



# Tragedy in Lewiston

## Analysis and reaction from the Sportsman's Alliance of Maine Institute for Legislative Action (SAM-ILA)

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### PART 1 – PREQUEL TO LEWISTON

*So many warning signals, so many unanswered questions*

## The Lewiston Tragedy and the Fallout for Maine Gun Owners and Our Future Security

by David Trahan, SAM-ILA Executive Director

### Introduction

As a Mainer, a law-abiding citizen, and compassionate human, I know I speak for my Board and members when I say how sorry and sad we are for those killed and wounded during the recent tragic shooting in Lewiston. To their families and loved ones, we send our sincere condolences and hope that this sad day will not be forgotten and that in the aftermath of this horrific event, positive changes will be made that will prevent such tragedies in the future.

Our organization will use all its resources and political influence to examine what happened at the New York military instillation, in the New York mental health hospital, as well as the New York and Sagadahoc County Sheriff's offices to determine where the public safety system or human judgement failed. On initial review, it appears the failures were many and obvious.

In this special edition, we will share police reports, press coverage, Legislative history of gun laws and any other educational materials that may help SAM members and the public become better informed.

Just a day after the tragedy in Lewiston, without any facts or details to determine a path of corrective action, gun control advocates seized on the day to push gun control proposals that had nothing to do with this tragic shooting, nor would have prevented it. That is simply political exploitation.

Some in the press aided this premature rush to judgement and focused on Maine's so-called Yellow Flag law as having failed. In truth, it was never used; nor were another

half dozen laws which could have been employed at the State and Federal levels to prevent this tragedy. Sadly, gun control advocates just could not let the facts stand in the way of their greater agenda!

As a result of this race to demonize firearms, the debate became one-dimensional and ignored glaring missteps or poor judgement by members of the military and police officers in Maine.

After you read this piece, we have no doubt you will come to the same conclusion we did: our public safety system failed, from the military, in New York state, and then in Maine, which allowed a seriously disturbed individual to kill 18 innocent people and wound another 13.

### Lewiston Shooting Fallout: Is it a Gun Control Crisis or a Colossal Failure of our Public Safety Systems?

*Two Sagadahoc Sheriff's Incident Reports tell the story of Robert Card's escalating danger to the public and how the military, police, and our public safety systems responded.*

In the wake of the tragic shooting in Lewiston that took the lives of 18 and wounded 13 more, two debates are emerging. One from gun control activists that promotes a "so-called" assault weapons ban, expands background checks to private sales and transfers, limits magazine capacity, creates a 72-hour waiting period to purchase a firearm, and repeals Maine's Extreme Risk Protection Order process, the so-called "Yellow Flag" law.

The second debate is being driven by the Sportsman's Alliance of Maine, Institute for Legislative Action, Governor Mills, and

Senator Collins to first evaluate all the facts surrounding this tragedy and any possible failures in the system. Then, based on the findings, recommend changes that could prevent another Lewiston type shooting.

To that end, just days after the shooting, SAM staff reviewed two police reports from the Sagadahoc Sheriff's Department which revealed that months prior to the shooting, Robert Card had been losing his grip on reality and was growing more agitated and threatening violence. This escalation in behavior occurred for nearly a year and was noticed by his family, multi-

### Featured Content

**PART 1 – Prequel to Lewiston: So many warning signals, so many unanswered questions.**

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## Part 1 – Prequel to Lewiston

ple police jurisdictions and several government agencies.

The reports showed his family and fellow soldiers raising the alarm, and for all intents and purposes revealed Robert Card was on a path to violence. The following timeline is taken from the two police reports referenced above. We have not included the names of officers or family members as there is an on-going investigation and such information does not add value to this report.

### **Timeline - Police Incident Report 1 - Six Months Prior to the Lewiston Shooting**

On May 3, 2023, a Citizen Assist complaint, originating from a local public school address, was logged with the Sagadahoc County Sheriff's Office.

The first line of the narrative advises patrol: "USE CAUTION IF RESPONDING TO 1007 WEST ROAD-ROBERT CARD'S RESIDENCE-PARANOID BEHAVIOR AND HAS 10-15 FIREARMS IN HOUSE AND/OR TRUCK. ANSWERED THE DOOR WITH A GUN ON 5/4/23 WHEN FAMILY VISITED."

The officer's report details family members' concerns that Mr. Card is "starting to experience paranoia." They emphasized his "deteriorating mental health" and stressed

they would like to remain anonymous. In the report, we learn the officer and family members agree to involve Card's Army Reserve command for assistance in getting Card help. The officer talked with members of the Army Reserve Center in Saco who expressed "considerable concern for Robert." The report states, "It sounded like they may be aware of his recent mental health decline." Ironically, some of these same reservists are police officers.

The report stated (this may be important later), "Robert is currently an Army Reservist assigned to a training unit in Saco and has historically instructed soldiers on the use of hand grenades."

The report alleges Card engaged in "heavy drinking" and "angry rants about having to shoot someone." An interesting twist offered by a family member then becomes part of the report with this statement, "all of Robert's paranoia/anger started around the same time he got hearing aids (for the first time) in February."

The reporting officer says, "I thought this was an odd coincidence and did some on-line research. I found that hearing loss-induced mental illness is a documented condition that can project itself in paranoid behavior." The officer reveals he shared this hearing aid/behavior theory

with the military. A family friend and nurse believe "there is also a connection between the loss of hearing/mental health illness."

The first police report in May is the equivalent of the "canary in the coal mine" and leaves a path of unanswered questions hanging in the air. In the report, three people referred to Card's loss of hearing corresponding with Mr. Card's paranoid behavior and all three witnesses reached the same conclusion—that it was connected. If they all concurred it could be the cause of Card's paranoia, did anyone (military or police) follow up?

How did this report not send up a warning flag with the military, and is there a process to do so? Why wasn't Mr. Card flagged at the time and prevented from participating in Reserve training that involved firearms, ammunition, and grenade training in July of the same year and just a few months after this May report?

