

A NEW ATTEMPT AT MASS SHOOTING PREVENTION

By CASHEN CONROY | April 23, 2018

Seventeen people at Stoneman Douglas High School in 2018. Fifty-nine in Las Vegas in 2017. Twenty-seven at a Sutherland Springs church, also in 2017. Fifty at an Orlando nightclub in 2016. The list goes on.

Everyone agrees that these deaths, and the 207 others resulting from mass shootings since the turn of the century, are tragedies. The big question is: could they have been prevented?

The Rhode Island House of Representatives thinks so.

In February, Representative Dennis M. Canario (D-Portsmouth) introduced a “red flag” gun bill that would require gun owners deemed dangerous to temporarily turn in their weapons. On April 12, the House passed the bill 60 to 8. An identical bill, sponsored by Representative Maryellen Goodwin (D-Providence), awaits hearing in the Senate.

Shortly after the House bill’s introduction in February, Governor Gina Raimondo signed an executive order establishing a statewide red flag policy that took effect immediately. However, in a statement prior to signing the order, she emphasized that “we still need to pass legislation so these protections are in place permanently.”

The main idea behind the legislation is that if someone knows that another individual is planning a mass shooting, they should be able to get courts involved preemptively—before any bloodshed.

This type of bill is also known as an “ERPO” bill, because it would authorize the superior court of the area in which the gun owner resides to issue “extreme risk protection orders.” These orders would enable the removal of all firearms from anyone determined to pose “significant danger of causing imminent personal injury to self or others,” and prevent them from buying new ones.

Currently, five states have some version of an extreme risk protection order law. Connecticut was the first to pass a bill, after a rampage shooting occurred at the Connecticut Lottery in 1998. Since then, Indiana, California, Washington, and Oregon have followed suit. As of now, 21 legislatures across the country are considering similar bills.

The current Rhode Island bill would give only law enforcement agencies the ability to petition state courts to order this temporary removal. According to Rep. Robert E. Craven (D-North Kingstown), if a family member fears a gun owner might harm themselves or others, the family member would still have to go directly to the police to start the petition process. Then, police would decide whether there is sufficient evidence to bring the case to court. If the answer is yes, a judge would then listen to the evidence, which could include the gun owner’s criminal history, recent acts or threats of violence, and mental health and substance abuse history. If the judge finds that the individual does indeed pose a significant threat, his or her firearms would be confiscated for one year.

For a one-year order, the bill requires “clear and convincing” evidence that the individual poses an imminent threat to themselves or others. In extreme cases, however, the court would have the ability to grant a temporary extreme risk protective order only under a probable cause standard. In these cases, the court would have to hold a hearing within 14 days to determine whether to issue a one year extreme risk protection order.

Those who support gun control see the bill as reasonable and necessary policy in light of recent mass shootings.

“As a retired police officer with more than 25 years of experience in the law enforcement field, recent tragic events have placed into focus the extreme dangers of having firearms in the hands of troubled individuals,” said Canario.

Paul Appelbaum, a Columbia University professor of psychiatry, added that from a mental health perspective, these laws make “a great deal of sense.”

“In many [of these] cases, someone is aware that the person in question is threatening to harm themselves or others, or is behaving in ways that previously have been associated with threats or actions of that sort,” he said. “To not provide the state with a mechanism to do something about it is essentially to leave the police and everyone else helpless in the face of what appears to be a clear threat.”

East Providence Chief of Police Christopher Parella agrees. “I am thrilled about this legislation,” he said. He supports the bill, he says, because it’s a “common-sense” piece of legislation that doesn’t infringe on anyone’s rights. Furthermore, he said, “This bill is going to potentially save lives.”

Parella referenced how Rhode Island already has similar laws in place when it comes to domestic violence. Currently, in domestic violence cases, police can give instant no-contact orders that include the removal of firearms. “That’s taking people’s freedoms, but we don’t think as much of it, because we know the danger that those people are in,” Parella said.

Given the success of these domestic violence laws, Parella said that the red-flag gun bill “just makes sense.”

“Every day there are people dying. As a police chief, it sickens me. It keeps me up at night,” he said. “There’s just no need for it.”

