



Written by [Bob Adelman](#) on April 20, 2021

Indiana's Red Flag Law Failed to Prevent FedEx Shooting

Indiana's unconstitutional red flag (Extreme Risk Protection Order, or ERPO) law [failed](#) to keep the FedEx shooter from legally purchasing the firearms he used to kill eight people and himself last Thursday at a FedEx facility near Indianapolis.

Under Indiana's red flag law, the oldest in the country, a police officer can seize a firearm from its rightful owner without a court order. Due-process rights are ignored for 14 days, after which the officer must "prove" to a judge that his seizure was merited by the circumstances. The officer must show that the citizen "presents an imminent risk" to himself or others or he "has the propensity for violent or emotionally unstable conduct."

If the judge doesn't agree, the citizen may have his firearm returned to him after at least six months have passed since the date of confiscation, but only if that citizen can prove to the judge by "a preponderance of the evidence" that he "is not dangerous" any longer either to himself or to others. The citizen is, in other words, assumed to be guilty but later must prove his innocence, turning the rule of law on its head.

In the case of the Indiana shooter, a year ago the shooter's mother contacted local police about her then-18-year-old son's intent to commit "suicide by cop." They responded by entering his home and placing him in an "immediate detention mental health" facility for further examination. In the process, they seized a shotgun he had recently purchased.

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Once he was in that facility, and his firearm seized, the problem was seen as remedied. He apparently was no longer "a threat to himself or to others" and the police had his firearm, so all was well. He was released from the facility, and was allowed to purchase firearms again. Since the police hadn't actually taken further action under the Indiana law because they found no reason they could use in front a judge to invoke the red flag law, the issue died.

In July and September of 2020, he legally purchased two semi-automatic rifles from a local gun shop. Supporters of "red flag" laws argue that such infringements of gun rights are justified because they help prevent such mass shootings from happening. They are "pre-crime" laws (a la [Minority Report](#)), but Indiana's failed massively.

Katie Shepherd wrote in the *Washington Post* that the FedEx shooting "raises questions about the efficacy of Indiana's 'red flag' laws." Shannon Watts, the founder of the anti-gun group Moms Demand Action, claimed that the police failed in their duty:



AP Images



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Had they shown the court that this man was a danger to himself or others, he would have been added to a prohibited-purchaser list and he would have been unable to buy firearms legally.

That does not appear to be what happened here, and we saw the consequences of that.

So, according to Watts, it was the police who failed and not the law. But, according to Jacob Sullum, writing at *Reason*, “the risk that motivated the shotgun seizure was suicide, not homicide.” Back in March 2020, there was no indication whatsoever that the shooter was likely to commit mass murder. And that’s the main weakness of “red flag” laws:

The difficulty of predicting which of the country’s many angry oddballs are bent on murder is the main weakness ... as a response to mass shootings....

Casting a wider net [by broadening such laws] inevitably means that many harmless people will lose their Second Amendment rights based on erroneous predictions of what they might otherwise have done.

Once a law is disconnected from the Constitution and its Bill of Rights, everything is permissible. It doesn’t matter that there is no solid evidence that red flag laws have any measurable impact on the homicide rate in the United States. If such laws are allowed to be broadened in order to capture such individuals as the Indianapolis FedEx shooter, then every sovereign citizen is liable to be caught in the net. It’s that dangerous phrase infesting every red flag law — “deemed to be a threat to themselves or others” — that is the door that can and will be opened ever wider to include every gun owner in the country.



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