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**...it has come to the Guard's attention that Card is having psychotic episodes where he is hearing voices that are insulting him, calling him a pedophile." "Card is also making threats to shoot up the Saco National Guard facility.**

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### **Three of Four in Maine's Congressional Delegation Now Support Some Version of a Ban on Semi-Automatic Firearms.**

Just after the Lewiston shooting, two of Maine's Congressional delegation changed their position on a "so-called" assault weapons ban. Senator Angus King, (I-Maine) who once wrote the best position paper we have seen on the reasons not to ban certain semi-automatic firearms, flipped his position and helped to introduce one of the most expansive semi-automatic bans in U.S history (the so-called "GOSAFE" bill).

Congressman Jared Golden, (D-Maine) who also took a strong position in opposition to such a ban in the past flipped his position to supporting a ban within hours of the Lewiston shooting. What is not clear though, is whether he supports Senator King's legislation. Initial reports are, he has very serious concerns with King's legislation. We will clarify Congressman Golden's position before the next election.

Congresswoman Chellie Pingree, (D-Maine) has voted for and continues to make strong statements in support of all sorts of gun control measures.

Senator Susan Collins has opposed such a ban in the very recent past and has not made a new statement recently.

We are very disappointed with Senator King and Congressman Golden for changing their positions without first learning the facts of the shooting and whether such a ban would have made a difference.

### **Timeline - Police Report 2, 9/15/23 - Welfare check requested by Maine National Guard, five weeks before the Lewiston shooting**

The first sentence from the police narrative: "I received a complaint from the Maine National Guard asking me to perform a welfare check on Robert Card." It goes on, "As of recent, it has come to the Guard's attention that Card is having psychotic episodes where he is hearing voices that are insulting him, calling him a pedophile." "Card is also making threats to shoot up the Saco National Guard facility. He had been committed (to a mental facility in New York) over the summer for a couple of weeks due to his altered mental state but has since been released."

**Time Out!** Making a credible threat against a military facility is a felony. This accusation and other contributing factors established Probable Cause that a crime may have been

committed and another may be imminent. Why was this complaint only a welfare check, not a warrant for his arrest, with a search warrant?

The responding deputy police officer reports going to Card's residence, finding no one home, handing off the complaint to the evening shift and then cutting and pasting a letter. Excerpts from this letter appear below.

"Card is one of my senior firearm instructors in Bravo Company in Saco. Card has been hearing voices calling him a pedophile and other insults. This hearing voices started in the spring and is only getting worse." It goes on, "On July 15, 2023, while at West Point, Card was hanging out with several other soldiers at the hotel they were staying. In the parking lot, Card accused three of them of calling him a pedophile." A shoving match ensued. When things calmed down Card said, "he would take care of it." When pressed by officers/reservists what he meant by that statement, he would not answer. Card went on to lock himself in his hotel room and refused to answer. The next morning his fellow soldiers got a key to his room and opened the door. After another scrap, officers/reservists decided to call their commander and it was decided to take him to a mental health facility. He spent 14 days in that hospital.

It went on, "To my knowledge he has not sought any more treatment since being released."

**Time Out!** We know very little about what happened that led to Card being committed to this facility. Was he forced into care, or did he voluntarily submit for evaluation? What were the diagnoses and treatment he received? Was he medicated, and what follow-up treatment was recommended? Did they explore his loss of hearing as the source of his altered mental status? Was his right to own and purchase firearms altered? What were the conditions of his release?

**Back to the deputy's report and excerpted letter - Just before entering the Mental Health Facility in July 2023**

What comes next is disturbing. "Night before last, at approximately 02:30, another soldier who is friends with Card called to tell me that Card had assaulted him. They were

driving home from the Casino when Card started talking about people calling him a pedophile." When told to "knock it off," he was going to get into trouble "talking about shooting up places," Card punched him. Card's friend got out of the car and made his own way home. Card also said to his friend, "[he] has guns and is going to shoot up the drill center at Saco" and other places. He also said he was going to "get them."

This next line in the report is also very important. The man Card assaulted says that Card said, "I was the reason he can't buy guns anymore because of the commitment."

**Time Out!** In this report, Card pushes a police officer and threatens to shoot people. The night before that incident, he assaults a friend by punching him and then makes an alleged felony threat against a military facility. He does this in front of Army reservists (who happen to be police officers in civilian life) with the knowledge of the military. Why didn't they charge him with assault and/or criminal threatening? Either of the two could have been prohibiting offenses and diffused the mass shooting threat. That means his right to purchase and possess firearms would have been taken away.

**Conflict!**

*On October 30th, 2023, the Press Herald ran a story titled, "Police identify 2 AR-style rifles, handgun as weapons linked to Lewiston mass shooting." In the story Matt O'Shaughnessy, public information officer at the Boston Office of the Bureau of Alcohol Tobacco and Firearms, says, "Card likely passed the background check to make other firearm purchases prior to when he was evaluated at the mental health facility." This statement does not explain what happened before, during, and after Card was in the hospital. If Card was evaluated and found to be a danger to himself or others, it is almost always a condition of release that they relinquish their firearms, at least temporarily. New York has a traditional "Red Flag Law," and mental health workers are mandated to initiate a "Red Flag" order in these cases. Did the military warn New York police about Card's threats, and if so, why wasn't he Red-Flagged in New York? How did he get to keep his guns?*

Finally, the report continues, "On 9/16/23 at about 08:45 hours I went and checked to

see if Card's vehicle was in his yard on West Road. It was there. Upon making this observation I opted to have another unit back me up." It went on, "Deputy arrived about 45 minutes later and we attempted contact with Card, without success. Card could be heard moving around inside the trailer but would not answer the door. Due to being in a disadvantageous position we decided to back away."

**Sagadahoc sheriff deputies had what they believed to be a very dangerous, unstable man inside his trailer. He had assaulted a fellow reservist and threatened to shoot up a military facility. Why didn't they seek a warrant for his arrest, and a search warrant?**

The remainder of the September 15 deputy's report is about trying to get his guns through family. That obviously did not work.

Sagadahoc sheriff deputies had what they believed to be a very dangerous, unstable man inside his trailer. He had assaulted a fellow reservist and threatened to shoot up a military facility. Why didn't they seek a warrant for his arrest, and a search warrant?

The deputy at his trailer was so concerned for his safety, he called for backup and when Card did not answer, they felt they were in a "disadvantageous position." So, they left.

