/Military-Health-Topics/Mental-Health>
24. *Reserve Health Readiness Program, Military Health System*, <https://www.health.mil/Military-Health-Topics/Health-Readiness/Reserve-Health-Readiness-Program> and <https://www.health.mil/Military-Health-Topics/Health-Readiness/Reserve-Health-Readiness-Program/Army-Reserve> .
25. *FEMA Emergency Management Quick Reference Guide*, www.fema.gov/sites/default/files/documents/fema_eoc-quick-reference-guide.pdf
26. *The Four C's of Emergency Management*, https://emilms.fema.gov/is_0289/groups/51.html#:~:text=Aligned%20with%20the%20founding%20principles,coordination%2C%20collaboration%2C%20and%20cooperation.
27. *Disaster Management Roles and Responsibilities- FEMA Training*, <https://training.fema.gov/emiweb/downloads/is208sdmunit1.pdf>
28. *Firearm Violence: A Public Health Crisis in America*, The U.S. Surgeon General's Advisory 2024, www.hhs.gov/surgeongeneral/priorities/firear-violence/index.html

29. *Active Shooter Incidents in the United States, 2023*, Federal Bureau of Investigation, U.S. Department of Justice, Washington D.C. and the Advanced Law Enforcement Rapid Response Training (ALERRT) Center at Texas State University, www.fbi.gov/file-repository/2023-active-shooter-report-062124.pdf/view

30. *How Blast Waves Can Injure the Brain*, New York Times Video, <https://www.nytimes.com/video/us/100000009504123/how-blast-waves-can-injure-the-brain.html?smid=url-share> .

31. *Patterns of Brain Damage is Pervasive in Navy SEALs Who Died by Suicide*, New York Times, June 30, 2024, <https://www.nytimes.com/2024/06/30/us/navy-seals-brain-damage-suicide.html?smid=nytcore-ios-share&referringSource=articleShare>

32. *Risk Assessment and Tools for Identifying Patients at High Risk for Violence and Self-Harm in the ED*, November 2015, American College of Emergency Room Physicians, www.acep.org/siteassets/sites/acep/media/public-health/risk-assessment-violence_selfharm.pdf

Appendix U

Proposed Legislation -Blast Over Safety Act

118TH CONGRESS
2D SESSION

H. R. 8025

To amend title 10, United States Code, to clarify roles and responsibilities within the Department of Defense relating to subconcussive and concussive brain injuries and to improve brain health initiatives of the Department of Defense, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 16, 2024

Mr. KHANNA (for himself, Ms. STEFANIK, Ms. HOULAHAN, Mrs. KIGGANS of Virginia, Ms. LEE of Nevada, Mr. WALTZ, Mr. BISHOP of Georgia, Mr. MOULTON, Ms. PINGREE, Mr. GOLDEN of Maine, and Mr. PANETTA) introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to clarify roles and responsibilities within the Department of Defense relating to subconcussive and concussive brain injuries and to improve brain health initiatives of the Department of Defense, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Blast Overpressure Safety Act”.

SEC. 2. ROLES AND RESPONSIBILITIES FOR COMPONENTS OF THE OFFICE OF THE SECRETARY OF DEFENSE RELATING TO BRAIN INJURIES FROM CONCUSSIVE AND SUBCONCUSSIVE BLASTS.

(a) FINDINGS AND SENSE OF CONGRESS.—

(1) FINDINGS.—Congress finds the following:

(A) Research conducted by the Department of Defense underscores that concussive and subconcussive brain injuries can arise not only from combat scenarios but also from routine training exercises.

(B) Even when adhering to established safety guidelines, the act of firing or being exposed to the firing of heavy weapons, grenades, and breaching during training sessions can potentially lead to cognitive impairments, particularly affecting aspects such as delayed verbal memory, visual-spatial memory, and executive function.

(C) Traumatic brain injuries have become the signature wound of members of the Armed Forces from the Global War on Terrorism generation.

(D) Special Warfare Operator 1st Class Ryan Larkin and Sergeant First Class Michael Froede both suffered traumatic brain injuries during their rigorous training and multiple combat deployments and were tragically lost to suicide as a result of their wounds. Their stories highlight the critical issues surrounding traumatic brain injury within the military and the subsequent risk of suicide among affected individuals.

(E) This Act honors the sacrifices of Special Warfare Operator 1st Class Ryan Larkin and Sergeant First Class Michael Froede, as well as the thousands of affected members of the Armed Forces by expediting the efforts of the Department of Defense to mitigate, identify, and treat traumatic brain injuries within the Armed Forces.

(2) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) Congress commends the Department of Defense for its efforts to implement measures consistent with modern science to limit the occurrence of concussive and subconcussive brain injuries among members of the Armed Forces and facilitate the rehabilitation of those recovering from service-related traumatic brain injuries; and

(B) the Secretary of Defense should sustain those efforts while also enhancing overall knowledge and protection against brain injuries.

