



Bill Summary and Position Paper

“Red Flag” Gun Confiscation Orders

Final Bill in drafting by
Sen. Lindsey Graham
116th Congress (2019-20)

NAGR Position: **Strongly Oppose**

Last Updated: 5/6/2019

Summary:

Sometimes repackaged as “Extreme Risk Protection Orders” or “Gun Violence Restraining Orders,” Red Flag gun confiscation bills call for Second Amendment rights to be stripped from law-abiding Americans without due process based largely on unsubstantiated accusations from disgruntled family members, neighbors, co-workers, and/or current or ex-romantic partners, or roommates.

On the federal level, such legislation has been proposed by U.S. Senators Lindsey Graham and Marco Rubio.

Senators Graham and Rubio’s proposals go further by incentivizing states to confiscate firearms through federal grant programs.

The National Association for Gun Rights expects all pro-gun members of the U.S. House and Senate to join us in opposing this type of gun confiscation.

Talking Points & References:

- **Gun Confiscation Without Due Process**
 - The proposal would provide grants to states that allow a court to issue a so-called “Extreme Risk Protection Order (ERPO)” which involves a court entering a secret order banning someone from possessing firearms or ammunition, and confiscating the firearms and ammunition that an individual already owns. The order and seizure warrant may be issued *ex-parte* (in other words, before any notice at all to the subject of the order). This has happened in multiple states, including more than 100 warrants in Maryland (one of which resulted in the death of a gun owner), putting the lives of local residents and police officers in danger.

- Such legislation contemplates that the persons who initiate the request for this order are family and/or ex-lovers of the person whose firearms are to be seized. For many people, those two categories are going to be full of people who now dislike them and would be motivated to seek revenge to include lying to the courts.
- The legislation authorizes accompanying seizure warrants, which are issued without any notice to the subject of the order. You find out when the SWAT team comes to your door to “collect” your guns. The order may be issued using the very weak “reasonable suspicion” standard of evidence.
- The court could report these orders to the FBI, barring the individual from being able to pass a NICS check to purchase a firearm. Additionally, law enforcement would be obligated to confiscate firearms the individual legally possesses.
- Only after seizure of the firearms, and entry of the order, can the subject of the order challenge the issuance and beg for their rights and their guns back. **This is not due process.**
- Under most Red Flag laws, the court is expected to hold a hearing within 30 days of the entry of the initial order, after notice has been provided to the subject of the order. At the hearing, the State must show “clear and convincing evidence” that the person poses a “significant risk” to themselves or to another person.
- Under such legislation, state law is supposed to allow a court to also involuntarily commit a person to substance abuse treatment or mental health treatment, while confiscating their firearms.
- Under such legislation, a court considering an ERPO or the ex-parte initial order can rely solely on written statements, depriving the person whose rights are being adjudicated the right to confront the witnesses against him. Such legislation even says that only the written statement, which is the basis for the initial ex parte order, has to be under oath! Written statements justifying the ERPO itself need not be under oath. Due process includes a number of ideas that are fundamental to justice in the USA. The right to confront witnesses against you is essential to due process.
- **Seizure of Firearms Belonging to Innocent Third parties is acceptable under such legislation**
 - Such legislation provides grants to states that permit firearms belonging to other persons besides the subject of the order, such as other household family members, to be seized also if the police think the subject of the order can access them.

- **Disgruntled Family Members and Roommates**
 - Under such legislation, family members who oppose the Second Amendment could use something as simple as a pro-gun social media post to assert that a family member should have their gun rights stripped and their firearms confiscated.
 - Under such legislation, disgruntled current or former roommates would also be able to initiate the gun confiscation process.
 - Individuals can be denied their right to self-defense based on any number of emotionally-charged personal disputes, where no crime is committed and no probable cause exists that a crime might be committed.
- **Indefinite suspension of Second Amendment Rights**
 - Once an ERPO is issued, the subject of the order may request one hearing, after the fact, to have the order rescinded before it expires on its own terms. This has been limited to a single hearing, where if the subject loses they may not request a new hearing, even if new evidence becomes available or if their life circumstances no longer warrant such a prohibition.
 - Under such legislation, these orders can be renewed indefinitely barring the subject from purchasing a firearm (one year at a time) and having their guns returned to them (three years at a time).
 - For some, this may amount to a lifetime Second Amendment ban.

Graham and Rubio's legislation do not state what will happen to confiscated firearms if they are not returned to the owner. These proposals say state law does not have to allow the owner to arrange for transfer of the confiscated firearms and ammunition to a dealer for sale. Will the firearms be destroyed, resold, or otherwise disposed? Will the accused be compensated for the value of the property that is no longer theirs?

Bottom Line: So-called Red Flag laws are GUN CONFISCATION ORDERS.

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