**Time Out!** This makes no sense! If these deputies were concerned for their own security, wouldn't they also be afraid for the public's safety, Card's family, and the threatened facilities? What did they do to protect the public? What happened in the preceding month and a half leading up to the Lewiston shooting to address complaints that Card's mental health was deteriorating, and that he was becoming more violent? What triggered Card to follow through on his threats?

## What SAM-ILA Is Doing to Answer These Very Important Questions

First, after reviewing these two Sagadahoc County Sheriff's Reports and because of the concerns expressed, we have reached out to Senator Collins and requested two separate actions be taken immediately. First, an independent federal inspector general investigation into the circumstances surrounding the military's handling of Robert Card. Senator Collins was joined by Senator King and together they drafted a letter asking for the investigation.

Second, we asked Senator Collins to introduce federal legislation requiring mandatory reporting when soldiers are deemed a threat to themselves or others.

The mandatory reporting would be to the Department of Public Safety in the state in which the military facility is located, and to the soldier's state of residency. The legislation would require all branches of the military to use the State's Extreme Risk Protection Order process when handling dangerous, potentially violent individuals experiencing a mental health crisis, where a person is deemed a risk to themselves or others. This legislation should also address how the soldier's rights to possess and purchase a firearm are handled during the crisis, with a process for the soldier to restore their firearm rights in the future.

Finally, a soldier's job, pay, and benefits should not be lost during this process. Soldiers are our heroes, and even heroes may have times in their lives when they need our help. The military must examine its culture to ensure there is not a stigma attached to men and women who experience a mental health crisis and need help! Robert Card needed help and he was surrounded by police officers and members of the military who witnessed his decline firsthand. There must be a more formal system of protocols that officers and fellow soldiers must follow. As we have learned, inaction can have tragic consequences.

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## Conclusion: What to Do Next?

Not many people know that during my twelve years as a legislator, I spearheaded the creation of Maine's Office of Program Evaluation and Government Accountability (OPEGA), and the only bi-partisan committee of the Legislature that oversees it. It has the most sweeping power of any committee, including subpoena powers and the power to compel and question witnesses. The reason I spent over a decade working on this effort is because I recognized government is inherently cumbersome and wasteful, as are most entities run by people and fueled by money. People make mistakes, both in judgment and action. Police and the military are no exception. At times, these entities and the people who run the government need to be held accountable. This is not a blame game, just the nature of the beast. The Robert Card story is a sad and tragic example of what happens when people, equipped with more than enough tools to do their job, fail to do so.

For nearly a year leading up to the Lewiston shooting, not only were there signs that Card was going to commit the most heinous of crimes, but he also telegraphed it. He was surrounded by Army officers and military personnel; some he assaulted, others he told he was going to shoot up people and places. At the same time, his mental health was deteriorating rapidly. Four family members, the military, and the police knew it. And three people specifically pointed to a potential cause for that

decline. Prior to the mass shooting, Card allegedly committed several felony crimes, including assault and terrorizing, yet he went uncharged. Instead, it appears he was given a pass repeatedly.

Some have claimed in the press that Maine's Yellow Flag law failed. It is a diversion and a deflection to make excuses for failures by these same public safety organizations and to promote a gun control agenda. Some critics within law enforcement had never even used the process. Truth is that the Yellow Flag law wasn't even the most appropriate tool to use in this case. Charging Mr. Card with assault or terrorizing, and serving an arrest warrant, was. It would have allowed the police to take him into custody for a mental health evaluation.

Several people made mistakes. There is nothing that can be done now to undo what happened to the innocent souls in Lewiston, but what can bring some solace to the families and survivors of the worst shooting and loss of life in Maine's history is to extract every fact and lapse in judgement that may

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**There is nothing that can be done now to undo what happened to the innocent souls in Lewiston, but what can bring some solace to the families and survivors of the worst shooting and loss of life in Maine's history is to extract every fact and lapse in judgement that may have contributed to this senseless tragedy.**

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have contributed to this senseless tragedy. Also, we must identify every person involved, and find every military and police report as yet undiscovered. Compile all the information, subpoena every witness or participant if they resist, and more importantly, fill in the gaps where information is missing.

So many questions remain. The second police report references the military's efforts to convince Card to retire. Really? Give him a mental health discharge? More importantly, six weeks passed after the Sagadahoc Sheriff's Office encountered

### **SPORTSMAN'S ALLIANCE OF MAINE – INSTITUTE FOR LEGISLATIVE ACTION – "SAM-ILA"**

Acting President: Erik Hart Vice President: vacant Clerk: Lynn Madison  
Treasurer: Craig Poulin Butch Moore Nick Archer Christi Holmes Mike Shaw Brian Smith

Address: 205 Church Hill Road, Suite 3, Augusta, Maine 04330

Telephone: 207-623-4589 Website: [www.samila.org](http://www.samila.org)

Facebook: Sportsman's Alliance of Maine Institute for Legislative Action



Card at his trailer but failed to act. What happened after that failed welfare check? Are there other encounters that occurred between Card, the military, or police? Who was there to help Card’s family cope with his deteriorating mental state between mid-September and October 25? Did some event we are yet unaware of trigger Card? Did the military take the loss of hearing and hearing aid issue seriously? Card was 40 years old, hardly a candidate to prematurely lose his hearing. Was he a petroleum re-fueler as claimed by the military or a “senior firearm and grenade instructor” as his fellow reservists, unit commander, and

family claimed? And did his military service contribute to his loss of hearing?

Until all the facts are known, and all questions answered, we are unlikely to prevent future mass shootings. At first glance, it appears our public safety net was a colossal failure from beginning to end—not because the tools weren’t available to prevent it—but because people made mistakes. The system not only failed the innocent victims killed and wounded, but also Robert Card and his family—especially his children and ex-wife—who tried to help him. If the police officers and military personnel were working within a flawed

system designed to be secretive or unaccountable, they too were failed.

As the investigations move forward, gun control groups and some government workers may downplay the roles of the police and the military leading up to this tragedy—it is natural to resist being held accountable. Change is frightening and—in some cases—people may lose their jobs. But unless we identify how the system failed, how can we prevent another mass shooting by another mentally disturbed individual? Certainly, focusing on firearms availability alone will not prevent another tragedy.