(b) ESTABLISHMENT OF ROLES.—The Secretary of Defense shall establish the roles and responsibilities of components of the Office of the Secretary of Defense for the mitigation, identification, and treatment of concussive and subconcussive brain injuries and the monitoring and documentation of blast overpressure exposure as follows:

(1) The Under Secretary of Defense for Personnel and Readiness shall be responsible for, not later than one year after the date of the enactment of this Act—

(A) establishing a baseline neurocognitive assessment to be conducted during the accession process of members of the Armed Forces before the beginning of training;

(B) establishing annual neurocognitive assessments to monitor the cognitive function of such members to be conducted—

- (i) at least every three years as part of the periodic health assessment of such members;
- (ii) as part of the post-deployment health assessment of such members; and
- (iii) prior to separation from service in the Armed Forces;

(C) ensuring all neurocognitive assessments of such members, including those required under subparagraphs (A) and (B), are maintained in the electronic medical record of such member;

(D) establishing a process for annual review of blast overpressure exposure and traumatic brain injury logs specified in paragraph (2)(A) for each member of the Armed Forces during the periodic health assessment of such member for cumulative exposure in order to refer members with recurrent and prolonged exposure to specialty care; and

(E) establishing standards for recurrent and prolonged exposure.

(2) The Assistant Secretary of Defense for Readiness shall be responsible for, not later than one year after the date of the enactment of this Act, the following:

(A) Establishing and maintaining blast overpressure exposure logs and traumatic brain injury logs for every member of the Armed Forces.

(B) Integrating those logs into the Individual Longitudinal Exposure Record (as defined in section 1171(b) of title 38, United States Code) for such member.

(C) Including in those logs at least the following:

(i) The number of previous exposures to blast overpressure, including the number of exposures per unit of time, date, blast overpressure in pounds per square inch, and number of times the member of the Armed Forces fires, uses, or is exposed to weapons that cause blast overpressure.

(ii) Any residual physical, mental, or emotional effects resulting from such exposure.

(iii) The source of the exposure, activity when the exposure occurred, whether it occurred during training or deployment, and any other relevant context of such exposure.

(iv) The treatment that the member sought and received in connection with such exposure.

(v) The number of concussive and subconcussive brain injuries, including traumatic brain injuries, sustained.

(vi) The severity of concussive and subconcussive brain injuries, including traumatic brain injuries, sustained.

(vii) Other head trauma, regardless of whether it requires the treatment of a medical provider.

(3) The Inspector General of the Department of Defense shall be responsible for—

(A) not later than two years after the date of the enactment of this Act, submitting to Congress a report (in unclassified form, but with a classified annex as necessary) evaluating the establishment and maintenance of the logs required under paragraph (2), including the cumulative exposure annotated in the blast overpressure exposure logs and traumatic brain injury logs, as well as the compliance of the Department of Defense with Department policies to address the brain health of members of the Armed Forces;

(B) not later than 10 days after submitting the report under subparagraph (A), making available to the public the unclassified portion of the report; and

(C) beginning on the date that is three years after the date of the enactment of this Act—

(i) evaluating the continued fulfillment by the Department of the requirements under paragraph (2), including the cumulative exposure annotated in the blast overpressure exposure logs and traumatic brain injury logs, as well as the compliance of the Department with Department policies to address the brain health of members of the Armed Forces;

(ii) not later than December 31 of each year, submitting to Congress a report (in unclassified form, but with a classified annex as necessary) containing the results of such evaluation; and

(iii) not later than 10 days after submitting each report under clause (ii), making available to the public the unclassified portion of such report.

(4) The Under Secretary of Defense for Acquisition and Sustainment shall be responsible for, not later than one year after the date of enactment of this Act, the following:

(A) Establishing the minimization of exposure to blast overpressure as a performance parameter when drafting requirements for new weapons systems that produce blast overpressure for the Department of Defense.

(B) Establishing a requirement that any entity under contractual agreement with the Department as part of the defense weapons acquisition process shall provide to the Department blast overpressure measurements and safety data for any weapons system that produce blast overpressure and exceed the department set maximum exposure limit procured from such entity.

(C) Establishing a requirement that any test plan for a weapons system incorporate testing for blast overpressure measurements and safety data.

(D) Not later than December 31 of each year, publishing on a publicly available website, including govinfo.gov or successor website, a report that includes—

(i) blast overpressure measurements and safety data for weapons systems of the Department, including how those systems have been tested and in what environments; and

(ii) plans to improve protection for exposure by members of the Armed Forces to in-use weapons systems with unsafe levels of blast overpressure and exposure.

(c) COORDINATION.—The officials specified in paragraphs (1), (2), (3), and (4) of subsection (b) shall coordinate and align their plans and activities to implement such subsection among themselves and with the Secretaries of the military departments.

(d) BRIEFINGS AND REPORTS.—

(1) IMPLEMENTATION BRIEFING.—Not later than 180 days after the date of the enactment of this Act, and every 180 days thereafter, the Secretary of Defense shall provide to the congressional defense committees a briefing on the plans, associated timelines, and activities conducted to implement subsection (a).

