



February 15, 2019

Red Flag Gun Confiscation Bill; HB19-1177

Rocky Mountain Gun Owners Position: **STRONGLY OPPOSE**

Overview

So-called “Red Flag” bills (“Extreme Risk Protection Orders ERPO” or “Gun Violence Restraining Orders GVRO”), call for Second Amendment rights to be stripped and guns to be seized from law-abiding Americans without due process based largely on unsubstantiated accusations from disgruntled family members, neighbors, co-workers, and/or current or ex-intimate partners or roommates.

As introduced, Colorado HB19-1177 is a “Red Flag” Gun Confiscation Bill.

Talking Points about HB19-1177

- This bill is a violation of both the Second Amendment right to bear arms and the takings clause of the Bill of Rights.
- Law-abiding gun owners will be forcibly disarmed, their firearms taken, without trial, and made to petition the court at their expense in order to get their rights back.
- This process can be abused to permanently suspend someone’s constitutionally-protected rights, without any criminal conviction. (“Red Flag” orders can be repeatedly renewed.)
- Seizing firearms from law-abiding citizens who have not committed a crime is gun confiscation; doing so without prior notice and a chance for a hearing is a violation of the right to due process.
- This bill is about guns, not public safety. It only calls for the confiscation of guns. It does not call for the confiscation of knives, bats, prescription medications, propane tanks or other items that could be used to harm one’s self or others.
- This law is ripe for abuse. The list of persons who can request such an order include many who would be reasonably thought to dislike the subject of the order, and they face no meaningful recourse for using the law maliciously against someone.
- Perhaps it should be called the “Tinder” gun ban, because there are so many loopholes that one blind date gone wrong could be enough for someone (an “intimate partner”) to file a “Red Flag” complaint against a law-abiding citizen.
- A gun owner (or non-gun owner) won’t even know they’ve been subjected to a gun confiscation order until a SWAT team barges down their door and raids their home.
- The gun confiscation procedure under this bill can be abused by stalkers and ex-husbands, and ex-boyfriends against vulnerable women to ensure they lose their only means to defend themselves.
- This is the same legislation that resulted in police shooting a Maryland father dead on his doorstep last November.
- This bill needlessly pits government against citizens, which will result in more risky and potentially violent confrontations between citizens and law enforcement.

Detailed Legal Analysis

HB19-1177 would create an “Extreme Risk Protection Order” (ERPO) or “Gun Violence Restraining Order” in Colorado.

The temporary ERPO order would be issued *ex parte* (without the accused’s knowledge) by a court upon showing, by a preponderance of the evidence standard (i.e. more likely than not) that a person “poses a significant risk of causing personal injury to self or others by having in his or her custody or control a firearm or by purchasing, possessing, or receiving a firearm [.]”

In addition to requiring loss of firearms, the order would also serve to revoke a concealed carry permit and confiscate the physical permit if the person has one.

The order could be requested by law enforcement or a “family or household member.”

Under the bill, a family or household member means, a person related by blood, marriage, or adoption to the respondent (no matter how distantly related by blood), or a person who has a child in common with the respondent, regardless of whether such person has been married to the respondent or has lived together with the respondent at any time, or a person who regularly resides or regularly resided with the respondent within the last six months, or domestic partner of the respondent, or a person who has a biological or legal parent-child relationship with the respondent, including stepparents and stepchildren and grandparents and grandchildren, or a person who is acting or has acted as the respondent’s legal guardian.

Finally, the bill also permits persons who are or were in an “intimate relationship” with someone to request a court strip that person of their right to possess firearms.

From the statutory definition and case law construing “intimate relationship”, it can mean a dating relationship like the one that might exist between spouses, former spouses, past or present unmarried couples, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time.

There is no set time frame required for a relationship to be an “intimate relationship” and no sexual contact is required for a relationship to meet this definition.

Indeed, this definition is so squishy and open ended that virtually any dating relationship, no matter how short, or how chaste, can meet the definition.

If the order is requested by law enforcement they can also request a warrant to seize the person’s firearms.

If the order is requested by a family or household member then law enforcement would have to apply for a warrant at a separate hearing.

Within fourteen days AFTER the *ex parte* order the court is supposed to schedule a hearing on making the order permanent, at which the respondent could appear.

The respondent is supposed to be served personally, but the bill says that service by mail or by publication can also be acceptable, if approved by the court.

A permanent order would be good for 364 days.

Evidence that a person should be barred from possessing firearms may include, but is not limited to:

“(a) A recent act or credible threat of violence by the respondent against self or others, whether or not such violence or credible threat of violence involves a firearm;

(b) A pattern of acts or credible threats of violence by the respondent within the past year, including but not limited to acts or credible threats of violence by the respondent against self or others;

(c) A violation by the respondent of a civil protection order issued pursuant to article 14 of this title 13;

(d) A previous or existing extreme risk protection order issued against the respondent and a violation of a previous or existing extreme risk protection order;

(e) A conviction of the respondent for a crime that included an underlying factual basis of domestic violence as defined in section 18-6-800.3(1);

(f) The respondent's ownership, access to, or intent to possess a firearm;

(g) A credible threat of or the unlawful or reckless use of a firearm by the respondent;

(h) The history of use, attempted use, or threatened use of unlawful physical force by the respondent against another person, or the respondent's history of stalking another person as described in section 18-3-602;

(i) Any prior arrest of the respondent for a crime listed in section 24-4.1-302(1) or section 18-9-202;

(j) Corroborated evidence of the abuse of controlled substances or alcohol by the respondent;

(k) Whether the respondent is required to possess, carry, or use a firearm as a condition of the respondent's current employment; and

(l) Evidence of recent acquisition of a firearm or ammunition by the respondent.”

In other words, evidence of ownership of firearms (item (f)) or recent purchase of a firearm or ammunition (item (l)) is sufficient for issuance of the order.

No other evidence need be presented, according to the bill. Indeed, for law enforcement personnel, their job can be the basis for issuing an order (item k).

A person facing such accusations may not even be able to confront his accusers, since the bill allows a court to issue an order based upon “affidavits” or written statements, with no requirement for live testimony.

Once the permanent order is issued it is in effect for 364 days.

Only one time during that period the respondent may ask the court to terminate it before it expires.

At such a hearing the burden of proof is on the person who lost their firearm rights to prove they are not dangerous.

The risk protection order can be renewed indefinitely for additional periods up to one year each.

A person who has an order entered against them has to give his firearms to the law enforcement agency, or if he can find a FFL dealer willing to take them, to the dealer.

If the person does not claim the firearms within one year after the order expires or is terminated, the agency that has them may dispose of them as they see fit.

The court is obligated to report the existence of the ERPO to NICS (federal gun control registry).

The bill provides immunity for “good faith” lies to the court to obtain an order.

There is no meaningful penalty in the bill or in current law for using the process to harass or annoy someone, or for lying about facts to support issuance of an order.

RMGO opposes this legislation, or similar legislation like it.