## Was Robert Card Rambo or Bambi?

Statements by the military after the Lewiston shooting contradict statements in the two Sagadahoc County Sheriffs police reports about Robert Card’s job and responsibilities in the military. The contradictions are significant and worthy of note. On October 27th, 2023, the Associated Press reporter, Aliss Higham, wrote an article titled, “Robert Card’s Military Background Revealed.” Below is an excerpt from the article and an excerpt from the police report. You decide what is going on.

The article quotes James LaPorta (AP reporter) on the social media platform “X” (formerly Twitter): “I sent a request to the Army for Robert Card’s releasable biographical data: ‘Sgt. 1st class Robert Card is a Petroleum Supply Specialist in the Army Reserve, enlisting in December 2002. He has no combat deployments. His awards include the Army Achievement Medal, Army Reserve Component Achievement Medal x2, Humanitarian Service Medal, National Defense Service Medal, and Army Service Ribbon.’” The article continues: “When asked to clarify by another X user whether Card’s achievements were “unremarkable,” LaPorta, replied: “Yeah. Pretty standard awards. I definitely wouldn’t use the term highly decorated.”

Army spokesperson Bryce Dubee said in a statement, “The army did not provide training for him as a firearms instructor, and nor did he serve in such capacity within the Army, the outlet reported.”

The description above by the military downplays Card’s training and lethality and is not the one his unit commander, family, and

fellow reservists quoted in the police reports used to describe Card. Here are some of the excerpts from the two police reports.

### **Report 1, Sagadahoc County Sheriff’s Office Report, 5/03/23**

Family: “Robert is currently an Army reservist assigned to a training unit in Saco and has historically instructed soldiers on the use of hand grenades.”

Officer’s comment after he notified a member of Card’s unit about his growing paranoia: “He thanked me for the notification because they are scheduled for an upcoming training exercise involving crew service weapons and grenades.”

### **Report 2, Sagadahoc County Office Report, 9/15/23**

Officer: “It should be noted that Card is a firearms instructor with the Guard so utmost caution must be utilized.”

These excerpts are from the Guard letter which is part of the report:

“Card is one of my senior firearms instructors in Bravo Company in Saco.”

Guard: “[redacted name] is concerned that Card is going to snap and commit a mass shooting.”

Guard: “I would rather err on the side of caution with regards to Card since he is a capable marksman and, if he should set his mind to carry out the threats made, he would be able to do it.”

## PART 2 – THE AR-15

### *Will we be blaming the gun again, and not the shooter?*

## “Assault Weapon” is an Invented Political Term

by David Trahan, SAM-ILA Executive Director

*Call it what it is—a semi-automatic firearm that looks frightening to those who do not understand the difference between “military-grade” firearms and civilian-owned firearms designed for hunting and personal defense.*

Years ago, the gun control lobby figured out their “gun control” messaging was a failure. They needed a fresh message and words that duped the uneducated while appealing to those who did not want to own firearms. And so emerged new terms like “assault weapon” and “gun safety” replacing failed terms like semi-automatic and gun control.

What is an “assault weapon?” In their headlong rush to ban them, lawyers, and

politicians (most recently by Maine’s own Senator Angus King) have struggled to answer that question. There is a good reason why they struggle—civilian assault weapons do not exist! “Assault weapon” is nothing more than a political term meant to create the illusion that bad guys can own military guns, and to deceive the public into thinking they are banning machine guns. The term is meant to evoke carnage and death, and to create fear: i.e., images of war. Truth is, any inanimate object—including a carpenter’s hammer used in a violent manner—can be an assault weapon.

Ownership of automatic firearms has been illegal in the US since 1934. In addition, no American can collect or own a

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**Call it what it is – a semi-automatic firearm that looks frightening to those who do not understand the difference between “military-grade” firearms and civilian-owned firearms designed for hunting and personal defense.**

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fully automatic firearm imported or manufactured since 1986. You might also be surprised to learn that since 1934, there have only been four incidents in which a fully automatic firearm was used in crimes where someone was killed. Two involved police officers who illegally used automatic firearms. That is it.

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## So, what is the difference between automatic and semi-automatic firearms?

An **automatic firearm (or machine gun)** is defined as, “*an autoloading firearm that continuously chambers and fires rounds when the trigger mechanism is actuated.*” The excess energy released from the previous discharge loads the next round while also igniting it. In 1884, a Maine inventor, Hiram Maxim, built the first machine gun. There are 741,000 automatic guns registered in the U.S.

A **semi-automatic firearm** is defined as, “*a firearm which automatically loads the next round, but will only fire one round per trigger pull.*” Ferdinand Ritter designed the first semi-automatic rifle in 1885, 139 years ago. It is very difficult to estimate exactly, but conservative estimates are there are now well over 100 million semi-automatic firearms of various types in the U.S., of which just under 25 million are AR-style semi-automatic rifles. Incidentally, “AR” stands for “Armalite Rifle,” not assault rifle or Army rifle. It is named after the company that first designed these rifles in the 1950s, using lightweight aircraft metals instead of wooden stocks.

Contrary to what gun control groups would have you believe, Armalite Rifles in the .223 caliber, (AR-15s) are used for target shooting and hunting predators like coyote, fox, and bobcat as well as varmints such as woodchucks, gophers, and prairie dogs. The AR-15’s small caliber bullet is accurate and flat shooting at long distances (200 to 300 yards), and it preserves valuable hides because of their minimal damage on animals weighing less than 40 lbs.

The AR platform is also versatile; it can accommodate a wide range of optics and accessories which are easily customized. AR-15s are simple to use and come in several calibers, including .22 rimfire. They are cost-effective for practice at the range, and they make a formidable home

defense firearm. In addition, their stocks are adjustable and can be easily fitted for all body sizes.

The Armalite Rifle chambered in .308 caliber, (the AR-10) is a large game caliber used by many hunters. The AR-10 has all the same design advantages as the AR-15, but its heavier caliber is more suitable for hunting deer, moose, black bear, caribou, and elk.