(2) REPORT ON CONCUSSIVE AND SUBCONCUSSIVE BRAIN INJURIES.—

(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the Secretary of Defense shall submit to the congressional defense committees a report on—

(i) concussive and subconcussive brain injuries caused during military operations, including combat operations, among members of the Armed Forces, including information on—

(I) the Armed Force of the member;

(II) the name of the operation;

(III) the location within the area of responsibility;

(IV) the number of concussive and subconcussive brain injuries caused;

(V) the severity of concussive and subconcussive brain injuries caused;

(VI) the treatment received for a concussive or subconcussive brain injury;

(VII) whether a member of the Armed Forces was medically retired from service due to a concussive or subconcussive brain injury;

(VIII) whether a member of the Armed Forces died by suicide after sustaining a concussive or subconcussive brain injury; and

(IX) the source of the injury, including the activity conducted when the injury occurred; and

(ii) concussive and subconcussive brain injuries caused during training events among members of the Armed Forces, including information on—

(I) the Armed Force of the member;

(II) the type of training;

(III) the location of the training;

(IV) the number of concussive and subconcussive brain injuries caused;

(V) the severity of concussive and subconcussive brain injuries caused;

(VI) the treatment received for a concussive or subconcussive brain injury;

(VII) whether a member of the Armed Forces was medically retired from service due to a concussive or subconcussive brain injury;

(VIII) whether a member of the Armed Forces died by suicide after sustaining a concussive or subconcussive brain injury; and

(IX) the source of the injury, including the activity conducted when the injury occurred.

(B) FORM.—Each report submitted under subparagraph (A) shall be submitted in unclassified form, but may include a classified annex.

(C) PUBLIC AVAILABILITY.—Not later than 10 days after submitting a report under subparagraph (A), the Secretary of Defense shall make the unclassified portion of the report available to the public, including by publishing the report on the govinfo.gov website, or successor website.

(3) REPORT ON DISCHARGES RELATED TO CONCUSSIVE AND SUBCONCUSSIVE BRAIN INJURIES.—

(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the officials specified in paragraphs (1) and (2) of subsection (b) and the Secretary of Defense shall submit to the congressional defense committees a report on members of the Armed Forces who were discharged administratively or punitively and had a concussive or subconcussive brain injury, including a traumatic brain injury, including information on—

(i) whether the injury or injuries occurred during combat operations or training and the associated combat operations or training incident;

(ii) the severity of the injury or injuries;

(iii) if any such injury was combat related, the name of the operation;

(iv) the treatment sought and received for the injury or injuries;

(v) the number of discharge upgrade requests in connection with such an injury or injuries that have been made; and

(vi) the number of such discharge upgrade requests that have been approved.

(B) FORM.—Each report submitted under subparagraph (A) shall be submitted in unclassified form, but may include a classified annex.

(C) PUBLIC AVAILABILITY.—Not later than 10 days after submitting a report under subparagraph (A), the Secretary of Defense shall make the unclassified portion of the report available to the public, including by publishing the report on the govinfo.gov website, or successor website.

(4) REPORT ON MEDICAL PROVIDERS TRAINED IN CONCUSSIVE AND SUBCONCUSSIVE BRAIN INJURIES.—

(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the Secretary of Defense shall submit to the congressional defense committees a report on medical providers within the Defense Health Agency who are trained in traumatic brain injury or concussive and subconcussive brain injuries as a sub-specialty of neurology, including information on—

(i) the number of such providers, disaggregated by location;

(ii) the billets of such personnel;

(iii) the number of medical personnel currently participating in training or a fellowship relating to traumatic brain injury or concussive and subconcussive brain injuries; and

(iv) the strategy of the Department of Defense to increase the number of medical providers trained in traumatic brain injury or concussive and subconcussive brain injuries as a sub-specialty of neurology.

(B) PUBLIC AVAILABILITY.—Not later than 10 days after submitting a report under subparagraph (A), the Secretary of Defense shall make the report available to the public, including by publishing the report on the govinfo.gov website, or successor website.

(5) REPORT ON EFFORTS TO COORDINATE WITH ALLIES AND PARTNERS.—

(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the Secretary of Defense shall submit to the congressional defense committees a report on the efforts of the Department of Defense to share and coordinate on blast

injury and subconcussive and concussive brain injury research efforts with allies and partners of the United States, which shall include information on—

(i) the activities coordinated with such allies and partners to better prevent, mitigate, and treat injuries from blast exposure; and

(ii) recommendations to improve future collaboration with such allies and partners, including administrative and data structures.

(B) PUBLIC AVAILABILITY.—Not later than 10 days after submitting a report under subparagraph (A), the Secretary of Defense shall make the report available to the public, including by publishing the report on the govinfo.gov website, or successor website.

