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Governor's Report on Court Order Enforcement Task Force

December 2013

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An Order Establishing the Court Order Enforcement Task Force

February 7, 2013

2013-001

AN ORDER ESTABLISHING THE COURT ORDER ENFORCEMENT TASK FORCE

WHEREAS, Maine courts have the authority to issue certain orders in specific cases where an individual's safety is threatened;

WHEREAS, sworn law enforcement is charged with enforcing the terms of court orders, including protection from abuse orders; and

WHEREAS, a review of laws and practices is necessary to ensure that orders are adequately enforced as the State seeks to end domestic violence;

NOW, THEREFORE, I, Paul R. LePage, Governor of the State of Maine, hereby order as follows:

1. The Court Order Enforcement Task Force ("Task Force") is hereby established.
2. The membership of the Task Force shall consist of nine (9) persons appointed by the Governor, including representatives of the following groups:
 - a. Department of Public Safety;
 - b. Sheriffs;
 - c. Chiefs of Police;
 - d. Prosecutors;
 - e. Defense Attorneys;
 - f. Attorneys who practice family law;
 - g. Maine Coalition to End Domestic Violence;
 - h. Firearms Owners; and
 - i. Sportsmen

1. The Task Force shall:

- a. Review the constitutional provisions and existing laws governing the issuance and execution of court orders in response to domestic violence complaints;
- b. Determine best practices currently undertaken by law enforcement to enforce the terms and conditions of court orders;
- c. Review domestic violence homicide cases in which court orders had been issued and violated; and
- d. Examine the practices of other states and jurisdictions to determine alternate means to enforce court orders issued pursuant to existing laws.

The Task Force shall undertake such other duties and responsibilities from time to time as may be required.

1. The Task Force shall submit a report to the Governor detailing their findings on or before July 31, 2013, at which time the Task Force shall dissolve.

The effective date of this Executive Order is February 6, 2013.

Paul R. LePage, Governor

Task Force Membership

Department of Public Safety	Col. Robert Williams Maine State Police
Maine Sheriff's Association	Sheriff Randall Liberty, Kennebec County Sheriff's Department
Maine Chiefs of Police Association	Chief Michael Tracy Oakland Police Department
Maine Prosecutors Association	District Attorney Stephanie Anderson Cumberland County DA Office
Defense Attorney	Mr. Walter McKee McKee Law
Family Law Attorney	Mr. Jed French Powers and French, P.A.
Maine Coalition to End Domestic Violence	Ms. Margo Batsie Maine Coalition to End Domestic Violence
Citizen representing Firearms Owners	Mr. Ralph Sarty Citizen
An Organization Representing Sportsmen	Mr. David Trahan Sportsman Alliance of Maine

Executive Summary

On February 7, 2013 Governor Paul R. LePage signed an Executive Order establishing the Court Order Enforcement Task Force. The primary mission of the Task Force was to review and make recommendations on how court orders related to domestic violence are issued and enforced. Members appointed to the Task Force represented a wide-range of perspectives, and this ensured that the committee's review of the court order process was thorough and informed.

The Task Force has made a number of recommendations that are listed on page 14 and 15 of this report. Several of the recommendations are reminders or suggested best practices for law enforcement. A majority of these recommendations, however, surround the seizing of firearms when a Protection from Abuse Order requires a defendant to relinquish them. This particular subject area requires more study, and the Task Force has recommended that the Legislature further consider the issue and perhaps take legislative action to address it.

The overall general consensus is that Maine's current Protection from Abuse Order system is effective in protecting victims of domestic violence.

Introduction

The Court Order Enforcement Task Force was established to review how effective Court Orders (specifically, Protection from Abuse Orders) are in protecting victims of domestic violence.

The Task Force was comprised of nine members and represented a wide range of constituents. The committee met seven times, and its members were engaged in the discussion on the issue and brought with them the knowledge and expertise that the Task Force used to develop this report.

In addition to the Task Force members, Deputy Chief Judge Robert Mullen attended a number of meetings as a representative of the courts. His input was extremely useful.