Meanwhile, opponents of the bill argue that it would infringe on civil liberties. Before the bill’s hearing, the Rhode Island ACLU released a 14-page analysis expressing “great concern” about the bill, highlighting the precedent it sets for the use of coercive measures against individuals “not because they are alleged to have committed any crime, but because somebody believes they might, someday, commit one.”

However, due to the significant amendments made prior to the bill’s passing, the ACLU no longer actively opposes it.

One of the major amendments that contributed to the ACLU's new stance involved the standard required for the filing of petitions and subsequent removal of firearms.

"In the original version, we were concerned that the standards were extremely broad," RI ACLU Executive Director Steven Brown said. "But the current version mirrors the standards of a lot of bills that have already been enacted." Specifically, the updated, ACLU-approved standards dictate that respondents must pose a significant danger of causing "imminent" personal injury to self or others for a petition to be valid.

Though the ACLU no longer officially opposes the bill, Brown says he still plans on testifying in the Senate.

"We do have a few suggestions to offer," he said.

One such suggestion concerns the bill's emphasis on confidentiality. The version that passed the House says that all proceedings and documents related to petitions shall be maintained as "confidential or non-public" by the Superior Court. In the Senate hearing, the ACLU will argue that courts should aggregate this data into annual reports that would be available to the public. These reports would monitor the number of petitions filed, the number that have been granted, and other, similar statistics. The reasoning behind this argument, according to Brown, is simply informational: "It's important to find out how it's actually working if the bill does pass," he said.

Despite amendments to the bill, the National Rifle Association (NRA) remains opposed. The NRA has fought red flag legislation in at least 17 states, and was originally opposed to all bills of this type. In a statement last summer, the organization pointed out that a similar bill in Oregon would "allow people who are not mental health professionals, who may be mistaken, and who may only have minimal contact with the respondent to file a petition with the court and testify on the respondent's state of mind." The statement also said that the Oregon bill would strip the accused of their Second Amendment rights.

However, in a recent video, Chris Cox, the NRA's top lobbyist, said that Congress should provide funding for states to adopt ERPO bills, as they can "help prevent violent behavior before it turns into a tragedy." The reality seems to be somewhere in between the two stances – the organization is apparently willing to support ERPO bills if they fulfill many specific requirements, according to the NRA's website. These include criminal penalties for those who bring "false or frivolous charges," a "clear and convincing" standard of evidence that a person poses harm to themselves or others, a requirement that a judge determine whether the individual meets the standard for involuntary mental health commitment, and, if met, a requirement that the individual receive community-based mental health treatment.

The Rhode Island bill fulfills some, but not all, of these requirements. The current text provides a harsh penalty for anyone who files a petition knowing the information in it to be false: a felony charge punishable either by imprisonment for 5 years, a fine of \$5,000, or both. The bill also requires a clear and convincing standard of evidence. However, judges are not required to determine whether the individual in question meets the standard for involuntary mental health

commitment. Instead, they may consider whether a mental health evaluation or substance abuse evaluation is appropriate and recommend that the respondent seek such evaluation.

David Dean, a representative for the NRA, said that the organization opposes the bill because it doesn't maintain enough protections for citizens and it lacks due process. He also said that the NRA supports required mental health evaluations because if a person is deemed to be in danger of harming themselves or others, they should "certainly" be evaluated for mental health issues. "We don't want people who are mentally unstable to have firearms either, obviously," he said.

So far, evidence shows that ERPO bills are perhaps most effective when it comes to preventing suicides. A 2016 study analyzed 762 gun seizure cases that occurred under Connecticut's red flag law between 1999 and 2013, and found that there was one averted suicide for every ten to eleven gun seizure cases. The study concluded that enacting similar laws in other states could "significantly mitigate the risk posed by that small proportion of legal gun owners who, at times, may pose a significant danger to themselves or others."

In response to arguments that the bill is unconstitutional, Rep. Craven drew parallels between the bill and the Patriot Act of 2001, which suspended constitutional rights to protect citizens against terrorism. The same logic should apply with this bill, he argued, as threat of gun violence is "a kind of terrorism."

Both Representative Craven and Police Chief Parella believe the bill is likely to pass this year in the Senate as well as the House. That outcome wouldn't be shocking, given Rhode Island's history. The Ocean State has traditionally been one of the most progressive in the country when it comes to gun control, and is ranked ninth for gun law strength by the nation's leading policy organization aimed at preventing gun violence.