(e) DEFINITIONS.—In this section:

(1) CONGRESSIONAL DEFENSE COMMITTEES.—The term “congressional defense committees” has the meaning given that term in section 101(a)(16) of title 10, United States Code.

(2) CONTRACTUAL AGREEMENT.—The term “contractual agreement” includes a contract, grant, cooperative agreement, and any other similar transaction or relationship.

(3) NEUROCOGNITIVE ASSESSMENT.—The term “neurocognitive assessment” means a standardized cognitive and behavioral evaluation using validated and normed testing performed in a formal environment that uses specifically designated tasks to measure cognitive function known to be linked to a particular brain structure or pathway, which may include a measurement of intellectual functioning, attention, new learning or memory, intelligence, processing speed, and executive functioning.

(4) TRAUMATIC BRAIN INJURY.—The term “traumatic brain injury” means a traumatically induced structural injury or physiological disruption of brain function as a result of an external force that is indicated by new onset or worsening of at least one of the following clinical signs immediately following the event:

(A) Alteration in mental status, including confusion, disorientation, or slowed thinking.

(B) Loss of memory for events immediately before or after the injury.

(C) Any period of loss of or decreased level of consciousness, observed or self-reported.

SEC. 3. IMPROVEMENTS TO BRAIN HEALTH INITIATIVES OF DEPARTMENT OF DEFENSE.

(a) BRAIN HEALTH INITIATIVES.—

(1) IN GENERAL.—Part II of subtitle A of title 10, United States Code, is amended by inserting after chapter 55 the following new chapter:

“CHAPTER 55A—BRAIN HEALTH INITIATIVES

“§ 1110n. Definition of traumatic brain injury

“In this chapter, the term ‘traumatic brain injury’ means a traumatically induced structural injury or physiological disruption of brain function as a result of an external force that is indicated by new onset or worsening of at least one of the following clinical signs immediately following the event:

“(1) Alteration in mental status, including confusion, disorientation, or slowed thinking.

“(2) Loss of memory for events immediately before or after the injury.

“(3) Any period of loss of or decreased level of consciousness, observed or self-reported.

“§ 1110n–1. Warfighter Brain Health Initiative

“(a) IN GENERAL.—The Secretary of Defense, in consultation with the Secretaries concerned, shall establish a comprehensive initiative for brain health to be known as the ‘Warfighter Brain Health Initiative’ (in this section referred to as the ‘Initiative’) for the purpose of unifying efforts and programs across the Department of Defense to improve the cognitive performance and brain health of members of the armed forces.

“(b) OBJECTIVES.—The objectives of the Initiative shall be the following:

“(1) To enhance, maintain, and restore the cognitive performance of members of the armed forces through education, training, prevention, protection, monitoring, detection, diagnosis, treatment, and rehabilitation, including through the following activities:

“(A) The establishment of a program to monitor cognitive brain health across the Department of Defense, with the goal of detecting any need for cognitive enhancement or restoration resulting from potential brain exposures of members of armed forces, to mitigate possible evolution of injury or disease progression.

“(B) The identification and dissemination of thresholds for blast exposure and blast overpressure safety and associated emerging scientific evidence that—

“(i) cover brain injury, lung injury, and impulse noise;

“(ii) measure impact over 24-hour, 72-hour to 96-hour, monthly, annual, and lifetime periods;

“(iii) ensure that the thresholds are low enough that they are not associated with cognitive deficits after firing;

“(iv) include thresholds that account for the firing of multiple types of heavy weaponry and use of grenades in one period of time;

“(v) include minimum safe distances and levels of exposure for observers and instructors; and

“(vi) include limits for shoulder-fired heavy weapons.

“(C) The modification of high-risk training and operational activities to mitigate the negative effects of repetitive blast exposure.

“(D) The identification of individuals who perform high-risk training or occupational activities for purposes of increased monitoring of the brain health of such individuals.

“(E) The development and operational fielding of non-invasive, portable, point-of-care medical devices, to inform the diagnosis and treatment of traumatic brain injury.

“(F) The establishment of a standardized monitoring program that documents and analyzes blast exposures that may affect the brain health of members of the armed forces.

“(G) The consideration of the findings and recommendations of the report of the National Academies of Science, Engineering, and Medicine published in 2022 and entitled ‘Traumatic Brain Injury: A Roadmap for Accelerating Progress’ (relating to the acceleration of progress in traumatic brain injury research and care), or any successor report, in relation to the activities of the Department relating to brain health.

“(H) The establishment of policies to encourage members of the armed forces to seek support for brain health when needed, prevent retaliation against such members who seek care, and address other barriers to seeking help for brain health, including due to the impact of blast exposure, blast overpressure, traumatic brain injury, and other health matters.

“(I) The modification of existing weapons systems to reduce blast exposure of the individual using the weapon and those within the minimum safe distance.

“(2) To harmonize and prioritize the efforts of the Department of Defense into a single approach to brain health.