Over the years Maine has aggressively pursued ways to prevent acts of domestic violence from occurring and to keep victims safe when an incident of domestic violence has occurred. This was evidenced by the Court Orders the committee reviewed, and the committee's assessment of how those orders were enforced. All parties involved in preventing domestic violence are extremely committed to assisting victims of such violence and ensuring their safety.

The Task Force's research showed that Maine is already at the forefront in developing strategies to try to deter incidents of domestic violence, and to effectively respond to such incidents when they do occur. For this, Maine should be proud. That said, however, even one incident of domestic violence is one too many.

Of note here is that, in carrying out its work, one of the main objectives of the Task Force was to try to determine a means to keep firearms out of the hands of persons who are the subject of a Protection from Abuse Order. Although this objective was not specifically outlined in the Executive Order forming the Task Force, considerable time and energy was spent by the committee in this area -- so much time and energy, in fact, that a deadline extension was requested and granted so the Task Force could finish the remaining work required by the Executive Order.

Review the constitutional provisions and existing laws governing the issuance and execution of court orders in response to domestic violence complaints.

The Task Force makes no recommendations to change any constitutional provisions.

The Task Force reviewed numerous laws and other practices that relate to the issuance and enforcement of Protection from Abuse Orders.

To better understand the impact of existing laws and practices surrounding Court Orders, each member of the Task Force discussed their respective roles in the process of the issuance of Protection from Abuse Orders and in protecting victims of domestic violence. This discussion was not only informative, but also served as the basis for many of the further discussions that the committee had on ways to improve the process and to address concerns about it, and to implement and follow best practices.

One focus of the committee's discussion was on the manner in which firearms owned or in the custody of a defendant may become known to law enforcement and how firearms may be relinquished by a defendant if he or she is required to do so as part of a Court Order.

When a plaintiff arrives at a court to request a Protection from Abuse Order, he or she fills out the Protection Order Service Information form. This form is used to collect general information about the plaintiff and defendant.

Currently the form asks, "Does the defendant own a firearm or other weapon?" The Task Force thought that this question should be modified to ascertain information about the number of and types of firearms a defendant has. Although a plaintiff might not know the number and specific types of firearms a defendant owns or has, the plaintiff might be able to estimate the number of firearms a defendant owns or has, as well as at least describe whether the firearms are long guns or handguns. This information would be very helpful for law enforcement officers to have in circumstances in which, for example, a defendant is reported to have more than one firearm, but he or she only turns over one firearm. In such cases, law enforcement might be able to obtain a search warrant to look for the other reported firearms.

Whether such a search warrant could be obtained based only on information a plaintiff provides is an unresolved question; however, having the information is at least a starting point for law enforcement to further investigate a situation in order to try to secure all firearms owned or possessed by a defendant.

If a Court determines that firearms are somehow involved when a plaintiff requests a Protection from Abuse Order, an Order Prohibiting Possession and Requiring Relinquishment of Firearms and Weapons might also be issued. The Order Prohibiting Possession and Requiring Relinquishment of Firearms and Weapons instructs a defendant to relinquish his or her firearms either to a law enforcement officer or to another

individual. Most of the time a Court orders the firearms to be relinquished to a law enforcement officer as Courts ostensibly expect that when law enforcement officers take firearms into their custody, the firearms will be safely secured until the firearms are able to be returned to the defendant. (It is worth noting here, however, that, in practice, some law enforcement officers and agencies interpret the provisions of Orders Prohibiting Possession and Requiring Relinquishment of Firearms and Weapons to mean that the officers and agency either can take custody of the firearms or facilitate a third party taking custody of them. This circumstance will be discussed further in this report.)

In circumstances in which a defendant relinquishes firearms to a third party, the defendant must return the Order Prohibiting Possession and Requiring Relinquishment of Firearms and Weapons document to either the court or to the law enforcement agency of jurisdiction, and report what firearms were relinquished to the third party, and who that third party (or third parties) is. The Task Force found, however, that this procedure is often not being followed and that there is not a means to track how often and when the procedure is followed. For this reason, the committee determined that there needs to be a process in place to track instances in which defendants relinquish firearms to third parties. The committee thinks this process is needed in order to ensure not only that firearms are not illegally kept in the custody of a defendant, but also to ensure the safety of the plaintiff.