**Civilians do NOT own “Assault Weapons.” That is a political term concocted by gun control advocates.**

Let us take a closer look at these two words: **assault** and **weapon**. Weapon means “something (such as a club, knife, or gun) used to injure, defeat, or destroy,” for example: a nuclear weapon. And an assault is, “a violent physical or verbal attack, a military attack usually involving direct combat with enemy forces.”

Labeling a whole class of civilian firearms as “assault weapons” implies that the U.S. citizens who purchased them did so with the intent to inflict harm or death on

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**“AR” stands for “Armalite Rifle,” not assault rifle or Army rifle. It is named after the company that first designed these rifles in the 1950s.**

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fellow humans. That definition and term is only appropriate for military grade automatic firearms (weapons of war), which are already illegal for the general population to own. It is **not** an appropriate term for the semi-automatic firearms built for and sold to law-abiding Americans for hunting, recreational shooting, and if necessary, self-defense.

Defining the AR and other semi-automatic firearms as “assault weapons,” as gun control advocates do, is a deliberate attempt to confuse and frighten Americans who are less familiar with the true nature of these sporting arms.

## What types of firearms are used to commit murders?

Gun control advocates would have you believe that there is an epidemic of gun violence sweeping the nation involving semi-automatic rifles. They imply that if we just ban AR-style rifles, there will be no more mass shootings. Gun control advocates are wrong on both. This quote from the Joslyn Law Firm says it best.

“Using FBI homicide statistics from the 2019 Crime in the United States report, the insights team at the Joslyn Law Firm charted out how often different types of weapons were used in homicides in the U.S.. Of the 16,425 homicides that occurred in 2019, the FBI was able to collect supplemental data for 13,922 of them, which is what our data is based on. The weapon types are broken down into the different types of firearms: handguns, rifles, shotguns, and a category for homicides in which the type of firearm was unknown. It also compares the number of homicides that were committed by non-firearm weapons such as knives or cutting instruments as well as bodily weapons, which include people’s hands, fists, and feet. Non-firearm weapons were used for one-quarter of all homicides in the United States.

Would a ban on AR-style rifles help to curb the violence? With rifles being a relatively uncommon type of weapon used in homicides in the United States, a ban on AR-type rifles may not make much differ-

**Would a ban on AR-style rifles help to curb the violence? With rifles being a relatively uncommon type of weapon used in homicides in the United States, a ban on AR-type rifles may not make much difference when it comes to the number of murders that occur.**

ence when it comes to the number of murders that occur. Homicides are overwhelmingly committed using handguns; they were found to be the most common murder weapon for nearly half of all homicides in the United States in 2019. Even hands, fists, and feet are used to commit homicide almost twice as often as a rifle is. An NIH study that investigated the levels of criminal activity committed with AR rifles or other high-capacity semiautomatics also found that these types of weapons are only being used in a small percentage of crimes: “Assault weapons (primarily assault-type rifles) account for 2–12% of guns used in crime in general (most estimates suggest less than 7%).” [Note the misuse of the term “assault weapon” to describe the AR rifle and other semi-automatic rifles, which is so pervasive in the US today.] Wouldn’t all the time, money, and resources being used to push for an AR rifle ban be better used elsewhere, such as creating a better mental health-care system that is accessible to those who need it most?

## Preventing future Lewiston type tragedies is nearly impossible when you ask the wrong questions.

*“Many mass shooters are suicidal prior to going into those attacks, and these mass shootings are a spectacle of violence. They want the world to see the pain that they are enduring. And so, if we can understand the despair that drives them, we can hopefully do something to prevent tragedies from occurring.” Minnesota Public Radio News, 4/6/23*

This short paragraph in the MPR story titled, “How re-framing mass shootings as suicide could help prevent them,” by Tom Crann and Megan Burks, April 6, 2023, reveals a completely different approach to shootings like the Lewiston tragedy. Unfortunately, the knee-jerk response from the gun control groups and the press are all too predictable. Within hours, before any facts or details become available, inevitably my

To understand how homicides compare to other preventable deaths in America, last year 109,680 people died from drug overdoses.

Each of these deaths is tragic and they all warrant our commitment to prevent them to the degree practicable. Based on the above statistics, rifles, including the AR platform, are used far less often to commit homicide than other firearms or other non-firearm means. Yet, the strategy by gun control advocates is always the same: blame the guns instead of the person committing the crime.

What happened in Lewiston was a horrible and preventable tragedy and this event will undoubtedly lead to attempts to change firearm policy, both in Maine and nationally. But will policy makers again target the firearm used, or will they pursue the much more difficult path of dealing with individuals who reach for a weapon of one form or another when in crisis?

Unfortunately, a lone wolf shooter knows in the end either he, or the police will likely take his life. For reasons known only to them, this type of shooter’s intent is to inflict maximum carnage against innocent civilians. In a sense, they are often mentally ill or suicidal terrorists. Would a lone wolf shooter suddenly decide not to kill if we made a whole class of firearms illegal for law abiding citizens? Not likely. They would just choose another lethal means. Or they will acquire these firearms illegally.

phone rings. And the question is always the same: “What gun control laws need to change?”

Gun control groups like to lump all firearm-related deaths into one category, which inflates the numbers to foster a sense of crisis. Gun suicides and homicides lumped together with a lone wolf shooting like Lewiston support the narrative that “too many guns are the problem,” not

the individuals committing the act. This approach has been politically successful, but it has not ended mass shootings. That is a critical difference.

Treating all violent crimes involving firearms, (drug related murders, suicides, and premeditated mass casualty shootings etc.) in the same way may be expedient politics, but it is bad policy. Each violent crime category is distinctly different and each warrants different approaches to prevention. Minnesota Public Radio did an eye-opening piece (quoted above) that revealed a much different way to prevent premeditated shootings targeting random victims. It involves treating the perpetrator like an individual, and identifying what is driving their hate and despair, instead of focusing on their weapon of choice.

The following excerpts from that piece are also relevant. Following each, I will explain how the Sportsman's Alliance of Maine, Institute for Legislative Action (SAM-ILA), drafted and, working with the Governor and Congress, passed meaningful policy changes. None of these policies impacted our Second Amendment rights, and they were passed with bipartisan support.

