



County Sheriff Blasts Colorado's Red Flag Law on Facebook

More than half of Colorado's county sheriffs are on record opposing the Red Flag (ERPO) bill signed into law by Colorado Governor Jared Polis on Friday. One of them went a very large step further: He posted the reasons for his opposition to it in a carefully crafted, thoughtfully drawn six-page [statement on his Facebook page](#).



Eagle County Sheriff James van Beek wrote that, under the new law to be effective January 1, 2020:

A household/family member could petition the court for an order requiring the Respondent to immediately surrender all firearms and any concealed carry permit. A law enforcement agency could also petition the court for a search warrant, based upon presumptive criminal acts.

Upon a judge's order, without notice, or the accused's ability to defend charges, his property is taken away. Imagine ... their first awareness of an issue is when police arrive at their home stating that they represent the government and are there to confiscate their guns.

It's not hard to imagine how that could elicit conflict, which could easily escalate to a physical encounter, as the defendant attempts to protect their property, placing deputies in immediate danger.

This was the story of Gary Willis, as covered by *The New American*. Awakened early one morning by sheriff's deputies from Anne Arundel County, Maryland, Willis answered the door "with a gun in his hand," according to a department spokesman. According to that spokesman, Willis put his firearm down to read the ERPO but then, apparently recognizing that it wasn't a legal search warrant issued by a judge in accordance with protections guaranteed to him by the Fourth Amendment to the U.S. Constitution, but instead was issued by a local judge under Maryland's newly minted "red flag" law, he retrieved his firearm.

The spokesman said that Willis "became irate." In the melee that followed, one of the firearms carried either by one of the deputies, or by Willis, went off. One of the officers then shot Willis dead.

The problems with Colorado's new law are the same as those with Maryland's, wrote van Beek: It is "presumptuous, extreme, and backward.... It is like putting a Band-Aid on the probability of a wound and not allowing its removal until an injury has occurred. In other words the entire process is ludicrous." He added:

The Red Flag Law can remind one of the movie *Minority Report*; regulating against what we think someone might do. It's like regulating via clairvoyance, but in this case, we actually take away someone's property and require them to go to court to prove their innocence of a crime that hasn't been committed, yet they were punished because someone thought they might be thinking about it....



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Police could break into their homes in the middle of the night, search everything they own, looking for guns, take away their personal property, and all based upon nothing they've done, but rather, on the hearsay of someone who could possibly have ulterior motives....

In Colorado, a single person's complaint against an individual instigates the removal of personal property (the confiscation of guns from their possession), just in case they may pose a danger to themselves or others, with no actual proof....

The Red Flag law places the burden of proof on gun owners to prove in court they do not pose a risk if they want to recover firearms that have been seized ... guilty until proven innocent....

Taking away personal property, denying 2nd, 4th, 5th, and 14th Amendment rights while placing the burden of proof on the accused rather than the accuser, and doing so, with no notice or ability to counter accusations ... essentially, punishing someone for up to a year on hearsay, is certain to be determined illegal by the Supreme Court.

Until that happens, however, the other half of Colorado's county sheriffs will be enforcing the new red flag law come January. Just how are Colorado's law-abiding gun owners to respond when they wind up in the cross hairs of an invisible and unaccountable accuser? Writing for *Backwoods Home* magazine last week, firearms author and expert marksman Massad Ayoob referred to a number of "Second Amendment" attorneys who attempted to answer that question: "A couple of entries ago I shared a link in which pro-Second Amendment attorneys gave pretty much unanimous advice that if police came to serve such an order on one of us, the best advice was to not resist and seek legal advice."

That triggered a firestorm of anger and indignation from his readers. This writer tracked down the comments from those attorneys in order to shed a little more light on what for some is going to be an existential question. Mark Selden, in Jacksonville, Florida, responded to the question posed by Marty Hayes, president of the Armed Citizens Legal Defense Network, Inc.: "What are a citizen's options when the police knock on the door with a warrant and want to confiscate the citizen's guns?"

Selden assumed Hayes was referring to a legal, constitutional search warrant as allowed under the Fourth Amendment and responded accordingly: "If the police arrive at your door with such a warrant DO NOT resist them or argue. To do so will likely result in your arrest and additional charges for obstruction [of justice], etc."

On the other hand, attorney Jerome Brown, with offices in Philadelphia, understood the question to mean a warrant issued under a red flag law and answered: "If the police come with a warrant, be cooperative and take them to your guns. If you resist in any fashion, you could be charged with [a] myriad [of] crimes such as obstruction of justice or assault on a police officer."

Jeffrey Voelkl, an attorney in Williamsville, New York, was much more explicit in how a citizen was to respond to that knock on the door:

First, ask for a copy of the warrant and do not let anyone in until you have had an opportunity to read the warrant. You will likely have to read the warrant right at the open door in the officers' presence.

Remember that when police execute a warrant, they are simply carrying out the order of a judge. For a warrant to be issued, the judge must have been presented with witness testimony and evidence to establish a legal basis for the judge to believe that firearms are possessed and located at the exact location listed on the warrant.



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Make sure the address on the warrant is the correct address the police are attempting to enter. If the warrant has the wrong address you can lawfully deny the police entry. If, however, the address is correct, you should comply with the police request.

Remember the police are only carrying out the judge's order, and that order was only based on one-sided facts which are probably not the full story.

There are many legal defenses to these types of allegations. There will be a time and place for you to respond and tell your side of the story. Getting agitated and not complying with the police who are only there to carry out a judge's order that the police must presume is valid is not the time and place and will escalate an already tense situation and could result in criminal charges being filed against you.

Thus, it is best to remain calm, comply with the lawful requests of the officers, and call your lawyer so your rights can be protected in court.

Ralph Long, at attorney from Florence, Alabama, was clear:

You have NO Options. Be polite and cooperative; you are basically considered a "dangerous armed adversary." Call your attorney as soon as you can, not to stop the seizure but to start the appeal process to get your property back. Resistance could get you arrested or worse — shot.

You can't ask Mr. Gary Willis of Ferndale, MD, anymore. He was shot to death by Anne Arundel County Police at 5:17 a.m. on Nov. 7, 2018, when an Extreme Risk Protective Order was served on him. Police said he answered the door with a gun in his hand and was combative.

How many of us wouldn't arm ourselves if someone came banging on your door before daylight?

Advice from attorney Randy Robinson, with offices in Augusta, Maine, was short and to the point: "The police are going to follow what their warrant says. I would make sure that you have the information regarding the firearms recorded. Give them the firearms if they have a lawful court order and fight it out in court. Any case has the potential to be a test case for overturning one of these laws."

Some gun owners aren't likely to wait that long, or be "a test case." As Ayoub pointed out, some of those responding to his suggestion that they roll over and play dead for the police told Ayoub exactly where and when he could get off the bus.

There's little help coming from the National Rifle Association (NRA) on the matter. Chris Cox, the executive director of the NRA's Institute for Legislative Action, said:

We appreciate President Trump's support for keeping firearms out of the hands of those who have been adjudicated by a court to be a danger to themselves or others in the form of state Extreme Risk Protection Orders — provided they include strong due process protections, require mental health treatment, and include penalties against those who file frivolous charges to harass law-abiding citizens.

Until the issue is ruled unconstitutional by the Supreme Court some long time in the distant future, red flag laws are, as Pastor Chuck Baldwin noted, "a powder keg that could explode into all-out rebellion."

What's inevitable is that, left in force and not overturned, red flag laws will eventually be used against law-abiding gun owners who, by definition, will be declared mentally ill for owning such guns.

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