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RED FLAG AT HALF MAST (PART I)

California's Gov nixes expanded authority to seize guns from their owners



By Julius (Jay) Wachtel. How can guns be taken away from reportedly unstable, possibly dangerous owners? [A dozen-plus states](#) have passed laws that authorize judges to issue so-called “Red Flag” orders (more formally, “Gun Violence Restraining Orders” and “Extreme Risk Protection Orders.”) California’s version, in effect since January 2016, comes in three flavors. Two are ex-parte, requiring pleadings by one side only. Both last 21 days: an emergency order, based on a police request, and a non-emergency ban based on testimony and evidence presented by police and/or close family members. Should petitioners wish to renew either order or secure a year-long ban, a hearing must be called so that both sides can be heard.

As things stand in the Golden State, only law enforcement officers or immediate family members ([that apparently includes roommates](#)) can apply for an order of whatever kind. Feeling that to be too limiting, the Legislature recently sent the Governor [a bill](#) that would have expanded the roster of authorized petitioners to include “an employer, a coworker, or an employee of a secondary or postsecondary school that the person has attended in the last 6 months.” But on September 26 Governor Jerry Brown vetoed the proposal:

All of the persons named in this bill can seek a gun violence restraining order today under existing law by simply working through law enforcement or the

immediate family of the concerning individual. I think law enforcement professionals and those closest to a family member are best situated to make these especially consequential decisions.

Then, a mere six weeks after the Guv said “no,” disaster struck. On November 7, 2018, [Ian David Long](#), 28, walked into an L.A.-area bar packed with college students, pulled a .45 caliber pistol and opened fire. By the time the Marine Corps combat vet pulled the trigger on himself twelve innocent souls were dead, among them Ventura Co. Sheriff’s Sergeant Ron Elus, the first officer on scene.

Sadly, while his horrifying act was unanticipated, the protagonist’s identity didn’t come as a complete surprise. Long’s tantrums [had spurred repeated visits by deputies](#) to the residence where the unemployed, deeply troubled young man and his mother lived. Last year, an officer summoned to the home observed that Long was “somewhat irate and acting irrationally.” But a mental health team decided there was insufficient reason to detain him. More recently, neighbors reported that Long went on a rampage that “sounded like he was tearing down the walls of the house.” Taken as a whole, the circumstances – repeated instances of crazy behavior, calls to police, no decisive action or inquiry about guns – seem remarkably similar to the precursors of [the bloodbath in Santa Barbara](#). Yet by the time of Long’s murderous acting out, California’s Red Flag law, which was intended to prevent such things, had been in effect for nearly three years.

Well, mom must have known that her son was armed and dangerous. Why hadn’t *she* petitioned the court? Likely for that very reason. California’s [official courts website](#) cautions against turning in one’s kin and strongly advises family members to let the police do the deed:

You can ask for a firearms restraining order against a close family member if you are afraid they may hurt themselves, or another person, with a gun. If you are in this situation, it is best to ask the police or other law enforcement to ask for the firearms restraining order...The officer will take the person’s firearms and ammunition while giving them a copy of the order. You should only ask for an order yourself if the police (or other law enforcement agency) will not do it and you are very concerned.

[According to The Trace](#) thirteen states have Red Flag laws authorizing judges to order allegedly dangerous persons to give up their guns: California, Oregon and Washington in the West; Illinois and Indiana in the Midwest; Connecticut, Delaware, Maryland, Massachusetts, New Jersey, Rhode Island and Vermont in the East; and Florida in the South.

What's driven these laws? Waves of senseless killings. Connecticut was first out of the gate [with a statute](#) drafted in response to the March 6, 1998 murder of four co-workers by a mentally troubled employee of the state lottery. While the bill wound its way through the legislature, two heavily-armed teens killed thirteen and wounded twenty-one at [Colorado's Columbine High School](#), a tragedy that resounded throughout the nation. That reportedly settled things, and Connecticut's governor signed the measure on June 29, 1999.