One way to perhaps help with such tracking is if the defendant was required to return the Order Prohibiting Possession and Requiring Relinquishment of Firearms and Weapons document to both the Court and the law enforcement agency of jurisdiction. (To implement such a change, the enabling section of the applicable statute would need to be amended to require such.)

Ensuring that the Order Prohibiting Possession and Requiring Relinquishment of Firearms and Weapons document is returned to both the Court and the law enforcement agency of jurisdiction would allow the domestic violence victims advocates to communicate the information to the plaintiff. If there were a discrepancy in the number or type of firearms relinquished by the defendant, the plaintiff might have information about the number of firearms the defendant actually or might have. In such circumstances, additional investigation by law enforcement could then be conducted.

Another consideration by the Task Force is that, when a third party takes custody of firearms for a defendant, the third party assumes some liability for the securing of those firearms from the defendant. Accordingly, when a third party takes custody of firearms for the defendant, the third party should be made aware of his or her responsibilities to safely secure the firearms and not to relinquish any firearm to the defendant until the defendant has the legal right to possess firearms again. The third party also should be instructed to immediately report any circumstance in which a defendant asks for a firearm back prior to the defendant having the legal right to possess firearms. Finally, the third party should be informed of the criminal penalties there are for relinquishing firearms to a defendant who is subject to a Protection from Abuse Order that is in effect. The committee thought such notification could be provided through a document that would

need to be sign by the third party receiving a defendant's firearm(s), and that would need to be returned by the defendant to the Court and the law enforcement agency of jurisdiction, along with the Order Prohibiting Possession and Requiring Relinquishment of Firearms and Weapons.

The committee also examined the role of court clerks in the process of the issuance of Protection from Abuse Orders. The court clerks are the first people a victim encounters when they are applying for a temporary Protection from Abuse Order. Clerks often do not have the time or the training to help a victim through the process, so a way to make them more efficient and informed about the process would be to provide them training. This is not to suggest clerks would be expected to provide legal services to victims, but they would be able to provide simple process guidance to the victims. (Currently, the lack of such an ability of clerks to provide simple process guidance to victims has prevented some victims from following through with applications for protection orders. This should never be the case.)

In its work, the Task Force also contacted the United States Attorney's Office to determine if there were any existing federal statutes or rules that Maine should contemplate enacting. After thorough discussion by the committee about this consideration, the Task Force determined that Maine has essentially the same State laws as the federal system does.

The one federal area that Maine is deficient in is with its compliance with the National Instant Criminal Background Check System, an electronic database system that licensed firearm dealers throughout the nation use. Under federal law there are nine prohibitors – that is, nine reasons why a person cannot possess a firearm; one such prohibitor is that a person who is the subject of an active Protection from Abuse Order cannot possess a firearm. Maine is in compliance with this prohibitor in that the State has a system in place to determine whether a person is the subject of an active Protection from Abuse Order. The State, however, is not in complete compliance with another provision of federal law that prohibits possession of a firearm by a person who has been adjudicated as a mental defective or has been committed to any mental institution. This circumstance has been the case for years and other committees are exploring ways to come into compliance with that provision of federal law. The fact that Maine is not compliant with that provision of federal law is mentioned here because some persons who become subject to Protection from Abuse Orders are already permanently prohibited from possessing firearms because they have been adjudicated as a mental defective or committed to a mental institution. Maine, however, currently has no way to determine whether such a prohibition already exists with respect to a given defendant (or any other person, for that matter).

In 2012 there were 6,172 Protection from Abuse Order complaints filed with the District Court. These cases resulted in 4,987 temporary orders being issued and 2,423 permanent orders being issued. Of the 4,987 temporary orders that were issued, 3081 (62%) prohibited defendants subject to the order from possessing firearms. Of the 2,423

permanent orders that were issued, 1960 (80%) prohibited defendants subject to the order from possessing firearms.

2012	PFA Cases	Temp PFAs Issued	Permanent PFAs Issued
Total	6172	4987	2423
With Firearm Prohibition	5041	3081	1960

Determine best practices currently undertaken by law enforcement to enforce the terms and conditions of court orders.

