



“Red Flag” Gun Confiscation

Including S.7, S.506 and similar legislation

Our Position: **Strongly Oppose**

Last Updated: 8/17/2019

Summary of Proposed Legislation:

“Red Flag” gun confiscation bills call for legally owned firearms to be forcibly confiscated from law-abiding Americans without due process, based on unsubstantiated accusations from disgruntled family members, neighbors, co-workers, and/or current or ex-romantic partners, or roommates.

Sometimes branded as “Extreme Risk Protection Orders” (ERPOs) or “Gun Violence Restraining Orders,” (GVRO’s) these laws rely on the issuing of ex-parte (one sided) orders authorizing law enforcement, including SWAT teams, to immediately seize firearms from the subject of the order without notification or right to an attorney.

In other words: Gun Confiscation without due process.

In the 116th Congress, S. 7, by U.S. Senator Marco Rubio, authorizes a federal grant program to fund state-level adoption of “Red Flag” gun confiscation laws.

S.506 by Senator Dianne Feinstein authorizes a grant program as well as a federally-enforceable “Red Flag” gun confiscation law.

In the wake of the El Paso and Dayton attacks, Sen. Lindsey Graham and Sen. Richard Blumenthal have taken the lead on re-drafting their “Red Flag” legislation (S.2521) from the 115th Congress.

Currently, 17 states and the District of Columbia have “Red Flag” laws on the books. None of these state’s laws respect due process or the presumption of innocence. Instead, the laws entirely neglect due process all together, a true “take the guns first” form of gun confiscation.

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.

“Red Flag” - Quick Facts & Talking Points:

The Myth of Due Process

Not a single one of the 17 states with “Red Flag” laws has due process. It is impossible to have due process and confiscate guns first. Further, the burden of proof is much lower to take the guns than to get them back.

Dangerous for Law Enforcement and Gun Owners Alike (lives are at stake)

“Red Flag” gun confiscation laws put rank and file law enforcement officers and everyday citizens in danger, as evidenced by a Maryland man who was shot and killed by a SWAT team in his own home during an unannounced raid at 5 o’clock in the morning.

Ripe for Abuse

Abusive partners, and criminals will use “Red Flag” laws to disarm their partners, neighbors, and potential victims. “Red Flag” laws do not provide penalties for false accusations, and even if they did, they will be seldom enforced.

“Red Flag” laws target law-abiding citizens who have not committed a crime, in other words, it’s an unconstitutional “pre crime” program similar to what you’d expect to see in Communist China.

Bribing States

Another federal money handout used to bribe states into passing strict and more-infringing “Red Flag” laws, while punishing states that do not.

“Red Flag” Laws are About Taking Guns, and Only Guns

They aren’t confiscating knives, prescription meds, cars, or propane tanks.

All 50 states already have procedures to separate crazy people and guns (ex: 72 hour holds).

“Red Flag” - Detailed Analysis:

All of the currently proposed federal “Red Flag” gun confiscation bills 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 lawfully 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 is happening in multiple states, including more than 100 warrants in Maryland alone, 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 by 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 “preponderance of the evidence” (basically a tipping of the scales: 51%) 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.

Upon issuing the order, the subject of the order potentially becomes in violation of it without their knowledge.

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. This is a higher legal standard than the initial order.

Further, any violation of these orders is a separate crime. So even if a respondent is innocent of the underlying allegations that inspired the “Red Flag” order, violation of the order pending a hearing could result in criminal charges, even if it’s necessary for self-defense purposes.

Under such legislation, a court considering an ERPO or the ex-parte initial order can rely solely on written statements or possibly telephone 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.

In most states, there is no recourse for the victims or punishment of the perpetrators of a falsely filed “Red Flag” complaint. Case law suggests even the addition of such a provision would be rarely enforced.

Firearms belonging to innocent third parties besides the subject of the order, such as household family members, can also be seized if the police think the subject of the order can access them.

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. In the most concerning scenario, violent partners or criminals can abuse “Red Flag” orders by filing one against their victim.

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 most versions of this legislation, these orders can be renewed indefinitely, barring the subject from purchasing a firearm (such as one year at a time) and having their guns returned to them (such as three years at a time).

This legislation does not provide for 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?

In practice, local governments are charging people thousands of dollars to store guns that are confiscated, including hefty fees.

Further, immense legal fees are associated with defending a case like this. According to law professor Donald Kilmer “Experienced counsel to defend you in a “due process” hearing will run about \$15,000 in fees. If you lose and want to appeal, expect to spend another \$25,000 to \$100,000 in fees and costs. And even with all of that, you might still lose.”

In other words, by mere “preponderance of the evidence” so-called “Red Flag” laws will strip a constitutional right from accused Americans without them ever having a day in court, and it will cost them tens of thousands of dollars to successfully convince a judge to overturn an order already set by another judge. The deck is stacked. Guilty until proven innocent.

“Red Flag” laws are an indefinite suspension of Second Amendment Rights, which, for some, will amount to a lifetime gun ban.

Bottom Line: A national “Red Flag” law OR grant program will violate law-abiding Americans due process and Second Amendment rights.

The National Association for Gun Rights will score any vote or legislative action to advance any “Red Flag” law, including a grant program, as an anti-gun action akin to the actions of King George III prior to the American Revolution.

National Association for Gun Rights
2300 W Eisenhower Boulevard
Loveland, CO 80537
www.NationalGunRights.org
877-405-4570