



“Red Flag” Gun Confiscation Laws in the *Bipartisan Safer Communities Act*

Murphy-Cornyn’s State-level Gun Confiscation Bribes

Sec. 12003 of the *Bipartisan Safer Communities Act* will provide grants to states which have qualifying gun confiscation programs, called “extreme risk protection order programs.”ⁱ The bill requires these programs to meet certain vague minimum qualifications.

For example, they “must include ... pre-deprivation and post-deprivation due process rights that prevent any violation of infringement of the Constitution...”ⁱⁱ However, the Cornyn-Murphy language states that these must include these “due process rights” *only* “at the appropriate phase ... as interpreted by” courts.

Even though the bill lists several such familiar due process rights such as “in-person hearing, an unbiased adjudicator, the right to know opposing evidence, the right to present evidence and the right to confront adverse witnesses,”ⁱⁱⁱ **it is entirely unclear when the bill requires those rights be protected.**

For example, under a “red flag” gun confiscation law funded by the *Bipartisan Safer Communities Act*, a person could be red flagged and have his guns seized by the police *ex parte*, and then only after their guns were taken might they be given these fake “due process rights.” **That is not due process.**

Due process is not a magic wand that can gloss over the infringement of the Second Amendment rights of someone who has never committed a crime.

Practical Concerns with All Gun Confiscation Laws

“Red Flag” Gun Confiscation Orders (GCOs), also known as Extreme Risk Protection Orders, violate the Second, Fourth, Fifth, and Fourteenth Amendment rights of gun owners — particularly their due process rights.

There is no amount of fake “due process” that can be added to gun confiscation orders to reconcile them with the Second Amendment. All “red flag” laws require gun confiscation without sufficient due process.

David Kopel also testified that *at least* one-third of gun confiscation orders that are filed are false accusations:^{iv}

In Connecticut, confiscation orders may be issued *ex parte*. Later, the respondent will have an opportunity to tell his or her side of the story in court. In Connecticut, once a judge eventually hears the respondent’s side of the story, 32 percent of confiscation orders are overturned.^v A study in Marion, County, Indiana, reported similar results.^{vi}

That same 2015 study on Indiana found it took gun owners on average more than nine months to get a hearing to have their firearms returned, despite the law requiring a hearing within fourteen days!^{vii} “Red flag” laws are gun confiscation without due process. They are dangerous, ineffective, and don’t even reduce crime.^{viii}

Gun Confiscation is a Legal Barrier to Those Seeking Mental Health Care

It is critical to consider that if a gun owner perceives that his or her autonomy or rights may be taken away, he or she may avoid treatment at great personal cost. Gun Confiscation Orders, which deprive individuals of their Second, Fourth, Fifth, and Fourteenth Amendment rights, are a strong motivator for a gun owner to not disclose psychological problems to a mental health professional, friends, or family.

Gun owners in need of compassion and support with mental health challenges may rightly fear that seeking help from friends, family, or healthcare providers will result in (1) the armed seizure of their firearms, (2) invasive searches of their homes and other property, disrupting the lives of family and neighbors, (3) disruption or loss of their employment, and (4) costly legal and attorney’s fees to defend or restore deprived rights.

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- ⁱ See *Bipartisan Safer Communities Act*. 117th Congress. Section 12003. Proposed amendment to 34 U.S.C. Section 10152(a)(1)(I)(iv)
- ⁱⁱ *Ibid.* 34 U.S.C. Section 10152(a)(1)(I)(iv)(I)
- ⁱⁱⁱ *Ibid.*
- ^{iv} Kopel. “Red Flag Laws: Examining Guidelines for State Action”. Written Testimony. United States Senate Judiciary Committee. 2019.
- ^v Norko and Baranoski. “Gun Control Legislation in Connecticut: Effects on Persons with Mental Illness”. *Connecticut Law Review*. 2014.
- ^{vi} Parker. “Circumstances and Outcomes of a Firearm Seizure Law: Marion County, Indiana, 2006-2013”. *National Library of Medicine*. 2015.
- ^{vii} *Ibid.*
- ^{viii} Lott, John R. and Moody, Carlisle E., *Do Red Flag Laws Save Lives or Reduce Crime?*. College of William and Mary and Crime Prevention Research Center: 2018.