



First-Year Implementation of  
Colorado's Violence Prevention Act

Reflections on Its Impact &  
Opportunities for Improvement



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## Executive summary

Colorado’s Deputy Zackari Parrish III Violence Prevention Act (“Violence Prevention Act” or “Act”), commonly known as the “red flag” law, took effect on January 1, 2020.<sup>4</sup> The Violence Prevention Act enables a judge to issue an Extreme Risk Protection Order (“Order”) that prohibits an individual from possessing firearms for up to 364 days, if the judge finds after a hearing that the individual, known as the respondent, poses a “significant risk of causing personal injury to self or others by having . . . or by purchasing, possessing, or receiving a firearm[.]”<sup>5</sup>

This report reviews publicly available information from 2020, the Violence Prevention Act’s first year of implementation. Year-one data shows that petitioners used the red flag procedures fewer than 125 times during 2020; law enforcement filed the majority of red flag petitions; and eighty-five percent of petitions filed by law enforcement resulted in 364-day Orders.

Part I of this report summarizes the background of the Violence Prevention Act. Part II describes how the red flag procedure works in practice. Part III evaluates data from the first year of implementing the Act. Part IV summarizes the Colorado Department of Law’s role in defending the constitutionality of the law. Part V discusses an area worthy of further exploration, namely, the need for further public education and outreach regarding the process for seeking an Order.

## Introduction

Colorado’s Violence Prevention Act became law on April 12, 2019 and took effect in January 2020.<sup>6</sup> The Act is named after Deputy Zackari Parrish III—a Douglas County Sheriff’s Office deputy who was shot in 2017 and killed by a mentally ill individual in an event that Douglas County Sheriff Tony Spurlock described as an “ambush-type” attack.<sup>7</sup> The shooter fired approximately 100 rounds, killing Deputy Parrish and injuring four other law enforcement officers involved in the standoff at the shooter’s apartment.<sup>8</sup> For weeks leading up to the shooting, law enforcement officers knew that Deputy Parrish’s shooter was experiencing a mental health crisis.<sup>9</sup> Indeed, the shooter’s mother

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<sup>4</sup> Colo. Rev. Stat. Ann. § 13-14.5-114 (West 2021).

<sup>5</sup> Colo. Rev. Stat. Ann. § 13-14.5-103(3).

<sup>6</sup> Colo. Rev. Stat. Ann. § 13-14.5-101.

<sup>7</sup> Bente Birkeland, *Colorado’s ‘Red Flag’ Gun Bill Is Now Law. But The Fight Over It Still Continues*, CPR NEWS, Apr. 9, 2019, <https://www.cpr.org/2019/04/09/colorados-red-flag-gun-bill-is-now-law-but-the-fight-over-it-still-continues/> (last visited March 4, 2021).

<sup>8</sup> Colorado Public Radio Staff, *Douglas County Deputy Dies in Highlands Ranch Shooting*, CPR NEWS, Dec. 31, 2017, <https://www.cpr.org/2017/12/31/douglas-county-deputy-dies-in-highlands-ranch-shooting/> (last visited June 28, 2021).

<sup>9</sup> Birkeland, *supra* note 6.

sought to restrict the shooter's access to firearms, but she was ultimately unsuccessful.<sup>10</sup> At the time, Colorado lacked formal legal procedures to remove the firearms. Consistent with the observable mental health deterioration displayed by Deputy Parrish's shooter, a Federal Bureau of Investigation ("FBI") retrospective study of active shooters concluded that in the weeks and months prior to an attack, the average shooter displays four or five concerning, observable behaviors that may signal impending violence, including behaviors indicating mental illness and violent intent.<sup>11</sup>

Red flag laws are not new in the United States—Connecticut passed the first red flag law in 1999 and fifteen states enacted such laws prior to Colorado. Like laws in other states, Colorado's red flag law prevents individuals who, according to a judge, "pose a significant risk of causing personal injury to self or others by . . . firearm" from possessing firearms for a period of up to 364 days. The Violence Prevention Act provides a mechanism to keep firearms away from individuals who, like Deputy Parrish's shooter, engage in a pattern of statements and actions that reveal an intent to inflict violence. Petitioners may also invoke the Violence Prevention Act if an individual poses a significant risk of committing suicide or domestic violence using a firearm.