This Executive Order resulted from a conversation about keeping firearms out of the hands of persons who are the subject of Protection from Abuse Orders that prohibit them from possessing firearms. Considerable time was expended by the Task Force discussing and exploring this area.

When serving a Protection from Abuse Order that requires a defendant to relinquish his or her firearms, law enforcement, as a general practice, seizes the firearms and secures them (usually in an evidence locker) for safe keeping. Although this is the preferred way to ensure the firearms are out of the control of defendants, the practice of doing so is, at times, not always practical or even realistic.

Collecting and storing firearms takes considerable space and is resource intensive. Many law enforcement agencies do not have the room available to safely secure firearms seized after serving a Protection from Abuse Order. Along with space, evidence lockers are at times not conducive for long term storage of firearms; damp and humid conditions are extremely hard on firearms, and often the firearms rust when in this type of atmosphere. As a result, law enforcement agencies can become responsible for the costs of replacing or repairing a firearm that has been damaged while in their care.

Along with storage, seizing firearms is labor intensive. Doing so requires an officer to create an inventory of the firearms seized from a defendant, and both the inventory and a receipt then need to be given by the officer to defendant. Then, once the firearms are transported by the officer to his or her agency, the firearms have to again be entered into an evidence log and safely stored. This process sometimes take an officer an hour or more to complete, and renders the officer unable to perform other duties such as responding to calls for service.

In addition, officers who work for agencies such as the State Police and the Sheriff's Departments have to safely pack the firearms into their cruisers and then often have to travel long distances to transport seized firearms in order to store them in evidence

lockers. As a result a Sergeant or other person must respond in order to assist in the process of transporting and securing the firearms so they can be stored in an evidence locker.

For the reasons discussed just now, and as alluded to earlier in this report, some law enforcement agencies opt to have defendants identify third parties with whom firearms may be kept, as doing so can make the process of collecting and storing the firearms much more efficient.

The Task Force tried to determine other options for the long-term safe storage of firearms. Some of these options seemed like easy solutions until they were fully explored and discussed. One option, however, that the committee thought might have some merit is for licensed firearms dealers to make available (for a fee) safe, secure storage areas for firearms that must be relinquished by a defendant as a result of a Court Order.

At least one licensed firearm dealer thought this approach would conflict with the belief of many firearms dealers that all persons have a Constitutional right to own and possess firearms. The Task Force was not convinced that all firearms dealers shared that belief. There was a concern, however, that keeping seized firearms separate from firearms for sale could become hard to manage if there is not storage space at firearms dealers' place of business. Another concern about the option was that a firearms dealers license requires strict accountability of firearms for sale. Keeping firearms for sale separate from other firearms could become hard to manage.

Another option the committee considered is for nonprofit or charitable organizations to store seized firearms (for a fee), if they are interested in providing such services. The Task Force strongly encourages the Legislature to study this approach of having non-associated third parties store firearms to determine whether it might be a viable solution.

Over the past ten years, law enforcement agencies made many changes to how they respond to domestic violence calls. Law enforcement officers are reminded to be vigilant when serving Protection from Abuse Orders and to keep in mind that if probable cause exists for a search warrant for firearms it should be obtained.

When investigating alleged violations of Protection from Abuse Orders, law enforcement should not hesitate to consult with the United States Attorney Office if there is a possibility of that a federal crime has been committed. This is particularly important if a defendant is a repeat offender or has been convicted of a violent crime in the past.

When circumstances exist, law enforcement and bail commissioners should consider random search conditions for firearms and ammunition.

Review domestic violence homicide cases in which court orders had been issued and violated.

Since 1999 (14 years) there have been five domestic violence-related homicides in Maine in which a Protection from Abuse Order was somehow related to the case. Appendix A lists cases.

One of the cases, the victim, Tracy White, was not killed, but her husband had attempted to kill her and was out on bail. There was a permanent Protection from Abuse Order in effect. He was not prohibited from possessing firearms; however, he used a knife to stab Tracy three times.

Of the remaining four cases, there were seven victims involved, and three of the cases involved individuals who had active Protection from Abuse Orders in effect against them at the time of the homicides. Only two of those Protection from Abuse Orders had a firearms prohibition, but nonetheless a firearm was used in each of the four cases.