“(c) THRESHOLDS FOR BLAST EXPOSURE AND OVERPRESSURE SAFETY.—

“(1) DEADLINE.—

“(A) IN GENERAL.—Not later than two years after the date of the enactment of the Blast Overpressure Safety Act, the Secretary of Defense shall identify and disseminate the thresholds

for blast exposure and blast overpressure safety and associated emerging scientific evidence required under subsection (b)(1)(B).

“(B) UPDATE.—Not less frequently than every five years, the Secretary of Defense shall update the thresholds for blast exposure and blast overpressure safety and associated emerging scientific evidence required under subsection (b)(1)(B).

“(2) CENTRAL REPOSITORY.—Not later than two years after the date of the enactment of the Blast Overpressure Safety Act, the Secretary of Defense shall establish a central repository of blast-related characteristics, such as pressure profiles and common blast loads associated with specific systems and the environments in which they are used, that is available to members of the armed forces and the public and includes the information described in subsection (b)(1)(B).

“(3) WAIVERS.—

“(A) PROTOCOLS.—Not later than two years after the date of the enactment of the Blast Overpressure Safety Act, the Secretary of Defense shall establish and implement protocols to require waivers in cases in which members of the armed forces must exceed the safety thresholds described in subsection (b)(1)(B), which shall include a justification for exceeding those safety thresholds.

“(B) TRACKING SYSTEM.—

“(i) IN GENERAL.—Not later than two years after the date of the enactment of the Blast Overpressure Safety Act, the Secretary of Defense shall establish a Department of Defense-wide tracking system for waivers described in subparagraph (A), which shall include data contributed by each of the Secretaries concerned.

“(ii) REPORT.—

“(I) IN GENERAL.—Not less frequently than once each year by December 31 of that year following the establishment of the tracking system required under clause (i), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on waivers described in subparagraph (A) that includes—

“(aa) the number of waivers issued, disaggregated by armed force;

“(bb) the justifications provided for each waiver;

“(cc) a description of actions taken by the Secretary concerned to track the health effects on members of the armed forces of exceeding safety thresholds described in subsection (b)(1)(B), document those effects in medical records, and provide care to those members; and

“(dd) a description of the medical care received by those members in response to exceeding these safety thresholds.

“(II) PUBLIC AVAILABILITY.—The Secretary of Defense shall make the information contained in each report submitted under subclause (I) available to the public, including on the govinfo.gov website, or successor website, not later than 10 days after the report is submitted under such subclause.

“(d) FORMAL TRAINING REQUIREMENT.—

“(1) IN GENERAL.—The Secretary of Defense shall ensure that training described in paragraph (2) is required for members of the armed forces before training, deployment, or entering other environments determined to be high-risk by the Secretary concerned.

“(2) TRAINING DESCRIBED.—Training described in this paragraph is training on the following:

“(A) Thresholds for blast exposure and blast overpressure safety and associated emerging scientific evidence required under subsection (b)(1)(B).

“(B) Symptoms of exposure to blasts or blast overpressure.

“(C) Symptoms of traumatic brain injury.

“(e) STRATEGIES FOR MITIGATION AND PREVENTION OF BLAST EXPOSURE AND OVERPRESSURE RISK FOR HIGH-RISK INDIVIDUALS.—In carrying out the Initiative, not later than one year after the date of the enactment of the Blast Overpressure Safety Act, the Secretary of Defense shall establish strategies for mitigating and preventing blast exposure and blast overpressure risk for individuals most at risk for exposure to high-risk training or high-risk occupational activities, which shall include—

“(1) a timeline and process for implementing those strategies;

“(2) a determination of the frequency with which those strategies will be updated, at a rate of not less frequently than every five years; and

“(3) an assessment of how information regarding those strategies will be disseminated to such individuals, including after those strategies are updated.

“(f) ANNUAL BUDGET JUSTIFICATION DOCUMENTS.—In the budget justification materials submitted to Congress in support of the budget of the Department of Defense for each fiscal year (as submitted with the budget of the President under section 1105(a) of title 31), the Secretary of Defense shall include a budget justification display that includes all activities of the Department relating to the Initiative.

“(g) ANNUAL REPORTS.—

“(1) IN GENERAL.—Not later than March 31, 2025, and not less frequently than annually thereafter, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report that includes the following:

“(A) A description of the activities taken under the Initiative and resources expended under the Initiative during the prior fiscal year.

“(B) The number of members of the armed forces impacted by blast overpressure and blast exposure in the prior fiscal year, including—

“(i) the number of members who reported adverse health effects from blast overpressure or blast exposure;

“(ii) the number of members exposed to blast overpressure or blast exposure;

“(iii) the number of members who received treatment for injuries related to blast overpressure or blast exposure, including at facilities of the Department of Defense and at facilities in the private sector;

“(iv) regarding treatment for blast exposure, blast overpressure, or subconcussive or concussive brain injuries at the National Intrepid Center of Excellence, an Intrepid Spirit Center, or an appropriate military medical treatment facility—

“(I) the number of members on the waitlist for such treatment;

“(II) the average period of time those members are on that waitlist; and

“(III) the average number of days between when an appointment is requested and the actual appointment date; and

“(v) the type of care that members receive from facilities of the Department of Defense and the type of care that members receive from facilities in the private sector.