Colorado ranks among the top ten states with the highest rates of suicide.<sup>12</sup> Firearms are the most lethal of suicide methods—more than 80% of suicide attempts using a firearm result in death.<sup>13</sup> According to research, most individuals take ten minutes or less to think through a suicide attempt and rarely employ other methods if the first option is unavailable.<sup>14</sup> Therefore, if a high-risk individual cannot access a firearm, that individual is less likely to resort to other means of attempting suicide.<sup>15</sup> Researchers examining the effect of Connecticut's red flag law estimate that for every ten to twenty

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<sup>10</sup> Kirk Mitchell, *Mother Returned Gunman's Weapons, Issued Warnings Just Months Before Fatal Douglas County Shootout*, THE DENVER POST, Jan. 30, 2018, <https://www.denverpost.com/2018/01/30/douglas-county-gunman-mother-gave-early-warnings/> (last visited July 1, 2021).

<sup>11</sup> U.S. Dep't of Just., *FBI Report: A Study of the Pre-Attack Behaviors of Active Shooters in the United States Between 2000 and 2013*, June 7, 2018, <https://www.fbi.gov/file-repository/pre-attack-behaviors-of-active-shooters-in-us-2000-2013.pdf/view> (last visited March 4, 2021).

<sup>12</sup> Kimberly Phu, *Some 1,287 Coloradoans lost their lives to suicide in 2019. This was not only an increase from the year before—it was also a higher number of suicides than has ever been recorded in the state.*, COLO. HEALTH INSTITUTE, Jan. 26, 2021, <https://www.coloradohealthinstitute.org/research/suicide-colorado> (last visited March 4, 2021).

<sup>13</sup> *Lethality of Suicide Methods*, Means Matter Initiative, Harvard School of Public Health, <https://www.hsph.harvard.edu/means-matter/means-matter/case-fatality/> (citing R.S. Spicer et al., *Suicide Acts in 8 States: Incidence and Case Fatality Rates by Demographics and Method*, 90 AM. J. OF PUB. HEALTH 12, at 1885 (2000)).

<sup>14</sup> See Madeline Drexler, *Guns and Suicide: The Hidden Toll*, HARV. PUB. HEALTH MAG., [https://www.hsph.harvard.edu/magazine/magazine\\_article/guns-suicide/](https://www.hsph.harvard.edu/magazine/magazine_article/guns-suicide/) (last visited July 30, 2021); Celia Watson Seupel, *Blocking the Paths to Suicide*, THE NEW YORK TIMES, March 9, 2015, <https://www.nytimes.com/2015/03/10/health/blocking-the-paths-to-suicide.html> (last visited July 30, 2021).

<sup>15</sup> Anna Dunn, *The Red Flag Law as a Means of Suicide Prevention*, COLLEGE AVENUE MAG., May 5, 2020, <https://collegeavemag.com/the-red-flag-law-as-a-means-of-suicide-prevention/> (last visited July 30, 2021).

granted petitions, approximately one life was saved through an averted suicide.<sup>16</sup> R estimate that red flag laws in Indiana and Connecticut decreased suicide rates by 7.5% and 14%, respectively.<sup>17</sup>

Colorado's domestic violence rates are higher than the national average—twenty-five percent of women and one-third of men are victims of domestic violence.<sup>18</sup> In 2019, seventy domestic violence incidents resulted in death, and firearms inflicted two-thirds of those deaths.<sup>19</sup> National studies find that approximately 50-60% of fatal domestic violence-related incidents involve firearms.<sup>20</sup> In fact, domestic violence perpetrators with access to firearms are five to eight times more likely to kill their victims than those without firearms.<sup>21</sup>

## How the red flag procedure works

Colorado's Violence Prevention Act sets forth procedures that govern the red flag process. The Act provides for two types of Extreme Risk Protection Orders: (1) a Temporary Order—lasting up to fourteen days;<sup>22</sup> and (2) a longer Order lasting up to 364 days.<sup>23</sup> The red flag process starts when the petitioner files a petition asserting that the respondent poses a significant risk of causing personal injury to self or others by having access to a firearm.<sup>24</sup> Only law enforcement, or a family member or household member of the respondent, may file a red flag petition. The petitioner must file an affidavit, "signed under oath and penalty of perjury, stating the specific statements, actions, or facts that give rise to a reasonable fear of future dangerous acts by the

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<sup>16</sup>Jeffrey W. Swanson, et al., *Implementation and Effectiveness of Connecticut's Risk-Based Gun Removal Law: Does it Prevent Suicides?*, 80 L. AND CONTEMP. PROBS. 179, 206 (2017).