Excerpts from the MPR story: *“Well, a great example of this is around safe storage of firearms. In the vast majority of K-12 school shooting cases, perpetrators are themselves school children, and how they get access to firearms is that they have not been secured safely in the home. So that is something that in many ways doesn't need an act of Congress or is not particularly controversial.”*

The SAM-ILA, working with then-state representative and now SAM-ILA board member Patrick Corey, introduced legislation to exempt gun safes, lock boxes and other safe storage devices from state sales taxes. Rep. Corey also agreed to introduce legislation creating the Maine School Safety Center at the Department of Education: In addition to recommending physical security in all Maine schools, the Safety Center works to resolve all issues negatively impacting young people in a school setting.

Working with state Senator Deschambault and Governor Mills, we introduced Safe Homes legislation to create an educational and awareness program on the

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**The logic of the authors and researchers is spot-on: outlawing the gun will not change or prevent the outcome of the attack in a significant way. It just changes the weapon of choice.**

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importance of safely storing dangerous weapons and prescription drugs. In addition, the legislation created a new grant program to assist groups, such as veterans and our youth who may present higher risks of suicide, with safe options for firearm storage and use.

Quoting again from the MPR story: *“We've also seen in our data, a real increase in the use of AR-15-style assault weapons [There are those word choices again!]. And many people point to the utility of that weapon, that it is dangerous and so on. But I think what is more interesting from our research is that there is a copycat phenomenon involved with these shootings. And if you want your shooting to conform with the sort of genre conventions of a mass shooting in America, you follow the template of the shooters who have come before you and sometimes that means using the very same weapons.”*

This quote is very important. The logic of the authors and researchers is spot-on: outlawing the gun will not change or prevent the outcome of the attack in a significant way. It just changes the weapon of choice.

Again, from the MPR story: *“The thing about mass shooters is this: before they ever pulled the trigger, every mass shooter was somebody's son, somebody's brother, somebody's classmate, somebody's colleague,*

*somebody's neighbor. And if we recognize them as the human beings that they were before they pulled the trigger, perhaps they would have never done it in the first place.”*

Tragically, this quote perfectly describes the events leading up to the Lewiston shooting. Robert Card was somebody's father, husband, son, brother, and a military reservist. He was once a hero and a typical American. Unfortunately, he showed obvious signs of deteriorating mental health resulting in escalating paranoia and a growing penchant for violence. The laws and systems were in place to identify his risk to himself and society, and to get him the care he obviously needed. Unfortunately, these systems were not implemented. Nowhere has it been shown that another gun control law or banning certain types of firearms would have prevented this tragedy. Just the opposite: all evidence points to human failures, not the need for more laws.

The overwhelming majority of American gun owners would never contemplate or justify killing innocent people. We live in a civilized society, and we believe in the rule of law. In a sense, gun control activists are demanding that the millions of firearms owners who are law-abiding citizens, and who pose no risk to anyone, give up their personal liberties and safety, so that anti-gun activists can pretend to feel safer. The gun control lobby's demand to disarm the American populace is based on misguided emotion, not fact. Accordingly, such an act would fail to prevent future mass shootings. Instead, gun bans just make it less safe for all of us, while empowering criminals who can acquire firearms illegally.

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## PART 3 – YELLOW FLAG VS. RED FLAG

### *The Maine Experience*

## The Yellow Flag vs. Red Flag Debate

by David Trahan, SAM-ILA Executive Director

In the few days following the Lewiston shooting, press outlets from around the country arrived in Maine to report on the events of October 25, 2023. The headlines were swift, and before much was known, the stories started to run criticizing whether Maine's Yellow Flag law was weak and cumbersome. Gun control activists asserted that this tragedy proves we need Red Flag laws. Bizarre, given no facts were available yet to confirm what had happened or what systems may have failed.

It might surprise you to learn there is no such thing as a "Yellow Flag" law. It is another made-up term to create a predetermined image that some in the press and gun control activists want the public to believe that Maine's Protective Custody Statute and Weapons Restrictions Order processes compromise your safety. Odd, both have been around for decades. What we did in Maine in 2018 was reject the traditional "Red Flag" approach. A year later, we reformed our existing Protective Custody statute and streamlined the Weapons Restrictions Order process to give law enforcement better tools when dealing with individuals suspected of being in a

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**What we did in Maine in 2018 was reject the traditional "Red Flag" approach. A year later, we reformed our existing Protective Custody statute and streamlined the Weapons Restrictions Order process to give law enforcement better tools**

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mental health crisis and deemed a threat to themselves or others.

The word "Yellow" in the context of a stop light means "in the middle". It makes no difference whether it is true or not, what gun control activists and their professional consultants have done is create a political image of an impotent, ineffectual law, which is, in fact, a lie. Their goal is to create an environment in which every shooting or suicide can be blamed on "weak" gun laws. At the same time, those who legislated these improvements, i.e. SAM-ILA, Governors Lepage and Mills, and nearly the entire Maine Legislature, can be accused of having blood on their hands for not passing a more extreme gun control measure like "Red Flag," and other favorites of the national gun control groups.

Because SAM is seen as the most powerful advocate for gun rights in the state and that we negotiated the 2019 law, we are the easiest to blame. By default we became the target for hate and frustration after October 25. Gun control advocates will then just sit back and wait for the next tragedy and use the press to direct the public's pain and grief on their adversaries—a perverse strategy to weaken their opposition.

After the Lewiston shooting, the press stories and messaging from gun control extremists all had the same theme: if we just had "Red Flag" law, the shooting could have been prevented. I received countless hate mail messages and even death threats alleging I and SAM were responsible for the shooting, and the blood of the dead and wounded was on our hands because SAM did not support stricter gun control. Threatening my family, and others affiliated with SAM in the name of politics is a very dangerous game. This scorched earthwin at all costs—strategy reflects the worst kind of sleazy politics, and it has no place in civilized political discourse.

### How Maine's "Yellow Flag" Legislation Came About

The following historical timeline tells a story of remarkable political courage and collaboration, and is the product of this state's most brilliant legal minds coming together to build a better law and a safer state.