“(C) A summary of the progress made during the prior fiscal year with respect to the objectives of the Initiative under subsection (b).

“(D) A description of the steps the Secretary is taking to ensure that activities under the Initiative are being implemented across the Department of Defense and the military departments.

“(2) PUBLIC AVAILABILITY.—The Secretary of Defense shall make the information contained in each report submitted under paragraph (1) available to the public, including on the govinfo.gov website, or successor website, not later than 10 days after the report is submitted under such paragraph.”.

(b) CONFORMING AND CLERICAL AMENDMENTS.—

(1) CLERICAL AMENDMENT.—The table of sections at the beginning of title 10, United States Code, is amended by inserting before the item relating to chapter 56 the following new items:

“CHAPTER 55A—BRAIN HEALTH INITIATIVES

“Sec.

“1110n. Definition of traumatic brain injury.

“1110n–1. Warfighter Brain Health Initiative.”.

(2) CONFORMING REPEAL.—Section 735 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 ([Public Law 117–263](#); [10 U.S.C. 1071](#) note) is repealed.

(c) INITIAL BRIEFING AND REPORT ON NATIONAL INTREPID CENTER OF EXCELLENCE.—

(1) IN GENERAL.—Not later than 150 days after the date of the enactment of this Act, the Secretary of Defense shall provide to the congressional defense committees a briefing and submit to the congressional defense committees a report on the parameters of the program of record established under section 1110n–3 of title 10, United States Code, as added by subsection (a).

(2) CONGRESSIONAL DEFENSE COMMITTEES DEFINED.—In this subsection, the term “congressional defense committees” has the meaning given that term in section 101(a)(16) of title 10, United States Code.

SEC. 4. PILOT PROGRAM RELATING TO MONITORING OF BLAST COVERAGE.

(a) AUTHORITY.—The Secretary concerned may conduct, as part of the initiative established under section 1110n–1 of title 10, United States Code, as added by section 3, a pilot program under which the Secretary concerned shall monitor blast overpressure exposure through the use of commercially available, off-the-shelf, remote measurements, and document and evaluate data collected as a result of such monitoring.

(b) LOCATIONS.—Monitoring activities under a pilot program conducted pursuant to subsection (a) shall be carried out in each training environment that the Secretary concerned determines poses a risk for blast overpressure exposure.

(c) DOCUMENTATION AND SHARING OF DATA.—If the Secretary concerned conducts a pilot program pursuant to subsection (a), the Secretary concerned shall—

(1) ensure that any data collected pursuant to such pilot program that is related to the health effects of the blast overpressure exposure of a member of the armed forces who participated in the pilot program is documented and maintained by the Secretary of Defense in an electronic health record for the member; and

(2) to the extent practicable, and in accordance with applicable provisions of law relating to data privacy, make data collected pursuant to such pilot program available to other academic and medical researchers for the purpose of informing future research and treatment options.

(d) DEFINITION OF SECRETARY CONCERNED.—In this section, the term “Secretary concerned” has the meaning given such term in section 101 of title 10, United States Code.

SEC. 5. SPECIAL OPERATIONS BRAIN HEALTH AND TRAUMA PROGRAM.

(a) IN GENERAL.—Chapter 55A of title 10, United States Code, as added by section 3, is amended by adding at the end the following new section:

“§ 1110n–2. Special operations brain health and trauma program

“(a) IN GENERAL.—The Commander of the United States Special Operations Command (in this section referred to as the ‘Commander’), in coordination with the Secretary of Defense, shall conduct an intensive, comprehensive brain health and trauma program (in this section referred to as the ‘Program’) to provide coordinated, integrated, multi-disciplinary specialist evaluations, treatment initiation, and aftercare coordination in a highly condensed model for special operations forces.

“(b) EVIDENCE-BASED TREATMENT.—In carrying out the Program, the Commander shall provide evidence-based physical, mental, and behavioral health care and counseling for traumatic brain injury, blast overpressure, blast exposure, and psychological or neurological conditions that are common among members of the special operations forces.

“(c) POPULATION SERVED.—In carrying out the Program, the Commander shall provide the health care and counseling specified in subsection (b) to members of the special operations forces and family members of such members.

“(d) EVALUATION, TESTING, AND TREATMENT.—The Program shall include the following:

“(1) Evaluations by health care providers in the areas of brain injury medicine, neuropsychology, clinical psychology, psychiatry, neuroendocrinology, sports medicine, musculoskeletal medicine, vestibular physical therapy, neuroimaging, and hormonal evaluation.

“(2) Metabolic testing, cardiovascular testing, and cerebrovascular testing.

“(3) Treatment relating to headaches, sleep interventions and medication, injection-based therapies for musculoskeletal pain, cognitive rehab, vestibular physical therapy, and exercise programming.