In the Rhonda Reynolds case, Richard Reynolds was prohibited from possessing firearms, but he forcefully took a firearm from his son.

In the Amy Lake case, Steven Lake was prohibited from having firearms, and they were turned over to his family. Law enforcement was unable to determine where the firearm used came from.

Since 1999 Maine has had 152 domestic violence homicides. Firearms are the primary weapon used in these homicides. Over the same time period there have been approximately 50,000 Protection from Abuse Orders issued, with approximately 35,000 of them having a firearm prohibition in them.

The Protection from Abuse Order system we are currently using is effective in keeping firearms from being used against plaintiffs. But in reaching this conclusion, it should be emphasized that the Task Force is in no way suggesting that the domestic violence homicides discussed in this report, or any domestic violence homicide in general, is ever acceptable. Domestic violence in any form is never acceptable, and the committee unquestionably shares the belief that as a society we must continue to find ways to reduce such violence and eliminate it.

Examine the practices of other states and jurisdictions to determine alternate means to enforce court orders issued pursuant to existing laws.

In carrying out this provision of the Executive Order, the Task Force reviewed numerous reports and articles, and asked The National Center on Protection Orders and Full Faith &

Credit for information about other states' approaches that Maine might consider adopting. There were few approaches, however, that other states are taking that the committee thought would be of benefit to Maine. As was previously discussed in this report, Maine is already employing many of the best practices in issuing, serving, and enforcing Court Orders issued in domestic violence situations.

New Jersey (which, unlike Maine, maintains an official firearms registry) has a statute that allows the Court to issue a search warrant for firearms that alleged have been not relinquished if there is "reasonable cause" to do so. The "reasonable cause" standard is something less of a standard than the "probable cause" standard that must be met for a search warrant to be issued. "Reasonable cause," for example, can be based on as little as a plaintiff's statements to an officer.

Maine has an almost identical statute compared to the New Jersey law, except in Maine probable cause must be shown. (Maine does not have a reasonable cause standard.) After considerable discussion, the Task Force determined that there was no need to continue exploring a change in Maine law in order to adopt the "reasonable cause" standard. This determination was made based on the lack of evidence that law enforcement is unable to acquire a search warrant pursuant to the probable cause standard that currently exists in Maine law. (The reasonable cause standard, however, should be kept in mind if in the future there is evidence that victims are at risk because law enforcement cannot develop probable cause when they need to search for firearms when a court order is in effect.)

Observations:

The Task Force makes the following observations:

1. That all those in the criminal justice system and services providers are dedicated to preventing and protecting victims of domestic violence.
2. That the current Protection from Abuse Order system is effective in protecting victims of domestic violence.
3. That the resources within the criminal justice system and service providers are inadequate to sufficiently provide the level of services needed to victims of domestic violence.

Recommendations:

1. The Protection Order Service Information form used by the Court should be modified to include how many and what type of firearms the defendant owns.
2. There needs to be established a tracking system to ensure firearms are relinquished by defendants as ordered by a Court. The Order Prohibiting Possession and Requiring Relinquishment of Firearms and Weapons document should be provided to and tracked by the Courts, with follow up by the appropriate law enforcement agency if needed.
3. The Order Prohibiting Possession and Requiring Relinquishment of Firearms and Weapons document should be modified so the defendant is required to return the document to both the Court and the law enforcement agency of jurisdiction. This could initially be accomplished by checking both boxes on the document. Section 4006, subsection 2-A of Title 19-A of the Maine Revised Statutes should be amended to reflect this recommendation. See Appendix B.
4. A document should be created and provided to third parties that receive firearms from defendants for safe keeping that informs the third parties of the responsibilities they have in taking and storing the firearms. The document should include information about the consequences of the third party returning any firearm to a defendant who has not had his or her right to possess firearms reinstated. This document should be returned by the defendant to the Court and the law enforcement of jurisdiction, along with the Order Prohibiting Possession and Requiring Relinquishment of Firearms and Weapons document.
5. Court clerks should be trained on how to better help plaintiffs fill out the forms associated with obtaining a Protection from Abuse Order.
6. Law enforcement should adopt the best practice of seizing firearms from defendants and not relinquish them to a third party.
7. The Legislature should examine ways to provide options for third party relinquishment of firearms.
8. Law enforcement should pursue obtaining search warrants for firearms whenever there is probable cause to do so.

