

Talking Points: HF9/SF436  
2019 Red Flag Bill  
Extreme Risk Protection Orders



This bill will help prevent gun deaths and injuries *before* tragedies occur.

When a person is in crisis, loved ones and law enforcement are often the first to see warning signs, or “red flags.” The Red Flag law will empower law enforcement to petition a judge for an order that temporarily removes guns from a high-risk situation. Extreme Risk Protection Orders (ERPO) will be issued based on objective evidence that an individual presents an immediate risk of self-harm or harm to others with firearms. By providing due process in the form of a court hearing, this bill strikes a balance between commitment to public safety and respect for individual constitutional rights.

Nearly 80% of gun deaths in Minnesota are suicides and the rate of gun suicide has increased 65% in Minnesota since the year 2000.<sup>1</sup> In other states, red flag laws have proven effective in preventing gun suicides. Subjects of Extreme Risk Protection Orders are significantly more likely to seek out and accept help after their guns are removed.<sup>2</sup> The alternative—placing an at-risk individual on a 72-hour hold against their will—takes away all the person’s civil rights and does nothing to mitigate the risk after the period of confinement has ended.

#### **SUMMARY OF THE BILL**

This legislation will enable law enforcement to present evidence to a judge in a civil, not criminal, court that a person in crisis should not have access to guns and that alternative solutions are inadequate. If the court finds the subject poses a significant danger of bodily injury with a firearm to self or others, it issues the protection order. The subject’s firearms are then temporarily removed and he or she is prohibited from buying new guns while the order is in place.

Family members who are concerned about a loved one will be able to contact law enforcement and ask for help. If law enforcement agrees there is a serious safety concern, they can start the petition process.

Before issuing an Extreme Risk Protection Order, courts are directed to consider several indicators of crisis, including recent threats or acts of violence, violations of domestic violence protection orders, criminal convictions, and other signs of increased risk.

The law has built-in protections against abuse: It is a misdemeanor to give false information in a red flag proceeding or to seek a red flag order with the intention to harass.

#### **TYPES OF EXTREME RISK PROTECTION ORDERS**

There are two kinds of ERPO orders – emergency orders and orders after a hearing.

- Ex parte or emergency orders last for 14 days and are issued only when the judge finds reasonable grounds that the person presents an immediate and present danger with firearms. This provision is based on Minnesota’s existing order for protection process.
- Orders after a hearing last for 6 months to 2 years. These are issued only if the subject has had the opportunity to appear at a hearing and respond to allegations that he or she represents a significant risk of harm to themselves or others. The judge must find by a preponderance of the evidence that the person poses a significant danger of bodily injury by having access to firearms.

## **EXTREME RISK PROTECTION ORDERS AND SUICIDE PREVENTION**

While high profile mass shootings tend to drive the political impetus behind Extreme Risk Protection Orders, a study by Duke University showed how in one state, Connecticut, gun removals from high-risk people may have prevented up to one suicide death for every 10-20 orders of protection. The study also showed that people in need of help were significantly more likely to accept it after their guns were temporarily removed.<sup>2</sup>

For people at risk of suicide, limiting access to guns is the first priority. Guns are exceptionally lethal; in 2014, about 87% of gun suicide attempts were fatal compared to just 3% of attempts by drug overdoses.<sup>3</sup> While nationally 51% of all suicides are carried out with a firearm,<sup>3</sup> a study by a leading HMO in Minnesota showed that, between 2010-2014, guns were used in 85% of suicides by their clients.<sup>4</sup>

The effectiveness of restricting access to certain means of committing suicide has been well established. Research has shown that many individuals have a preference for a given means, which limits the likelihood of substitution with another method.<sup>5</sup> Suicidal crises are often short-lived and influenced by ambivalence or impulsiveness. 90% of those who attempt suicide and survive do not go on to die by suicide at a later date.<sup>6</sup>

## **EXTREME RISK PROTECTION ORDERS AND MASS SHOOTINGS**

Extreme Risk Protection Orders would have enabled law enforcement to prevent recent mass shootings by having guns removed from individuals showing signs of being dangerous with firearms:

- In the case of 19-year-old Nikolas Cruz, numerous missed red flags left a community grieving after the recent mass shooting at Marjorie Stoneman Douglas High School in Parkland, Fl. Cruz' behavior raised concerns among neighbors as early as age 9; later he showed a propensity for violence toward small animals, expressed enthusiasm about guns and knives and even began introducing himself as "a school shooter." Police and even the FBI were alerted to Cruz's behavior many times over the years, but there would have been no way for them to remove his guns. At the time of the shooting, a Red Flag bill had been introduced in the Florida legislature, but had gotten nowhere.
- The shooter who killed six people and wounded 13 others, including Congresswoman Gabrielle Giffords, in a parking lot in Tucson in January 2011, had given many indications that he was dangerous. At one point, his parents became so concerned about his behavior that they took away his shotgun. But they could not take any further action to restrict his access to guns.
- In the case of the mass shooting at the Fort Lauderdale airport in January, 2017, the shooter heard voices, experienced violent rages, and believed he was a victim of CIA mind control. The FBI seized his gun while he underwent evaluation, but they couldn't keep it because there was no Red Flag law in place. When the gun was returned to Santiago, he immediately flew with it to Fort Lauderdale and started shooting.
- Before he killed six people near the University of California, Santa Barbara, in May 2014, the shooter made homicidal and suicidal threats online. His parents asked law enforcement to step in. But the shooter did not have a criminal history that prohibited him from having firearms, and the police were unable to keep guns out of his hands.

## **OTHER STATES THAT HAVE PASSED RED FLAG LAWS**

More than one-third of all Americans live in the 13 states that have passed Red Flag bills, including Connecticut (1999), Indiana (2005), California (2014), Washington (2016), Oregon (2017), Florida, Vermont, Maryland, Rhode Island, New Jersey, Delaware, Massachusetts, Illinois (2018). Many states passed these laws in the wake of a terrible mass shooting that may have been prevented by extreme risk protection orders. We urge our law makers not to wait until after such a tragedy to pass the Red Flag law in Minnesota.

### **NOTES:**

1- *Targeting Gun Deaths in Minnesota, Protect Minnesota, 2019.*

2 - <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4830&context=lcp>.

3 - *Centers for Disease Control and Prevention (CDC).*

4 - *Dr. Thomas Kottke, Past President of the Twin Cities Medical Society, 2016.*

5 - <https://www.ncbi.nlm.nih.gov/pubmed/15949453>.

6 - <https://www.hsph.harvard.edu/means-matter/means-matter/survival/>.