“(e) COORDINATION.—In carrying out the Program, the Commander shall coordinate with private sector non-profit healthcare organizations that have the capacity and infrastructure to provide the care and services required under the Program.

“(f) MEDICAL RECORDS.—In carrying out the Program, the Commander shall coordinate with the Director of the Defense Health Agency and the Secretaries of the military departments to ensure that the treatment received through the Program is documented in the medical records of members of the armed forces.”.

(b) CLERICAL.—The table of sections at the beginning of chapter 55A of such title, as amended by section 3, is amended by adding at the end the following new item:

“1110n–2. Special operations brain health and trauma program.”.

(c) REPORT AND BRIEFING ON IMPLEMENTATION OF SPECIAL OPERATIONS TRAUMATIC BRAIN INJURY PROGRAM.—

(1) REPORT ON PROGRAM.—

(A) IN GENERAL.—Not later than December 31, 2025, the Commander of the United States Special Operations Command, in coordination with the Secretary of Defense, shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the special operations brain health and trauma program required under section 1110n–2 of title 10, United States Code, as added by subsection (a), which shall include—

(i) the benefits of the program to members of the Armed Forces and their families;

(ii) the number of members assisted by such program;

(iii) the type of treatment received under such program;

(iv) the rate of members of the Armed Forces returning to duty after receiving treatment under such program;

(v) how the Commander is coordinating with the Director of the Defense Health Agency and the Secretaries of the military departments to update records of members of the Armed Forces with treatment received under such program; and

(vi) whether and how the program should be expanded to include other vulnerable populations within the Armed Forces;

(B) PUBLIC AVAILABILITY.—The Secretary of Defense shall make the information contained in the report submitted under subparagraph (A) available to the public, including on the govinfo.gov website, or successor website, not later than 10 days after the report is submitted under such subparagraph.

(2) COMPTROLLER GENERAL REPORT AND BRIEFING.—Not later than 180 days after the date of the enactment of this Act, the Comptroller General of the United States shall

brief the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives on the implementation of section 1110n–2 of title 10, United States Code, as added by subsection (a), with a report to follow at a mutually agreed upon date.

SEC. 6. NATIONAL INTREPID CENTER OF EXCELLENCE.

(a) **IN GENERAL.**—Chapter 55A of title 10, United States Code, as added by section 3 and amended by section 5, is further amended by adding at the end the following new section:

“§ 1110n–3. National Intrepid Center of Excellence

“(a) **IN GENERAL.**—Not later than 120 days after the date of the enactment of the Blast Overpressure Safety Act, the Secretary of Defense shall establish the National Intrepid Center of Excellence (in this section referred to as the ‘Center’) as a program of record subject to milestone reviews and compliance with the requirements under this section.

“(b) **DUTIES.**—The duties of the Center are as follows:

“(1) To provide interdisciplinary care to prevent, diagnose, treat, and rehabilitate members of the armed forces with traumatic brain injury, post-traumatic stress disorder, symptoms from blast overpressure or blast exposure, and other mental health conditions.

“(2) Support and conduct research and education on traumatic brain injury, post-traumatic stress disorder, blast overpressure or blast exposure, and other mental health conditions.

“(c) **CHILDCARE.**—Childcare services shall be made available for individuals seeking help through the National Intrepid Center of Excellence.

“(d) **ANNUAL REPORT.**—

“(1) **IN GENERAL.**—Not later than one year after the date of the enactment of the Blast Overpressure Safety Act, and annually thereafter, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report that shall include, for the year covered by the report—

“(A) the number of individuals to whom the Center has provided services;

“(B) the number of individuals who return to active duty in the armed forces after receiving services from the Center, and the stage in their career at which they seek treatment at the Center;

“(C) the number of individuals whose families are able to participate in programs provided by the Center; and

“(D) the number of individuals on a waitlist for treatment at the Center and the average period those individuals are on the waitlist.

“(2) PUBLIC AVAILABILITY.—The Secretary of Defense shall make the information contained in each report submitted under paragraph (1) available to the public, including on the govinfo.gov website, or successor website, not later than 10 days after the report is submitted under such paragraph.”.

(b) CLERICAL.—The table of sections at the beginning of chapter 55A of such title, as amended by sections 3 and 5, is amended by adding at the end the following new item:

“1110n–3. National Intrepid Center of Excellence.”.

SEC. 7. MANDATORY TRAINING ON HEALTH EFFECTS OF CERTAIN BRAIN TRAUMA.

(a) IN GENERAL.—[Chapter 55A](#) of title 10, United States Code, as added by section 3 and amended by sections 5 and 6, is further amended by adding at the end the following new section:

“§ 1110n–4. Mandatory training on health effects of certain brain trauma

“Not less frequently than once every two years, the Secretary of Defense shall provide to each medical provider and training manager of the Department of Defense mandatory training with respect to the potential health effects of blast overpressure, blast exposure, and traumatic brain injury.”.