9. Law enforcement should consult with the United States Attorney's Office regarding the possibility of federal prosecution in cases in which a defendant is a repeat offender or has a prior conviction for a violent crime.
10. Law enforcement and bail commissioners should consider a bail condition of random searches for firearms and ammunition when the facts of the case warrant such a condition.
11. The criminal justice system and service providers should continue to encourage victims of domestic violence to obtain Protection from Abuse Orders.

Appendix A

Domestic Violence Homicides

1. **Mindy Gould/Treven Cunningham-** December 3, 1999 Respondent-Jeffrey Cookson
PO in Effect? **Yes.** A permanent PFA was issued on November 30th but the firearm prohibition was not checked off.

Prohibited? **No**

Unable to determine where gun was obtained
2. **Melissa Mendoza-** August 15, 2005 Respondent-Daniel Roberts
PO in Effect? **No** Temp 6/14/05- not served. Mendoza filed motion to dismiss which was denied. She failed to show for hearing resulting in dismissal. On 8/9/05 Mendoza files for Temp PFA (prohibited), which is not served on Roberts. An amended Temp PFA (without firearm prohibition checked off) is issued on 8/10 /05 to Roberts during a custody hearing.

On 8/15/05 at 0120, Roberts shoots and kills Mendoza at his residence.

Prohibited? **No**
3. **Tracy White (Attempted Homicide)-** September 22, 2007 Respondent-Scott White (Killed by LEO)
PO in Effect? **Yes** Scott White stabbed Tracy White in June of 2007 (Attempted murder). Protection Order obtained. On 9/22/07 Scott calls Tracey at work from her residence and threatens to burn the house down. LEO responds and Scott is killed by LEO as he advances towards them with knife.

Prohibited- **No**
4. **Rhonda Reynolds-** January 12, 07 Respondent- Richard Reynolds
PO in Effect? **Yes** A temporary PFA was issued and served against Richard Reynolds on 1/2/07 with a hearing scheduled for 1/11/07. Richard was prohibited

for possessing firearms. Richard also attempted to obtain a temporary PFA against Rhonda the same date. Judge French denied Richards request for a temporary order. On 1/10/07, Rhonda filed for divorce. On 1/9/07 a motion to continue the PFA hearing was granted with the new court date of 1/26/07. On 1/11/07, a custody proceeding took place in District Court.

Prohibited?- **Yes.** Investigation revealed that Richard forcefully obtained the weapon used from his son on the evening before the murder. This was after the contentious custody hearing that day.

5. **Amy Lake, Monica Lake, Cote Lake** – June 13, 2011 Respondent-Steven Lake
PO in Effect? **Yes.** A temporary order was issued on 7/21/2010 and the permanent order was issued on 8/26/2010 after Steven threatened to kill Amy and the children. The permanent order was in effect until 10/26/2011. LEO served the order and the guns were turned over to family members. Amy and the children moved to Dexter out of fear that Steven knew where they were living.

Prohibited?- **Yes.** Weapons were reportedly turned over to his father.

Appendix B

Sec. 1. 19-A MRSA § 4006, sub-§ 2-A, Fourth ¶, as enacted by PL 2003, c. 372, § 2, is amended to read:

If the court prohibits the defendant from possessing a firearm or other dangerous weapon in a temporary order, the court shall direct the defendant to relinquish, within 24 hours after service of the order on the defendant or such earlier time as the court specifies in the order, all firearms and specified dangerous weapons in the possession of the defendant to a law enforcement officer or other individual for the duration of the order. If the weapons are relinquished to an individual other than a law enforcement officer, the defendant must file, within 24 hours after such relinquishment, with the court ~~or~~and local law enforcement agency designated in the order a written statement that contains the name and address of the individual holding the weapons and a description of all weapons held by that individual. The court may subsequently issue a search warrant authorizing a law enforcement officer to seize any firearms and other dangerous weapons at any location if there is probable cause to believe such firearms or dangerous weapons have not been relinquished by the defendant.