<sup>17</sup> Aaron J. Kivisto, Peter Lee Phalen, *Effects of Risk-Based Firearm Seizure Laws in Connecticut and Indiana on Suicide Rates, 1981-2015*, PSYCHIATRIC SERVICES, June 1, 2018, <https://ps.psychiatryonline.org/doi/10.1176/appi.ps.201700250> (last visited July 30, 2021).

<sup>18</sup> Elise Schmelzer, *Colorado Domestic Violence Deaths Spiked in 2019, When 70 People Died in Connection to Abuse*, THE DENVER POST, Dec. 7, 2020, <https://www.denverpost.com/2020/12/07/colorado-domestic-violence-abuse-deaths-2019/#:~:text=At%20least%2070%20Coloradans%20died,the%20Colorado%20Attorney%20General's%20Office>

(last visited March 4, 2021).

<sup>19</sup> *Id.*

<sup>20</sup> Colorado Domestic Violence Fatality Review Board, 2020 Annual Report p.4, <https://coag.gov/app/uploads/2020/12/CDVFRB-2020-Annual-Report.pdf>.

<sup>21</sup> *Id.* at 8.

<sup>22</sup> Colo. Rev. Stat. Ann. § 13-14.5-103(5)(a).

<sup>23</sup> *Id.*

<sup>24</sup> Colo. Rev. Stat. Ann. § 13-14.5-103(1),(3).

respondent.”<sup>25</sup> To encourage proper use of the red flag process, a person who files a “malicious or false petition” may be subject to criminal prosecution.<sup>26</sup>

Upon receiving a petition for an Extreme Risk Protection Order, the court sets a hearing date, promptly notifies the respondent about the hearing, and appoints an attorney to represent the respondent. Unique among state red flag laws, Colorado’s Violence Prevention Act requires the state to pay for the respondent’s court-appointed attorney, ensuring that respondents will have legal counsel regardless of their ability to pay.<sup>27</sup> During the hearing for the 364-day Order, the petitioner and the respondent may cross-examine witnesses and present evidence, or the court may itself examine witnesses.

Prior to the full hearing, the court may grant a Temporary Order if the court finds that the respondent poses a “significant risk of causing personal injury to self or others *in the near future* by having . . . or by purchasing, possessing, or receiving a firearm[.]”<sup>28</sup> A Temporary Order remains in effect until a hearing is conducted regarding the 364-day Order—such hearing must occur within 14 days after the Temporary Order is issued—or until the petition is withdrawn.<sup>29</sup>

The Violence Prevention Act identifies factors for judges to consider when determining whether or not to issue an Order, including evidence of a recent act or credible threat of violence by the respondent against self or others; a pattern of acts or credible threats of violence by the respondent within the past year; a conviction of the respondent for a crime that included an underlying factual basis of domestic violence; a credible threat of or the unlawful or reckless use of a firearm by the respondent; and a history of use, attempted use, or threatened use of unlawful physical force by the respondent against another person, or the respondent’s history of stalking another person.<sup>30</sup> If, after considering all relevant evidence, the court finds by clear and convincing evidence that the respondent poses a significant risk of injury to self or others by having, controlling, purchasing, or receiving a firearm, then the court will grant an Order for a period of 364 days.<sup>31</sup>

If the court grants an Order, then the respondent shall relinquish all firearms and any concealed carry permits in their possession and shall not control, possess, or purchase

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<sup>25</sup> Colo. Rev. Stat. Ann. § 13-14.5-103(1).

<sup>26</sup> Colo. Rev. Stat. Ann. § 13-14.5-113(2).

<sup>27</sup> Colo. Rev. Stat. Ann. § 13-14.5-104(1).

<sup>28</sup> Colo. Rev. Stat. Ann. § 13-14.5-103(3).

<sup>29</sup> Colo. Rev. Stat. Ann. § 13-14.5-103(5)(a).

<sup>30</sup> Colo. Rev. Stat. Ann. § 13-14.5-105(3).