(b) CLERICAL.—The table of sections at the beginning of chapter 55A of such title, as amended by sections 3, 5, and 6, is amended by adding at the end the following new item:

“1110n–4. Mandatory training on health effects of certain brain trauma.”.

SEC. 8. ANNUAL BRIEFING ON INDIVIDUAL LONGITUDINAL EXPOSURE RECORD.

(a) IN GENERAL.—[Chapter 55](#) of title 10, United States Code, is amended by adding at the end the following new section:

“§ 1110c. Annual briefing on Individual Longitudinal Exposure Record

“(a) IN GENERAL.—Not less frequently than annually, the Secretary of Defense, in consultation with the Secretary of Veterans Affairs, shall provide the appropriate committees of Congress a briefing on—

“(1) the quality of the databases of the Department of Defense that provide the information presented in the Individual Longitudinal Exposure Record; and

“(2) the usefulness of the Individual Longitudinal Exposure Record in supporting members of the armed forces and veterans in receiving health care and benefits from the Department of Defense and the Department of Veterans Affairs.

“(b) ELEMENTS.—Each briefing required by subsection (a) shall include, for the period covered by the report, the following:

“(1) An identification of potential exposures to occupational or environmental hazards, including blast overpressure and blast exposure, captured by the current systems of the Department of Defense for environmental, occupational, and health monitoring, and recommendations for how to improve those systems.

“(2) An analysis of the quality and accuracy of the location data used by the Department of Defense in determining potential exposures to occupational or environmental hazards by members of the armed forces and veterans, including blast overpressure and blast exposure, and recommendations for how to improve the quality of such data if necessary.

“(c) DEFINITIONS.—In this section:

“(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term ‘ appropriate committees of Congress ’ means—

“(A) the Committee on Armed Services and the Committee on Veterans’ Affairs of the Senate; and

“(B) the Committee on Armed Services and the Committee on Veterans’ Affairs of the House of Representatives.

“(2) INDIVIDUAL LONGITUDINAL EXPOSURE RECORD.—The term ‘Individual Longitudinal Exposure Record’ has the meaning given such term in section 1171(b) of title 38.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of [chapter 55](#) of title 10, United States Code, is amended by inserting after the item relating to [section 1110b](#) the following new item:

“1110c. Annual briefing on Individual Longitudinal Exposure Record.”.

(c) CONFORMING REPEAL.—Section 802 of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 ([Public Law 117–168](#); [10 U.S.C. 1071](#) note) is repealed.

SEC. 9. REVIEW OF BLAST-RELATED BRAIN INJURY RESEARCH AND OTHER EFFORTS OF THE DEPARTMENT OF DEFENSE.

(a) REVIEW.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a review of the research and other efforts of the Department of Defense on traumatic brain injury, including injuries related to blast overpressure or blast exposure.

(2) **MATTERS TO BE INCLUDED.**—The review required by paragraph (1) shall include the following:

(A) A description of the research conducted by the Department of Defense on traumatic brain injury, the entities involved in that research, and efforts to coordinate that research internally and externally.

(B) A description of any improvements identified by that research related to the prevention, diagnosis, and treatment of blast-related brain injuries and an assessment of the implementation of those improvements.

(C) An evaluation of the efforts of the Department to protect members of the Armed Forces from retaliation for seeking care for the prevention, diagnosis, or treatment of traumatic brain injury, blast overpressure, or blast exposure, including any gaps in or barriers to those efforts.

(D) An evaluation of the list maintained by the Department of the military occupational specialties most at-risk for blast overpressure and blast exposure and whether additional at-risk occupational specialties should be included.

(E) Any other finding the Comptroller General considers relevant.

(b) **BRIEFING AND REPORT.**—Not later than 180 days after the date of the enactment of this Act, the Comptroller General shall brief the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives on the review required under subsection (a), with a report to follow on a mutually agreed upon date.

(c) **DEFINITION OF TRAUMATIC BRAIN INJURY.**—In this section, the term “traumatic brain injury” means a traumatically induced structural injury or physiological disruption of brain function as a result of an external force that is indicated by new onset or worsening of at least one of the following clinical signs immediately following the event:

(1) Alteration in mental status, including confusion, disorientation, or slowed thinking.

(2) Loss of memory for events immediately before or after the injury.

(3) Any period of loss of or decreased level of consciousness, observed or self-reported.

SEC. 10. IMPLEMENTATION OF INSPECTOR GENERAL RECOMMENDATIONS TO MANAGE TRAUMATIC BRAIN INJURY CARE.

(a) **IMPLEMENTATION.**—Not later than December 31, 2025, the Secretary of Defense shall implement the recommendations contained in the report of the Inspector General of the Department of Defense entitled, “Evaluation of the DoD’s Management of Traumatic Brain Injury” (DODIG–2023–059).

(b) BRIEFING.—Not later than April 1, 2025, the Secretary of Defense shall provide to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a briefing on the progress of the Secretary in carrying out the implementation required under subsection (a).