[Five more states](#) joined the parade this year: Florida, Maryland, New Jersey, Rhode Island and Vermont. [Florida's statute](#) was propelled by the Valentine's Day massacre at [Marjorie Stoneman High School](#), in a Miami suburb. [NRA A-rated Republican legislators](#) quickly drafted a Red Flag measure, which the state's Republican governor signed into law on March 9. Most recently, [Maryland's law](#) (it took effect this October) came on the heels of [a series of killings](#): a school shooting in March that left two students dead, an armed attack on a newspaper office in June with five casualties, and the killing of three fellow employees by a mentally ill woman who then committed suicide.

State gun violence orders carry a variety of legal and evidentiary requirements. (For a precise state-by-state rundown, click [here](#).) California's provisions take a middle ground, facilitating an urgent response but imposing safeguards when deciding for the longer term. For example, its [emergency ex-parte \(one-sided\) 21-day order](#) requires police to offer "reasonable cause" that the respondent "poses an immediate and present danger of causing personal injury to himself, herself, or another." Like most such laws, it also stipulates that "less restrictive alternatives" must have been considered and ruled out. [Non-emergency orders](#) (these are also 21 days and ex-parte but can be initiated by immediate family members) carry a burden of "substantial likelihood." [Imposing a full one-year ban](#) requires a full hearing as well as "clear and convincing evidence" of dangerousness. (For a rank-ordered analysis of legal standards click [here](#).)

Indiana is somewhat of an exception. Its Red Flag law authorizes officers who believe that an individual presents "an imminent risk" [to pre-emptively seize firearms](#) (but not conduct a search) without a warrant. They must then promptly obtain a judicial endorsement and proceed in the normal fashion.

Of course, ordering someone to give up their guns doesn't assure compliance. In twelve Red Flag states police who encounter uncooperative subjects must obtain a search warrant to look for guns, an additional process that carries its own burden of probable cause. In contrast, orders obtained in [Connecticut](#) are effectively search warrants:

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Upon complaint...to any judge of the Superior Court, that [there is] probable cause to believe that (1) a person poses a risk of imminent personal injury to himself or herself or to other individuals, (2) such person possesses one or more firearms, and (3) such firearm or firearms are within or upon any place, thing or person, such judge may issue a warrant commanding a proper officer to enter into or upon such place or thing, search the same or the person and take into such officer's custody any and all firearms.

Judges are directed to refer candidates to mental health proceedings when appropriate.

Connecticut leaves the entire process to the police. Otherwise *who* can petition for an order varies. [According to the Giffords Law Center](#) Florida, Rhode Island and Vermont limit applicants to police. Eight states (California, Illinois, Delaware, Maryland, Massachusetts, New Jersey, Oregon and Washington) allow, or will soon allow, immediate family members to file petitions as well. Maryland's taken a step beyond, letting mental health workers kick things off as well. But no one goes any further.

Had California expanded its list of authorized petitioners to include co-workers and school employees it would have been treading new ground. But some claim that the state fails to use the authority it currently has. A week before Governor Brown issued his veto, [an expansive review](#) by the *Los Angeles Times* revealed that California judges issued "fewer than 200" gun violence restraining orders during 2016-17, the law's first two years (no distinction was made as to type of order.) As one might expect, Los Angeles County, by far the state's most heavily populated at ten-million plus, claimed the largest share: 32, or about one per month. Second place went to Santa Barbara County. Notably, with a population less than 1/20th L.A.'s, it issued twenty-one notices. Given that the county was the setting for the [2014 Isla Vista massacre](#), which led to the law's enactment, its enthusiastic use of the statute is unsurprising. Clearly, context matters. More recently, amidst a wave of mass shootings, [Maryland judges fielded 114 applications](#) for gun violence orders during October, the law's first month of operation. Seventy respondents were ordered to surrender their guns, and thirty-six ultimately lost their rights for up to one year.

Still, as Maryland quickly discovered, vigorously enforcing Red Flag laws itself carries some risk. On November 5th. Anne Arundel (MD) police [served an order](#) filed by a woman against her 60-year old brother. He answered the door while armed, "became irate" and wrestled with a cop for the gun, which discharged during their struggle. The other officer then shot him dead.

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One assumes this won't be the last incident of its kind. So are Red Flag laws worth it? For a review of studies about their effectiveness, and our take on their conclusions, be sure to come back for Part II!