



# NATIONAL DISTRICT ATTORNEYS ASSOCIATION

## THE VOICE OF AMERICA'S PROSECUTORS

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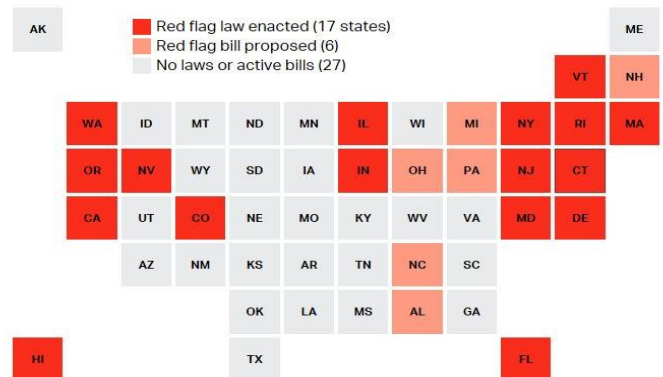
## Red Flag Laws

### How the Law Works

- Police or family members, fearing that a gun owner has become acutely dangerous, file a seizure warrant with a judge. In an initial hearing, without the gun owner present, the judge decides if the firearms should be confiscated. If the court approves the seizure, officers are dispatched to collect the weapons, and the judge schedules a second hearing in two or three weeks, at which time he or she will decide whether the guns should be returned or remain in law enforcement custody for a given period of time, usually a year.
- The gun owner can appeal the order, though one study suggests that few do. [An analysis of data from one Indiana county](#) found that 72 percent of gun owners whose cases weren't dismissed failed to show up for court dates to contest the seizures.
- Connecticut has one of the country's oldest GVRO laws, the "risk warrant" program, on the books since 1999. Police departments large and small have carried out more than 1,500 such orders, the bulk of them in the [years following the Sandy Hook Elementary School shooting in 2012](#). [The cases have run the gamut](#) from gun owners at risk of suicide to threats of workplace shootings.<sup>1</sup>

### Status of State Red Flag Laws

- As of June 27th, 2019, there are **17 states** that have 'Red Flag' Laws as well as Washington, D.C.
- These states are Vermont, Washington, Illinois, New York, Rhode Island, Massachusetts, Oregon, Nevada, Indiana, New Jersey, Connecticut, California, Colorado, Maryland, Delaware, Hawaii, and Florida.
- There are 6 other states who have red flag bill proposals, including Ohio, Pennsylvania, Michigan, North Carolina, and Alabama.<sup>2</sup>



Last updated: June 27, 2019

Source: State legislatures. Interactive: Daniel Nass.

### Pros and Cons of 'Red Flag' Laws

#### Pros:

- Proponents say "red flag" laws make it possible to stop gun violence before it has the chance to take place, potentially saving countless innocent lives. They point out that a risk protection order would only be temporary, and the accused person would have the chance to defend themselves in court.

<sup>1</sup> <https://www.thetrace.org/2018/03/red-flag-laws-gv-ro-parkland-mass-shooting/>

<sup>2</sup> <https://www.thetrace.org/2018/03/red-flag-laws-pending-bills-tracker-nra/>

- “Red Flag” laws empower those who recognize people who are in crisis and considering harming themselves or others. Since family members are often the first to see these warning signs, ‘Red Flag’ laws allow them to intervene in order to temporarily prevent someone in crisis from accessing firearms.
- These laws can help de-escalate emergency situations and provide an avenue for the community or law enforcement to intervene before gun violence such as a firearm suicide or mass shooting takes place.
- Under current federal law, a person is barred from having guns only if they fall into one of several categories of prohibited persons – such as those who have been convicted of certain crimes, adjudicated as mentally ill or involuntarily committed to a psychiatric hospital, or who are subject to a final domestic violence restraining order.
- A person who displays warning signs that they’re considering suicide or other acts of violence, but who does not fall into a category or is otherwise not prohibited under current law, would still be able to legally buy and possess guns, which could be a major risk.
- Perpetrators of mass shootings and school shootings often display warning signs before committing violent acts.
- Temporarily removing guns from people in crisis can reduce the risk of firearm suicide.<sup>3</sup>

#### Cons:

- Opponents of such “red flag” laws argue that existing gun control measures are already working to reduce gun violence. For example, some opponents cite New Hampshire’s *current gun laws*<sup>4</sup> as an example of how background checks that state’s have already enacted, can assist in preventing gun violence.
- Advocates also point out that current background check systems and the current NICS database still have ongoing issues that need to be solved before implementing new requirements on federal, state, and local law enforcement agencies.<sup>5</sup>
- There are also concerns that a bill could infringe on citizens’ Second Amendment rights by placing too much power in the hands of district court judges to remove firearms from individuals who do not pose a legitimate threat. If “red flag” laws lack proper Due Process protections, they could run afoul of the constitution, rendering a bill unenforceable.
- Further, there are concerns that there is no concrete evidence that “red flag” laws reduce violence, despite the first state law being enacted in 1999. For example, the limited evidence available showed that Washington, D.C.’s “red flag” law was not even used in the first two fiscal years it was available to law enforcement and the broader community.<sup>6</sup>
- “Red flag” laws implemented at the federal level would require a new government-run system where both law enforcement and citizenry can make reports to remove an individual’s Second Amendment right without any legitimate penalty of law if the initial report is deemed to be insufficient to remove a firearm from an individual.

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<sup>3</sup> <https://everytownresearch.org/extreme-risk-laws/>

<sup>4</sup> <https://www.citizenscount.org/issues/gun-laws>

<sup>5</sup> <https://www.washingtonexaminer.com/list-13-gaping-holes-in-fbi-gun-background-check-system>

<sup>6</sup> <https://www.lowellsun.com/2019/08/25/7-reasons-to-oppose-red-flag-guns-laws/>