<sup>31</sup> *Id.*

a firearm for the duration of the Order.<sup>32</sup> To comply with the relinquishment requirement, respondents may sell or transfer possession of firearms to a federally licensed firearm dealer or arrange for a law enforcement agency to store the firearms. When an Order is granted, the court notifies the Colorado Bureau of Investigation (“CBI”), and CBI enters the Order into the national instant background check system and other similar databases used by law enforcement.<sup>33</sup>

An Extreme Risk Protection Order remains in effect for 364 days unless a court terminates or extends the Order. The Act allows a respondent to request a hearing to terminate an Order one time during the duration of the Order.<sup>34</sup> To terminate an Order, the court must find by clear and convincing evidence that the respondent no longer poses a significant risk of injury to self or others by having, purchasing, possessing, or receiving a firearm.<sup>35</sup> Finally, the court may renew an Order for a period of up to 364 days if, after a valid petition and another full hearing, the court finds clear and convincing evidence that the respondent continues to pose a significant risk of injury to self or others.<sup>36</sup>

Upon termination or expiration of an Order, the Act entitles the respondent to regain possession of his or her firearms within three days, but only after the law enforcement agency or federally licensed firearm dealer with custody of the firearms conducts a background check to confirm that the respondent is otherwise eligible to possess a firearm.<sup>37</sup> Furthermore, when an Order expires or is terminated, CBI and the appropriate law enforcement agency must promptly remove the Order from computer-based background check systems.<sup>38</sup>

## Use of the Violence Prevention Act in 2020

Using publicly available information, public health researchers and journalists analyzed data and documented trends from the first year of implementing the Violence Prevention Act in Colorado.<sup>39</sup> Key findings from this analysis include the following:

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<sup>32</sup> Colo. Rev. Stat. Ann. § 13-14.5-103(5)(g).

<sup>33</sup> Colo. Rev. Stat. Ann. § 13-14.5-110(2).

<sup>34</sup> Colo. Rev. Stat. Ann. § 13-14.5-107(1)(a).

<sup>35</sup> *Id.*

<sup>36</sup> Colo. Rev. Stat. Ann. § 13-14.5-107(2)(e).

<sup>37</sup> Colo. Rev. Stat. Ann. § 13-14.5-109(1).

<sup>38</sup> Colo. Rev. Stat. Ann. § 13-14.5-110(5).

<sup>39</sup> Schmelzer *supra* note 18; Colo. Judicial Branch, Report on Extreme Risk Protection Orders (Jan. 26, 2021); Emmy Betz et al., Colorado Extreme Risk Protection Order Data Brief, University of Colorado Firearm Injury Prevention Initiative (April 2021); Jesse Paul, Colorado’s



- Petitioners filed fewer than 125 red flag petitions during 2020;
- Law enforcement filed the majority of the red flag petitions;
- Courts granted law enforcement petitions at a higher rate than family or household member petitions;
- Courts issued Orders against respondents who threatened suicide, intimate partner violence, and mass shootings; and
- Courts affirmed that the Violence Prevention Act adequately protects constitutional rights.

***a) Petitioners filed fewer than 125 petitions in Colorado during 2020.***

As summarized in Table 1, data published by the Colorado Judicial Branch shows that a total of 111 petitions were filed during year-one of implementation.<sup>40</sup> Researchers at Colorado School of Public Health observed that twelve red flag petitions were duplicates involving the identical petitioner, respondent, and factual allegations, meaning approximately 100 unique petitions were filed in 2020.<sup>41</sup> According to Judicial Branch data, courts issued sixty-six Temporary Orders and forty-nine 364-day Orders during 2020.<sup>42</sup> In some cases, courts issued a Temporary Order but did not issue a 364-day Order.<sup>43</sup>

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Red Flag Gun Law Was Used 73 Times In Its First 7 Months. Here's How the Rollout Has Gone, Colorado Sun, Aug. 21, 2020, <https://coloradosun.com/2020/08/21/red-flag-law-colorado-usage/> (last visited July 16, 2021).

40 Colo. Judicial Branch, Report on Extreme Risk Protection Orders *supra* note 40.

41 Betz et al., *supra* note 40 at 1.

42 Colo. Judicial Branch, Report on Extreme Risk Protection Orders *supra* note 40. The Judicial Branch did not publish information regarding renewals of Orders, because most 364-day Orders issued during 2020 had not yet expired when this data was published.