On March 23, 2018, Senator Mark Dion, D-Portland sent out a press release stating he had six Republican and four Democrat co-sponsors who were in support of Red Flag legislation. Among firearm rights supporters, this was the equivalent of being doused in ice water. A chill reverberated across the state and gun control groups rejoiced. That a gun control bill of this nature would pass with both parties in support was significant. Full disclosure: the SAM-ILA has always

strongly opposed Red Flag legislation because of its lack of due process for firearm owners. That was true in 2018. Our commitment to due process has not changed.

#### ***First, what is Red Flag?***

Twenty-two states have "Red Flag" laws or what are called Extreme Risk Protection Orders that allow family members and significant others to petition the court to confiscate firearms from individuals they believe, (with the court's concurrence) to be a possible threat of violence in the future. The most significant complaint from firearms rights organizations is the lack of due process for the accused person.

First, a court order to take a person's existing firearms and their right to purchase a firearm in the future can be approved by a court, *ex parte* (i.e., without the knowledge of the accused and without the ability to defend oneself). In addition, there need be no accusation of a crime, no mandatory legal representation, and no proof necessary that a crime may be committed soon. Red Flag legislation may also authorize a search warrant without Probable Cause. Sound un-American? It is. This process is the modern day "Scarlet Letter" for anyone owning firearms.

And what if a government official, or anti-gun group petitions an activist judge to declare that a certain class of firearms poses

## Legal Standards Definitions for Red and So-called Yellow Flag

### Meaning of Clear and Convincing Evidence-Maine Law

“Under the clear and convincing evidence” standard, the party presenting the evidence must demonstrate that it is highly probable or reasonably certain that their version of the facts is true. This

standard is considered to be more stringent than the preponderance of the evidence standard but less stringent than the beyond a reasonable doubt standard.”

Source: <https://www.legalmatch.com/law-library/article/clear-and-convincing-evidence-standard.html>

### Meaning of Preponderance-of-the-Evidence-Red Flag

“A preponderance of evidence” means that a party has shown that its version of facts, causes, damages, or fault is more likely than not the correct version, as in personal injury and breach of contract suits. This standard is the easiest to meet and applies to all civil cases unless otherwise provided by law.

The concept of “preponderance of the evidence” can be visu-

alized as a scale representing the burden of proof, with the totality of evidence presented by each side resting on the respective trays on either side of the scale. If the scale tips ever so slightly to one side or the other, the weightier side will prevail. If the scale does not tip toward the side of the party bearing the burden of proof, that party cannot prevail.”

Source: <https://courts.uslegal.com/burden-of-proof/preponderance-of-the-evidence/>

### Probable Cause for the Purposes of Protective Custody-Mental Health Statute-Maine Law

#### §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).]

Source: <https://legislature.maine.gov/statutes/34-B/title34-Bsec3862.html>

### Probable Cause for the Purposes of Arrest

Probable cause is a requirement found in the Fourth Amendment that must usually be met before police make an arrest, conduct a search, or receive a warrant. Courts usually find probable cause when there is a reasonable basis for believing that

a crime may have been committed (for an arrest) or when evidence of the crime is present in the place to be searched (for a search).

Source: [https://www.law.cornell.edu/wex/probable\\_cause#:~:text=Courts%20usually%20find%20probable%20cause,a%20warrantless%20search%20or%20seizure.](https://www.law.cornell.edu/wex/probable_cause#:~:text=Courts%20usually%20find%20probable%20cause,a%20warrantless%20search%20or%20seizure.)

an ongoing public threat? Could a Red Flag law be used to confiscate these firearms from thousands of law-abiding citizens? Under the “prove you are innocent” stance of a Red Flag law, this scenario is not so far-fetched.

After a tenacious floor fight, Senator Dion’s Red Flag law passed the Legislature and landed on Governor Paul LePage’s desk in 2018. With strong support from groups like SAM, Governor LePage vetoed the bill. Thankfully, the Legislature sustained the veto. Red Flag legislation was dead in Maine, at least for this legislative session. But the fight had just begun.

In the ensuing 2018 elections, Democrats won majorities in both chambers of the Maine Legislature and Janet Mills (D) won the Governorship. On March 19, 2019, Senator Rebecca Millett (D), a well-known gun control activist, reintroduced a much more extreme Red Flag law. Worse, at the same time, Republican President Donald Trump was sending mixed messages of support for a national Red Flag law.

The political headwinds were against us. During the 2019 Legislative session, Democrats and some Republicans were lining up to support “Red Flag” and we had what appeared to be only limited minority Republican support.

The public hearing room was packed, and SAM testified in opposition to Sen. Millett’s Red Flag bill. When the dust cleared, something dramatic happened. Behind the scenes, former Maine Attorney General and now Governor Janet Mills indicated she was uncomfortable with Sen. Millett’s bill, particularly as it pertained to “due process” for the accused.

What came next was astonishing. Former Attorney General and current Chair of the Senate Judiciary Committee, Mike Carpenter, switched from supporting Red Flag to negotiating a different bill to reform Maine’s Protective Custody and Extreme Risk Protection Order systems. Red Flag was dead!

Gov. Mills invited the SAM-ILA to enter discussions on a different path forward,

one that addressed concerns around “due process” and other issues we had with the bill. Mills convened a bipartisan negotiating team that in addition to SAM-ILA (David Trahan and Thomas Tyler), included Senators Mike Carpenter and Lisa Kiem, and attorneys Derek Langhauser and John Chapman.

What emerged from these negotiations became Maine’s Protective Custody and Weapon Restriction Order statute, our so-called Yellow Flag law. This legislation which became law in October 2019, is far superior to “Red Flag” because it is more effective at protecting innocent people while honoring our nation’s values of due process and personal liberty. Furthermore, this law makes it more difficult to falsely accuse someone of being mentally unsound and hence, a public safety risk by directly involving law enforcement officials in the petitioning process with the court.

