



REASON

Hundreds of Floridians Ordered to Surrender Guns Thanks to ‘Red Flag’ Law, Report Says

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Republican Gov. Rick Scott signed the legislation into law weeks after the shooting at Marjory Stoneman Douglas High School in Parkland, Florida, claimed the lives of 17 people. The Risk Protection Act allows authorities to file "risk protection orders" (RPOs) against those who supposedly pose a threat to themselves or others. Such people are not allowed to buy or possess firearms.

According to WFTS, the new law has directly affected 467 people, roughly a quarter of whom have concealed carry permits. WFTS reports:

Since the law took effect in mid-March we've learned the number of risk protection cases filed in Florida now total 467, as of July 24th and according to the FL Department of Agriculture and Consumer Services (DOACS). DOACS oversees gun permit licensing in Florida and is notified when a petition is filed. An agency spokesperson revealed just over a quarter of risk protection cases filed so far involve concealed license firearm holders whose license temporarily is suspended once the order is granted.

Authorities are more likely to seize guns in some parts of the state than in others. In Broward County, where the Parkland shooting occurred, 88 RPOs have been filed in court (it's up to a judge to decide whether to grant the order). And in Pinellas County, the sheriff's office has filed 64 RPOs. "In all, we've taken in about 200 firearms and around 30,000 rounds of ammunition," Sgt. Jason Schmittendorf of the Pinellas County Sheriff's Office told WFTS.

But the "red flag" law has been criticized by those who say it violates Floridians' constitutional rights. Though the legislation is meant to stop violent and/or mentally ill people from carrying out shootings, RPOs have been filed in some cases against perfectly sane, harmless people.

In March, *Reason's* Jacob Sullum noted the case of Chris Velasquez, a 21-year-old student who allegedly fantasized on Reddit about shooting up schools. After police portrayed him as a serious threat, a judge issued a temporary RPO against him, even though he didn't own a gun in the first place. Velasquez successfully argued that he was simply trolling, and the judge declined to extend the RPO.

"These are individuals who are often exercising their First Amendment rights online, who are protecting constitutionally protected speech online," says Kendra Parris, an attorney who represented Velasquez. "Maybe it was odious, maybe people didn't like it but they were hit with the risk protection order because of it."

It's not terribly difficult for law enforcement to get a temporary RPO. As Sullum points out:

A police officer can obtain a temporary order, lasting up to two weeks, by persuading a judge there is "reasonable cause to believe" that the target "poses a significant danger of causing personal injury" to himself or others "in the near future" if he is allowed to possess firearms. No allegation of mental illness is necessary, and the target has no opportunity to contest the claims about him.

The respondent doesn't get a hearing unless police want the RPO to last for more than two weeks. To do so, law enforcement must prove that "the respondent poses a significant danger of causing personal injury" to himself or others.

Clark Neily, vice president for criminal justice at the Cato Institute, tells *Reason* that if authorities want to take away someone's guns, they should give him the "opportunity to appear in court" and make his case first. "A procedure that doesn't include" this step, says Neily, whose areas of expertise include constitutional law and gun rights, "is clearly unconstitutional."

Neily doesn't think "red flag" laws in general are unconstitutional, but he expressed concern over the lack of accountability involved in the process of seizing someone's guns. "There's no accountability for judges and prosecutors, and there's almost no accountability for police," he says.

"If you're a law enforcement officer or even a judge, you're unlikely to get in trouble for taking guns away from somebody who really wasn't a threat," Neily adds. "But you'd get in a lot of trouble for failing to take away somebody's guns if they then go do something horrible with them." Thus, "the incentives point in the direction of erring on the side of taking away somebody's guns."