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Federal and State Affairs

D-6 Red Flag Laws

What Are Red Flag Laws?

Red flag laws, sometimes called extreme risk protection order laws or gun violence restraining order laws, allow a judge to issue an order that enables law enforcement to confiscate firearms from individuals deemed a risk to themselves or others. Prior to the enactment of red flag laws, in most states, law enforcement had no authority to remove firearms from individuals unless they had been convicted of specific crimes, even if their behavior was deemed unsafe.

Depending on state laws, family members, household members, law enforcement, or a mixture of these groups, can ask the court for an order that would allow police to remove the firearm or firearms from the individual's home and restrict their ability to purchase firearms. Typically, the person seeking the order must provide evidence of behavior that presents a danger to others or themselves; then the court holds an expedited hearing. If a judge agrees the individual is a threat, the individual's firearms will be removed for a temporary period that can last from a few weeks to a year. However, the firearm owner is usually entitled to a hearing so that they may respond.

What Actions Constitute a 'Red Flag'?

While each state defines what constitutes a "red flag" differently, the following are some examples:

- Recent threats or acts of violence by such person directed toward themselves or other persons;
- The reckless use, display, or brandishing of a firearm by such person;
- History of documented evidence that would give rise to a reasonable belief the individual has a propensity for violent or emotionally unstable conduct;
- History of the use, attempted use, or threatened use of physical force by such person against other persons;
- History of mental illness or prior involuntary confinement of such person in a hospital for persons with psychiatric disabilities; and
- The illegal use of controlled substances or abuse of alcohol by such person.

State Actions

Enacted

Before 2018, only five states had enacted red flag laws: Connecticut, Indiana, California, Washington, and Oregon.

In 1999, Connecticut became the first state to enact a law permitting law enforcement the legal authority to temporarily remove firearms from individuals when there is probable cause to believe they are a risk to themselves or others (C.G.S.A. §29-38c).

Indiana enacted the state's red flag law in 2005 (IC 35-47-14 *et seq.*).

California became the first state to allow family members to file a petition for firearms to be removed from an individual's possession when the state enacted their red flag law in 2014. The California Legislature passed a measure in 2016 to allow high school and college employees, co-workers, and mental health professionals to file such petitions, but this legislation was vetoed by Governor Brown (CA Penal Code §18100 *et seq.*).

Washington also enacted a similar red flag law in 2016. Washington, like California, allows family members to petition for the removal of firearms (Chapter 7.94 RCW, Extreme Risk Protection Order Act).

In 2017, Oregon enacted its red flag law (O.R.S. §166.525 *et seq.*).

As of September 2018, an additional eight states have enacted red flag laws. These states are Delaware, Florida, Illinois, Maryland, Massachusetts, New Jersey, Rhode Island, and Vermont.

Considered

During the 2017 and 2018 Legislative Sessions, 23 states and the District of Columbia considered red flag legislation. These states are Alabama, Alaska, Arizona, Colorado, Hawaii, Iowa,

Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Missouri, Nevada, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Texas, Utah, Virginia, and Wisconsin.

Did Not Consider

During the 2017 and 2018 Legislative Sessions, 14 states did not consider red flag legislation. These states are Arkansas, Georgia, Idaho, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Oklahoma, South Carolina, South Dakota, West Virginia, and Wyoming.

However, Arkansas and New Mexico have red flag bills drafted for the 2019 Legislative Session.

Federal Legislation

Four bills have been introduced at the federal level concerning red flag laws. All but one bill, the Gun Violence Prevention Order Act of 2017, have received bipartisan support.

2017 Legislation

The Gun Violence Restraining Order Act of 2017, H.R. 2598, introduced in May 2017, would define a gun violence prevention order as a written order, issued by a state court or signed by a magistrate, prohibiting a named individual from having custody, controlling, purchasing, possessing, or receiving any firearms, or would require the removal of firearms from that individual's possession. As of May 2017, the bill is in the House Committee on the Judiciary.

The Gun Violence Prevention Order Act of 2017, S. 1212, introduced in May 2017, would define a gun violence prevention order as a written order, issued by a state court or signed by a magistrate, prohibiting a named individual from having custody, owning, purchasing, possessing, or receiving any firearms, or would require the removal of firearms from that individual's possession. As of March 2018, the bill is in the Senate Committee on the Judiciary.

Both of the bills described would provide federal grants to states that implement red flag laws.

2018 Legislation

The Federal Extreme Risk Protection Order Act of 2018, S. 2521, was introduced in the Senate in March 2018. The bill would amend Chapter 44 of Title 18 of the U.S. Code by including extreme risk protection orders in federal law. Under the bill, an extreme risk protection order would be issued by a federal court and would enjoin an individual from purchasing, possessing, or receiving, in or affecting interstate and foreign commerce, a firearm or ammunition. As of March 2018, the bill is in the Senate Committee on the Judiciary.

The Extreme Risk Protection Order and Violence Prevention Act of 2018, S. 2607, also introduced in March 2018, would add a new section to Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10101 *et seq.*). The bill would define an extreme risk protection order as a written order for a period not to exceed 12 months, issued by a state or tribal court or signed by a magistrate that would prohibit the individual named in the order from having custody, controlling, purchasing, possessing, or

receiving any firearms, or would require a firearm be removed from that individual's possession.

Under these bills, with the exception of the Gun Violence Restraining Order Act of 2017, a family or household member of the applicable individual, or a law enforcement officer, may submit a petition requesting that a court issue a gun violence prevention or an extreme risk protection order. Under the Gun Violence Restraining Order Act of 2017, only a family member or a law enforcement officer may submit a petition.

Kansas Legislation

SB 390 was introduced during the 2018 Legislative Session. The bill would have created the Extreme Risk Protective Order Act, which would allow courts to grant an order prohibiting defendants from owning, controlling, or purchasing a firearm or ammunition for up to one year. A law enforcement officer or family member would have been allowed to file a petition for an Extreme Risk Protective Order (ERPO). After an ERPO was issued, the defendant would have been required to relinquish all firearms and ammunition to law enforcement. The bill died in the Senate Committee on Judiciary.

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