## How Maine’s new Protective Custody and Weapons Restriction Order law is intended to work

- A complainant contacts police concerned that a subject, often a family member, is behaving erratically and may be in danger of harming himself or others. This initial contact with police may also be initiated by an emergency services call (911), by a member of the public, a school official, or by direct observation of the police in a public setting.
- The police investigate the complaint to determine the veracity of the complaint, and to ascertain whether the subject is showing signs of diminished mental capacity, and/ or criminal behavior.
- Using probable cause criteria, the officer may arrest and criminally charge the subject, or place the subject in protective custody for up to 18 hours to better ascertain the subject’s mental state or release the subject without restrictions.
- If the subject is placed in protective custody, the officer expedites a mental evaluation by a qualified medical professional.
- If the medical professional confirms the subject is suffering from a mental condition which poses a threat to himself or others, the police official petitions the court to enact a Weapons Restrictions Order

(WRO) in which the subject’s weapons will be confiscated for up to two weeks.

- A hearing is then scheduled to determine whether further action is justified, such as extending the WRO.

During this entire process, the subject has legal representation and if he cannot afford it, counsel is appointed by the court. In every step of the process, the highest levels of due process and legal standards are applied.

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**This process is far superior to “Red Flag” because it focuses on an individual’s actions when triggering government intervention, not the opinions and future predictions of family and others, sometimes a disgruntled acquaintance.**

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This process is far superior to “Red Flag” because it focuses on an individual’s actions when triggering government intervention, not the opinions and future predictions of family and others, sometimes

a disgruntled acquaintance. It places the burden on the government (in the full light day), not ex parte, (without your knowledge) whether to take a person’s liberty. Maine’s so-called Yellow Flag law relies on professionals to determine next steps and relies on the suspected person’s actions to determine whether to order a temporary loss of liberty.

It is critical in these cases for police to have timely access to qualified mental health care professionals who can deliver consistent, unbiased opinions regarding the subject’s mental state. Beginning in October 2022, a health care company called SPURWINK has fulfilled this role statewide. Subjects placed in protective custody are typically evaluated using ZOOM conferencing.

Since the passage of Maine’s so-called Yellow Flag law in late 2019, police have logged 145 incidents [as of December 26, 2023] in which people in some form of mental health crisis were considered for placement in protective custody and/or weapons removal. This new police and public safety tool saw limited use in 2020

Since the passage of Maine's so-called Yellow Flag law in late 2019, police have logged 145 incidents [as of December 26, 2023] in which people in some form of mental health crisis were considered for placement in protective custody and/or weapons removal.

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(14 incidents), 2021 (7 incidents) and 2022 (7 incidents). After SPURWINK became the mental health provider in these cases in late 2022, use of Yellow Flag increased dramatically. In 2023, prior to the October 25th mass shooting, police logged 54 Yellow Flag cases, or 5.4 per month. After the Lewiston tragedy, 63 Yellow Flag incidents were logged statewide, or 31.5 per month. What follows is a representative sampling of these 145 incidents.

- **August 7, 2020** *Scarborough PD*: Mother reported son on drugs and alcohol, threatening suicide with knife or “suicide by cop.”
- **October 21, 2021** *Waterville PD*: Man, 21, held gun to head in presence of two friends, threatening to kill himself. Taken into custody after brief standoff.
- **March 21, 2022** *State Police*: Lyman man, 91, with paranoid delusions of men he claims he can see sent electronically into his house to harm him; high risk of harm to self or others; 13 firearms removed from residence.
- **January 4, 2023** *Franklin SO*: 58-yr-old highly intoxicated man w/past suicidal ideation, attempted suicide by taking medication, called behavioral health for help. Police took him into protective custody. Seized several handguns, rifles, and shotguns.

- **February 16, 2023** *Knox SO*: 54-yr-old man highly depressed, history of suicidal ideation, threatening to kill himself with gun; held gun to his head. Order resulted in seizure of six guns and a crossbow.
- **May 13, 2023** *Lincoln County SO*: 53-yr-old man suffering from PTSD; intoxicated; threatening suicide with firearm and saying he will make wife watch. Wife hid ammo, left, and called police.
- **November 7, 2023** *Androscoggin SO*: 44-yr-old man concerned he will be the next mass shooter. Drinking heavily in the context of financial stress and infidelity. History of removing firearms when depressed and suicidal.
- **November 18, 2023** *Hampden PD*: 32-yr-old man made verbal and written suicidal statements; agreed to [get] help and removal of weapons.
- **December 1, 2023** *Sanford PD*: 29-yr-old man threatened to go on “murderous rampage”; multiple 911 calls of man with knife; shot in leg by citizen fearful for himself and family; [Subject] claimed to be a vampire, licking own blood in ambulance.
- **December 15, 2023** *Cumberland County SO*: 31-yr-old man assaulted brother and sister-in-law; believes government planted “bug” in his ear; patrols property with rifle and ballistic vest; believes birds are talking to him and construction workers are planting bugs in his house.

Note that individual entries do not necessarily reveal the final disposition of these cases.

Since the Lewiston shooting, gun control activists and their friends in the press who so stridently criticized Maine's Yellow Flag

law have now gone silent. As the use of this law received scrutiny, it is becoming obvious Maine's Protective Custody and WRO law protects the public, is easy for police to implement, and it helps people in crisis, while upholding the values of Due Process protected in the Constitution.

To get a snapshot comparison of how Maine's law stacks up against Red Flag, just look to our close neighbor. Massachusetts has just under 7 million people and has had a traditional Red Flag law for five years. According to CBS News, Boston, November 2, 2023, Massachusetts' Red Flag, “has only been used 57 times in five years. Of those 57 times, 38 emergency orders have been issued.” Another way to look at it is that the court has rejected the petitions, or the petitions have been misused, 34% of the time.

The reason Maine's law is superior to Red Flag is that it focuses on intervention based on a person's actions, not someone's opinion that something might happen. The words “Protective Custody” emphasize the point. The Maine system is designed to help the person in crisis while at the same time, protecting the public. Our system uses the highest level of due process standards which have been around since the founding of our nation. Furthermore, it employs a health assessment by a competent mental health professional to act as a starting point for getting a person in mental crisis the mental health care he or she needs.

These 145 cases represent someone's, sibling, parent, uncle, or friend. Most represent a tragedy averted. There is no way to know how many suicides, police shootings or crimes have been prevented by Maine's Yellow Flag law, but what I can say is 145 people needed help and support and nearly all are now alive and better off because of it.