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Extreme Risk Protection Orders and Effects on Gun Violence

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What, if any, statistical data is available regarding the impacts of extreme risk protection orders—also known as “red flag” laws—on rates of gun violence?

As of January 2019, at least 13 states have enacted, and many more have considered, “red flag” laws—also known as extreme risk protection orders, gun violence prevention orders, or risk warrants—which allow courts to issue a temporary denial of possession of, or access to, firearms by certain perpetrators of domestic violence or others deemed to be at an extreme or high risk of committing a violent crime.¹

Under red flag laws, when a petition is filed, a court weighs a number of factors to determine whether to issue an order.² Some states have allowed law enforcement to petition the court system, as in Connecticut, Indiana, and Florida, while others have additionally allowed petitions from a family or household member, as in California, Oregon, and Washington.³ Legislation has received bipartisan support in many states, with a handful of governors in each major party signing red flag bills to date.⁴

¹ Warren Fiske, “Ralph Northam is right: GOP governors and legislatures have OK'd 'red-flag' gun laws,” *PolitiFact*, January 23, 2019, www.politifact.com/virginia/statements/2019/jan/23/ralph-northam/ralph-northam-right-gop-governors-and-legislatures/.

² For information on the petition process in California, see “Gun Violence Restraining Orders,” California Courts, <https://www.courts.ca.gov/33961.htm>. A court in California *must* consider: a recent threat of violence or act of violence by the subject of the petition directed toward another, himself, or herself; a recent violation of a protective order of any kind; a conviction of a violent offense; or a pattern of violent acts or violent threats within the past 12 months, including, but not limited to, threats of violence or acts of violence. The court *may* also consider: the unlawful and reckless use, display, or brandishing of a firearm; evidence, including police reports and records of convictions, of either recent criminal offenses by the subject of the petition that involve controlled substances or alcohol or ongoing abuse of controlled substances or alcohol; and evidence of recent acquisition of firearms, ammunition, or other deadly weapons. “Gun Violence Protection Orders,” presentation at U.S. Department of Defense/Veterans Affairs Biannual Suicide Prevention Conference by Adelyn Allchin, MPH, Educational Fund to Stop Gun Violence, www.dspo.mil/Portals/113/Documents/2017%20Conference/Presentations/Gun%20Violence%20Protection%20Orders.pptx.

³ Nicole Gaudiano, “‘Red flag’ laws that allow for temporary restrictions on access to guns gain momentum across nation,” *USA Today*, March 25, 2018, www.usatoday.com/story/news/politics/2018/03/25/red-flag-laws-allow-temporary-restrictions-access-guns-gain-momentum-across-nation/454395002/. For an analysis of the contents of laws across states, see “Extreme Risk Protection Orders,” Giffords Law Center to Prevent Gun Violence, lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/extreme-risk-protection-orders/.

⁴ Warren Fiske, *PolitiFact*.

While a mounting body of research depicts gun violence as a leading cause of death in the United States, it is difficult to single out, as causal, a single firearms policy that affects only a relatively small number of people (as red flag laws do) in comparison to other variables, including other laws that differ among states. Where red flag laws are found, relatively few individuals are subject to such court orders as compared to the broader population, for these laws are only intended for cases of known and extreme danger. The recent enactment of red flags laws in most states where they have been codified may not have provided enough time—or produced enough protection orders to date—to see measurable statistical impacts on gun violence rates.

Accordingly, supporters of red flag laws point not to overall crime statistics, but rather to specific instances in which firearm seizure serves as a means to deal with a preventable, individualized risk of gun violence by a particular person at a particular time. Supporters commonly cite known cases of mass shootings, intimate partner shootings, and other acts of gun violence committed by someone who was regarded, before a killing spree, as being at high risk of committing gun violence.⁵

In the view of Adam Winkler, a scholar at the University of California Los Angeles (UCLA):

The truth is that it is very rare to know in advance when someone is going to be dangerous with a firearm. This is not going to make a huge dent in our gun violence statistics. But it can help in individual cases.⁶

As far as we are aware, no studies regarding the effects of red flag laws on overall crimes have been published to date. The lack of available statistical research does not necessarily lead to the conclusion that red flag laws—or other policies—have no impact on the commission of crimes. The only published studies that we found regarding red flag laws and crime rates appear to be focused narrowly on suicide, due to the fact that most subjects of court orders under red flag laws have been reported to be men at risk of suicide by firearm. According to an analysis of data in Connecticut, that state’s red flag law has

⁵ For example, the intent of Hawaii House Bill (HB) No. 2024, proposed in 2018, stated in part: “Nationwide, active shooters have inflicted great harm by killing and injuring innocent persons, sometimes in tragic mass shootings such as the 2016 Orlando nightclub shooting and the 2017 Las Vegas and Sutherland Springs church shootings. In such cases, law enforcement or a member of the shooter's family or household may have observed warning signs before the shooting, but depending on the jurisdiction, may not have had the ability to petition a court to confiscate the shooter's firearms and ammunition.” HB 2024 may be viewed at www.capitol.hawaii.gov/session2018/bills/HB2024_.HTM.

⁶ Brian Resnick and *National Journal*, “Restraining Orders, But For Guns,” *The Atlantic*, May 27, 2015, www.theatlantic.com/politics/archive/2015/05/restraining-orders-but-for-guns/454371/.

measurably prevented certain suicides, saving some lives.⁷ Separately, according to law enforcement in Maryland, at least four “significant” threats involving potential school shooters have been interdicted due to court-ordered seizure of firearms by law enforcement under the new red flag law in that state.⁸

We hope this is helpful. If you have questions or need additional information, please let us know.

⁷ A two-page summary of relevant data is available from Educational Fund to Stop Gun Violence at efsgv.org/wp-content/uploads/2018/05/Data-behind-Extreme-Risk-Laws-FINAL-2.pdf. A comprehensive academic study of suicides and firearms seizures in Connecticut and Indiana appears in the journal *Psychiatric Services*, as reported by Bill Flood in “Researchers study ‘red flag’ gun laws in CT and IN, find reduction in firearm suicides,” *Fox 61*, June 13, 2018, fox61.com/2018/06/03/researchers-study-red-flag-gun-laws-in-ct-and-in-find-reduction-in-firearm-suicides/.

⁸ House Judiciary Committee hearing, Maryland General Assembly, January 15, 2019, viewable at mgahouse.maryland.gov/mga/play/7b08ab70-94ba-4fda-889c-91db84fcaf86/.