43 *Id.*

**Table 1. Summary of red flag petitions and orders, in 2020 <sup>44</sup>**

	Temporary Order	364-day Order	Total
<b>Initial Petitions Filed *</b>	75	36	111
<b>Orders Issued **</b>	66	49	115
<b>Orders Denied **</b>	20	26	46
<b>Orders Terminated or Expired ***</b>	65	6	71

\* This count includes only the first petition filed into the case, meaning if the petitioner files a petition for a temporary extreme risk protection order and then files a petition for an extreme risk protection order in the same case, this would only be counted under the temporary petition column, because that was the first petition in the case.<sup>45</sup>

\*\* A case stemming from a single petition may have both a temporary Order and a 364-day Order issued (or denied) at separate times. Therefore, a single petition/case may be counted under both the “temporary Order” and “364-day Order” columns. Also, a petitioner may petition for an extreme risk order, but the court may decide to issue a temporary extreme risk order. Or, the petitioner may petition for a temporary extreme risk protection order, but the court may choose to not grant or deny that request at the initial hearing. Instead, the court may decide to hold an extreme risk hearing. At the extreme risk hearing an extreme risk protection order may be granted and a temporary order is never granted on that case. A case may also have a temporary extreme risk order granted and later have the extreme risk order granted in the case. This may cause the petition numbers to not align with the order numbers.<sup>46</sup>

\*\*\* As of Jan. 26, 2021.

<sup>44</sup> Colo. Judicial Branch, Report on Extreme Risk Protection Orders, *supra* note 39.

<sup>45</sup> Colo. Judicial Branch, Report on Extreme Risk Protection Orders, *supra* note 39 at 4

<sup>46</sup> Colo. Judicial Branch, Report on Extreme Risk Protection Orders, *supra* note 39 at 10.

***b) Law enforcement filed the majority of red flag petitions and courts granted law enforcement petitions at a higher rate than petitions filed by family or household members.***

In 2020, law enforcement officials filed the majority of red flag petitions.<sup>47</sup> As summarized in Table 2, courts granted petitions filed by law enforcement at a significantly higher rate than petitions filed by family or household members.<sup>48</sup> More than three-quarters of petitions filed by law enforcement resulted in Temporary Orders and subsequent 364-day Orders.<sup>49</sup> Of the more than 30 petitions filed by family or household members, courts granted 364-day Orders in only six instances.<sup>50</sup> As described in greater detail below, law enforcement used the red flag law in instances where the individual displayed signs of harming themselves or others—consistent with the Act’s purpose of preventing violence.<sup>51</sup>

Table 2. Outcome of red flag petitions, by type of petitioner, in 2020 <sup>52</sup>		
Petitioner Type	Petitions resulting in Temporary Order	Petitions resulting in 364-day Order
Law Enforcement	96%	85%
Household or Family Members	32%	15%

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<sup>48</sup> Schmelzer, *supra* note 18; *see also* Dunn, *supra* note 15.

<sup>49</sup> Bez et al., *supra* note 40 at 1.

<sup>50</sup> Betz et al., *supra* note 40 at 1.

<sup>51</sup> Schmelzer *supra* note 18.

<sup>52</sup> Betz et al., *supra* note 40 at 1.

Judges declined to issue Orders in cases where the petition lacked evidence of credible threats or included only vague allegations.<sup>53</sup> Courts also denied petitions for procedural errors such as filing in the wrong county, and in cases where an Order was unnecessary such as where another law or court order already prohibited the respondent from possessing firearms and where the petition lacked any firearm-specific allegations.<sup>54</sup>

***c) Courts issued orders against individuals who threatened suicide, intimate partner violence, and mass shootings.***

Year-one data shows that courts issued Orders in situations where individuals threatened suicide, intimate partner violence, and mass shootings.<sup>55</sup> Most red flag petitions involved situations where individuals struggled with mental health or substance abuse issues.<sup>56</sup> A third of the 364-day Orders were issued after the respondent made suicidal threats, and another third of the Orders were issued to respondents who threatened to harm others with their firearms.<sup>57</sup> The remaining third of the 364-day Orders involved individuals who threatened both suicide and harm to others.<sup>58</sup>

