

Maine's yellow flag law is found in our statutes dealing with mental health generally and involuntary hospitalization specifically. The law is actually called "protection from substantial threats" and can be found at 34-B MRS §3862-A. The Maine Supreme Judicial Court has reviewed the statute once in 2022 and found it to be Constitutional; the decision is In Re J and can be found at 276 A.3d 510 (2022), 2022 ME 34.

The weapons restriction law begins only "when a law enforcement officer has taken a person into protective custody". (§3862-A(2)) The law defines a law enforcement officer as someone who possesses a current and valid certificate from the Maine Criminal Justice Academy Board of Trustees. (§3862-A(1)(F)).

Protective custody – the event that can begin the weapons restriction process – is authorized under two circumstances, each of those having two conditions: (1) when a police officer has probable cause to believe a person is mentally ill & because of that condition poses a likelihood of serious harm or (2) the police officer knows the person has an advance mental health treatment directive & probable cause to know the person lacks legal capacity. 34-A MRS §3862.

The first criteria for putting someone in protective custody is that the officer has probable cause to believe the person is mentally ill. A mentally ill person is defined as a person having a psychiatric or other disease that substantially impairs their mental health OR creates a risk of suicide; including suffering effects from drugs, narcotics, hallucinogens, or intoxicants (including alcohol) but a person with developmental disabilities or a sociopath is not mentally ill for that reason alone. 34-B MRS §3801(5).

The second condition before placing someone in protective custody is for the officer to have probable cause that because of the mental illness the person poses a likelihood of serious harm. If the person poses a likelihood of serious harm for some reason other than being mentally ill, the protective custody process is not appropriate.

A likelihood of serious harm means (A) a substantial risk of self-harm, including suicide, (B) a substantial risk of physical harm to others by recent homicidal or violent behavior or by recent conduct placing others in fear of serious physical harm, or (C) a reasonable certainty that the person will suffer severe physical or mental harm after demonstrating an inability to avoid risk or to protect oneself. 34-B MRS §3801(4-A).

After a law enforcement officer places the person in protective custody, the person undergoes an assessment by a medical practitioner (§3862-A(2)). Only if the practitioner agrees does the law enforcement officer petition the court for an order restricting weapons possession; however, the judicial officer then reviews the material and can either issue a weapons restriction order or not endorse the request. (§3862-A(3)).

Maine's weapon restrictions law does not authorize a Maine order because another jurisdiction – State, Tribal, or Federal - issued a similar or even more restrictive order. It does not authorize a Maine order on the basis of a weapons ban from the Federal or military authorities. When a weapons restricted order is issued and the court issues an abstract for the Department of Public Safety, it is not a public document, and its dissemination is limited. §3862-A(6)(D).

Who is prohibited from possessing firearms by Maine law? §3862-A(8) makes it a class D crime to possess a dangerous weapon after a restriction order is issued. Maine's general prohibition on firearm possession law is found in 15 MRS §393. It prohibits a person from owning or possessing or controlling a firearm without a permit if that person,

(A-1) – has been convicted of or found not criminally responsible because of insanity of certain crimes in this state or other jurisdictions,

(C) – certain juvenile offenses or a determination of insanity in relation to charges,

(D) – is subject to a protection order from this state or other jurisdictions regarding protections to intimate partners,

(E) – involuntarily committed by a Maine court pursuant to 34-B MRS §3864 (white papered), found not responsible because of insanity, or deemed not competent to stand trial,

(E-1) – is restricted by a Maine court pursuant to 34-B MRS §3862-A (limits possession and control but not ownership),

(E-2) – prohibited by a Maine court for other purposes (§3873-A) (limits possession and control but not ownership),

(F) – is a fugitive from justice,

(G) – is prohibited by Federal law as an addict or user of controlled substances,

(H) – is an illegal alien or otherwise federally banned,

(I) – dishonorably discharged from US armed forces, or

(J) – has renounced US citizenship.