

## **GOP-Led Committee Examines Red-Flag Gun Laws**

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WASHINGTON (CN) – As more states pass laws that allow authorities to take guns from those suspected of posing a danger, Republicans on the Senate Judiciary Committee expressed support Tuesday for so-called red-flag laws on the state level but pushed back against federal legislation.

The laws allow police, family members or other concerned parties to petition a court for the temporary removal of guns from someone deemed to be a threat to themselves or others.

Senator Lindsey Graham, a Republican from South Carolina who chairs the Judiciary Committee, called Tuesday’s hearing to discuss how the laws are working in states that have enacted them.

“We’re trying to balance the right to own gun under the Second Amendment with mental health issues that are far too prevalent in society,” Graham said. “And we do not have enough capability to deal with the problem.”

Graham had worked last year with Democratic Senator Richard Blumenthal of New York on a bipartisan federal red-flag bill. Graham noted during Tuesday’s hearing, which marked a rare bipartisan effort to tackle gun violence, that a federal law is likely off the table for now.

But he said the federal government could offer incentives for states that enact red-flag laws that contain meaningful due process protections.

“I think that’s the best way, at least initially, to solve this problem,” Graham said.

A wave of the laws, sometimes called extreme risk protection order laws, emerged after the school shooting at Marjorie Stoneman Douglas High School in Parkland, Florida last year that left 17 dead.

Fourteen states plus the District of Columbia have passed such laws, with eight of them enacted after the Parkland shooting. The laws vary in terms of process and procedure but most allow ex-parte hearings, which can exclude the subject of concern.

Proponents of the laws say they enable intervention that can save lives, particularly as they pertain to those contemplating suicide or violence against others.

But for some, the risk of due-process violations – and stripping people of their constitutional rights – poses a red flag of its own. Others say the laws can further stigmatize those with mental illnesses.

Because of that, experts told the committee Tuesday that red-flag laws need to be crafted with built-in due-process protections based on individualized assessments, not stereotypes of those with a mental illness.

According to Ron Honberg with the National Alliance on Mental Illness, an individual's history with mental illness is often not a good predictor of future violence. According to Honberg, only 4 percent of violence nationwide can be attributed to mental illness.

"People experiencing first episodes of psychosis may particularly be at risk," Honberg said. "However, it should be noted that most people experiencing these symptoms will not act violently towards others, and particularly if they receive treatment."

A history of violent behavior, Honberg noted, is the primary predictor of future violence.

But Palm Beach County Sheriff Ric Bradshaw said Tuesday that mental illness does have a relationship to targeted violence.

"It is complex and by no means absolute," he said.

Though Bradshaw clarified that not all mentally ill people are violent, he said research shows that those who carry out targeted violence – including mass shootings – "do have and have demonstrated mental illness issues."

Bradshaw says the Palm Beach County Sheriff's Office has a special behavioral services unit with specially trained investigators and licensed mental health therapists to help address these issues.

He characterized extreme risk orders as a tool, "not the end-all."

The goal, he said, is to identify people with the potential to carry out violent acts.

"Because it could be a car. It could be a rock knife. It could be a knife. It could be a pressure cooker," he added.

Intervention is key to stopping violence carried out with any type of weapon, he said.

"It's about prevention. It's not about the gun-taking," Bradshaw said.

David Kopel with the Libertarian Cato Institute, meanwhile, noted that one-third of ex-parte confiscation orders are wrong.

"Error rates for newer laws are likely to be higher," he said.

Though Kopel said he supports red-flag laws, he said they need to offer rigorous due-process protections to prevent abuse, as well as a robust remedy for those who have their firearms wrongly confiscated.

"It is well-known in family and domestic law that ex-parte procedures with low standards of evidence are often abused by angry spouses in a divorce, jilted lovers, and so on," he said.

Good red-flag laws, Kopel said, will include "fair procedures" to protect innocent people.

During Tuesday's hearing, prosecutor Kimberly Wyatt with the King County Attorney's Office outlined the ways in which due-process protections are included in Washington's state's red-flag law.

Petitioners must submit detailed petitions and appear before a judge during a hearing. The subject of the extreme risk protection order is required to have an opportunity to be heard in court, with a full hearing happening within two weeks.

“If the court finds that the legal standard has been met, the court may issue an extreme risk protection order that lasts for one year,” Wyatt said. Respondents, she noted, can petition to have the order cancelled prior to its expiration.

“What we see in Washington is that this law is working and saves lives,” Wyatt said. “Every state in the nation deserves to have this tool, the ability to react quickly to threats of suicide and homicide and prevent irreversible violence.”