Consider, for example, the case of an Arapahoe County woman who filed a red flag petition after her husband threatened suicide three times.<sup>59</sup> In an interview with The Denver Post, the woman credited the Violence Protection Act for saving her husband's life.<sup>60</sup> Similarly, Denver police sought an Order to prevent a man from obtaining firearms while he was the subject of a credible domestic violence investigation.<sup>61</sup> In another case, Lakewood police obtained an Order against a respondent who threatened to shoot himself and police officers.<sup>62</sup> Denver police Lt. Adam Hernandez told the Denver Post that "[w]e believe that this particular legislation has prevented some from

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<sup>53</sup> *Id.*

<sup>54</sup> Betz et al., *supra* note 40 at 3.

<sup>55</sup> Leigh Paterson, 'Probably All Of These Cases Have To Do With Mental Health,' Says Researcher Analyzing Colorado's Extreme Risk Law, KUNC, Jan. 20, 2021 <https://www.kunc.org/news/2021-01-20/probably-all-of-these-cases-have-to-do-with-mental-health-says-researcher-analyzing-colorados-extreme-risk-law> (last visited March 4, 2021).

<sup>56</sup> *Id.*

<sup>57</sup> Schmelzer, *supra* note 18.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Marshall Zelinger, *First Known Case Using Colorado's New Red Flag Law Filed in Denver*, 9NEWS, Jan. 3, 2020 <https://www.9news.com/article/news/local/next/first-known-case-using-colorados-new-red-flag-law-filed-in-denver/73-2c6b704c-bb49-4683-a8e8-df85b978596b> (last visited March 4, 2021).

<sup>62</sup> Schmelzer, *supra* note 18.

committing suicide and has helped prevent crimes of violence against members of our community.”<sup>63</sup>

***d) Instances of abuse of red flag procedures were rare.***

In analyzing the more than 100 red flag petitions sought during 2020, researchers at the Colorado School of Public Health found only four instances of clearly inappropriate attempted use of the red flag process, all of which involved the petitioner falsely characterizing their relationship to the respondent.<sup>64</sup> In all four cases, courts denied the red flag petition. One case led to perjury charges against the petitioner. In the other three cases of inappropriate attempted use, the petitioners were not charged. As the researchers note, “one [petitioner] was already incarcerated and had filed against prison guards; one appeared to have misunderstood law requirements and filed against a neighbor; and one filed against an entire police department with evidence of mental illness in the petition.”<sup>65</sup>

**The Colorado Department of Law defended the constitutionality of the Violence Prevention Act and protected against abuse of red flag procedures**

***a) The Colorado Department of Law successfully defended the constitutionality of the Violence Prevention Act.***

During 2020, the Colorado Department of Law successfully supported efforts to defend the constitutionality of the Violence Prevention Act in two cases, *Pastecki v. Gatton*<sup>66</sup> and *Gunnison Police Dep’t v. Vallejo*.<sup>67</sup> In *Vallejo*, the respondent opposed the imposition of an Order by arguing that the red flag law is unconstitutional.<sup>68</sup> The Department of Law joined the Larimer County Attorney in arguing that the Violence Protection Act is constitutional under both state and federal constitutions.<sup>69</sup> The district

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<sup>63</sup> Jeffrey W. Swanson, et al., *Implementation and Effectiveness of Connecticut’s Risk-Based Gun Removal Law: Does it Prevent Suicides?*, 80 L. AND CONTEMP. PROBS. 179, 203 (2017); Schmelzer, *supra* note 16. Such findings align with a recent study of Connecticut’s red flag law, which found one suicide averted for every 10 to 11 guns relinquished through the red flag process.

<sup>64</sup> Betz et al., *supra* note 40 at 3.

<sup>65</sup> *Id.*

<sup>66</sup> *Pastecki v. Gatton*, Case No. 2020CV101 (Colo. Dist. Ct., Larimer Cty. May 27, 2020); see Brief for the State of Colorado as Amicus Curiae, *Pastecki v. Gatton*, Case No. 2020CV101 (Colo. Dist. Ct., Larimer Cty. filed Apr. 3, 2020).

<sup>67</sup> *Gunnison Police Dep’t v. Vallejo*, Case No. 2020C17 (Colo. Cty. Ct., Gunnison Cty. May 11, 2020); see Brief for the State of Colorado as Amicus Curiae, *Gunnison Police Dep’t v. Vallejo*, Case No. 2020C17 (Colo. Cty. Ct., Gunnison Cty. filed April 27, 2020).

