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E-5 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. Notice for scheduled hearings is provided for orders that could result in a firearm divestment for a specific period of time. Defendants may participate in such hearings.

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 2019, an additional 12 states have enacted red flag laws. These states are Colorado, Delaware, Florida, Hawaii, Illinois, Maryland, Massachusetts, Nevada, New Jersey, New York, Rhode Island, and Vermont.

Federal Legislation

Numerous bills concerning extreme risk protection orders have been introduced in the 116th Congress. Most proposed legislation would establish a method of obtaining an extreme risk protection order in a federal district court. Legislation would allow both *ex parte* and long-term protection orders. *Ex parte* orders would result in a protection order that begins immediately upon issuance and would expire after a set term, sometimes 14 days or less. A long-term order would expire after a definite period of time, but would require notice and a hearing.

Kansas Legislation

Red flag legislation has been considered by the Kansas Legislature several times in recent years, most recently in 2019.

HB 2129 (2019) (currently in the House Committee on Federal and State Affairs) would create the "Gun Safety Red Flag Act" and would allow plaintiffs to seek a gun safety protective order. Plaintiffs would be required to file a petition in the district court of the county where the defendant resides and would be required to include information such as:

- The number, types, and locations of any firearms and ammunition the defendant is believed to possess;
- Whether a current or prior protective order has been issued against the defendant; and
- Whether there are any pending legal matters between the parties.

The court would be required to set a hearing within 14 days, and notice of the hearing would be required to be served upon the defendant.

The bill would also allow for *ex parte* protective orders to be issued before a hearing. Such orders would require detailed allegations to be included in the plaintiff's petition that the defendant poses an "immediate and present danger" to either self or others if such person were to continue

to possess firearms and ammunition. The court would be required to issue an *ex parte* order if it finds reasonable cause the defendant is an immediate threat to self or others if such person were to continue to possess firearms and ammunition. The court would also be directed to set a hearing within 14 days to determine whether a full gun safety protective order is necessary.

Additionally, a judge would also be able to issue an emergency order at any time the court is unavailable, and such judge believes the defendant is an immediate threat to self or others if such person were to continue to possess firearms and ammunition. The order would expire at 5:00 p.m. on the next day the court is in business.

All above orders would not allow the person subject to the order to possess firearms or

ammunition while such order is in effect. The bill would also require when law enforcement serves any of the above orders, the defendant be requested to turn over firearms and ammunition at that time. Persons subject to an order who later purchase, possess, receive or attempt to purchase or receive firearms or ammunition could be charged with a class C misdemeanor and would be subject to a five-year prohibition on firearm or ammunition ownership.

SB 183 (2019) (currently in the Senate Committee on Federal and State Affairs) contains similar provisions to HB 2129, except the bill would allow the issuance of extreme risk protection orders that would prohibit persons subject to the order from possessing firearms and ammunition for a period of one year.

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