<sup>68</sup> *Id.* at 1.

<sup>69</sup> *Id.* at 1–2.

court agreed that the Violence Protection Act is constitutional and does not violate Second Amendment rights “because it does not restrict law-abiding, responsible citizens from possessing arms.”<sup>70</sup> Rather, the court noted, the law only *temporarily* restricts the right to possess a firearm for individuals who pose a credible threat to themselves or the public.<sup>71</sup> The court also concluded that because the Violence Protection Act provides the respondent with notice, court-appointed counsel, and an opportunity to present a defense, requires a showing of “clear and convincing” proof, and limits the Order to a duration of 364 days, the Act meets constitutional due process requirements.<sup>72</sup>

This conclusion is consistent with decisions from multiple Colorado courts<sup>73</sup> and from courts in other states.<sup>74</sup> In fact, every court that reviewed the constitutionality of similar red flag laws reached the same conclusion: these laws satisfy constitutional requirements.<sup>75</sup>

### ***b) The Colorado Department of Law defended against abuse of the red flag procedures.***

The Department of Law also successfully took action to protect against efforts to abuse the red flag procedures.<sup>76</sup> In 2020, Susan Holmes, the mother of Jeremy Holmes—who in 2017 was fatally shot by Colorado State University (“CSU”) Officer Phillip Morris—filed a red flag petition against Officer Morris.<sup>77</sup> Holmes falsely alleged that she and Officer Morris shared a child together and, therefore, that she was Officer Morris’s family member.<sup>78</sup>

The Department of Law urged the court to deny Ms. Holmes’ petition because the Violence Prevention Act prohibited Ms. Holmes from filing a red flag petition against

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<sup>70</sup> *Id.* at 3.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 6.

<sup>73</sup> See *Pastecki v. Gatton*, Case No. 2020CV101 (Colo. Dist. Ct., Larimer Cty. May 27, 2020); *Denver Police Dep’t v. Koreh*, Case No. 20CV30006 (Denver Prob. Ct. Apr. 17, 2020).

<sup>74</sup> Caroline Shen, Note, *A Triggered Nation: An Argument for Extreme Risk Protection Orders*, 46 HASTINGS CONST. L.Q. 683, 692–711 (2019) (canvassing relevant case law from across federal circuits); See *Hope v. State*, 133 A.3d 519 (Conn. App. Ct. 2016); *Redington v. State*, 992 N.E.2d 823 (Ind. Ct. App. 2013); *Davis v. Gilchrist Cnty. Sheriff’s Off.*, 280 So.3d 524 (Fla. Dist. Ct. App. 2019).

<sup>75</sup> *Id.*; see also Jennifer L. Pomeranz et al., *Firearm Extreme Risk Protection Order Laws and Preemption: New Developments and Outstanding Issues*, 50 States, 2020, AM. J. OF PREVENTATIVE MED., 2021, at 1, 2, 5–6, <https://www.ajpmonline.org/action/showPdf?pii=S0749-3797%2821%2900214-2> (last visited July 18, 2021).

<sup>76</sup> Hayley Sanchez, *AG Phil Weiser Backs Judge’s Denial of Red Flag Petition Against CSU Police Officer*, CPR NEWS, Jan. 16, 2020, <https://www.cpr.org/2020/01/16/ag-phil-weiser-backs-judges-denial-of-red-flag-petition-against-csu-police-officer/> (last visited March 4, 2021).

<sup>77</sup> *Id.*

<sup>78</sup> Rebecca Powell, *FAQ: Here’s how Colorado’s new red flag law works*, COLORADOAN, Jan. 15, 2020, <https://www.coloradoan.com/story/news/2020/01/15/how-does-colorado-red-flag-law-work-extreme-risk-protection-order-second-amendment/4480034002/>.

Officer Morris. Under the Act, only law enforcement or family members or household members of the respondent may file red flag petitions. The court denied the petition for the reasons urged by the Department of Law.<sup>79</sup>

## **Areas for further exploration: public education on the red flag process**

The Violence Prevention Act provides a limited mechanism to temporarily restrict access to firearms for persons deemed by courts to pose a significant risk to themselves or others. As noted above, during 2020, the Act's red flag procedures were invoked—primarily by law enforcement—against individuals who threatened suicide, intimate partner violence, and mass shootings, resulting in a total of 49 364-day Orders issued by Colorado courts. Courts granted red flag petitions filed by law enforcement at a much higher rate than petitions filed by a family or household member. Courts denied roughly a dozen red flag petitions either because the petition was filed in the wrong county or lacked firearm-specific allegations, or because another law or legal proceeding already prohibited the respondent from possessing firearms, thereby rendering the Order unnecessary.

This initial data points to at least one area worthy of further exploration by policymakers, public health researchers, and violence prevention practitioners, namely, education and outreach to increase the public's awareness and understanding of the red flag process. The red flag law remains novel in Colorado. Many Coloradans are unaware that the red flag law exists, while others, especially individuals who are not members of law enforcement, know of the red flag law, but may struggle to understand and navigate the legal process required to obtain an Order. Furthermore, the red flag law is one of many possible interventions available for Coloradans who believe a family or household member with access to a firearm poses a serious risk to themselves or others. Raising awareness can be approached from a variety of angles in the public, private, and nonprofit sectors.

As one of the entities authorized to use the red flag law, law enforcement should be included in any discussion about raising awareness of this procedure. Law enforcement brought the majority of red flag petitions during 2020, and courts granted those petitions at a high rate. The use of the red flag law by law enforcement, however, varied substantially between jurisdictions. As a result, some law enforcement agencies developed significant experience at determining when and how to appropriately use the red flag process, while other agencies did not. In addition, the experience of law

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<sup>79</sup> Sanchez, *supra* note 75.

enforcement agencies implementing the law can help support other agencies who have expressed some hesitancy about relying on the red flag process because of concerns of officer safety. Consequently, Colorado has a compelling opportunity to expand awareness and training for law enforcement bodies throughout the state on the appropriate uses and practical limits of the red flag process, as informed by the lessons of the first year of implementation.

Law enforcement agencies that effectively used the red flag law during 2020 may be well suited to share their best practices and lessons learned with other agencies. All agencies benefit from a greater understanding of the various tools and resources – of which the red flag law is only one – available for intervening when individuals credibly threaten to harm themselves or others, and for connecting those individuals with support and treatment services as appropriate. In California, Illinois, and Florida, disparate investment in training and education across jurisdictions is one of the main drivers of varied rates of awareness and adoption.<sup>80</sup>

During the 2021 legislative session, the Colorado General Assembly enacted, and the Governor signed, a law creating the Office of Gun Violence Prevention (the “Office”).<sup>81</sup> The Office’s statutory duties include a mandate to “increase the awareness of, and educate the general public about” a myriad of gun violence prevention strategies, including the “availability of, and the process for requesting, an Extreme Risk Protection Order[.]”<sup>82</sup> The Office is authorized to employ various public education strategies, including the creation of training materials, digital, radio or television campaigns, as well as grants to community partners.<sup>83</sup> Although educating the public about the red flag law is but one of its many functions, the Office of Gun Violence Prevention will likely work with other state government entities already engaged in violence prevention efforts, such as the Office of Behavioral Health and the Office of the Attorney General, toward that goal.<sup>84</sup>

Furthermore, as the Office of Gun Violence Prevention gets off the ground, there is opportunity in the interim for stakeholders to jumpstart public-private partnerships and

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<sup>80</sup> Alain Stephens, *San Diego is Showing California How to Use Its Red Flag Law*, THE TRACE, Aug. 21, 2019, <https://www.thetrace.org/2019/08/red-flag-laws-san-diego-mara-elliott/> (last visited June 21, 2021); Sue Carlton, *Dangerous but Disarmed: How Florida has Confiscated Thousands of Guns*, TAMPA BAY TIMES, Oct. 22, 2019, <https://www.tampabay.com/special-reports/2019/10/22/dangerous-but-disarmed-how-florida-has-confiscated-thousands-of-guns/> (last visited June 28, 2021); Champe Barton, *Illinois Passed a Red Flag Law. A Coalition of Advocates is Working to Ensure It's Used*, THE TRACE, Oct. 31, 2019, <https://www.thetrace.org/2019/10/illinois-red-flag-law-coalition-advocates/> (last visited June 28, 2021).

<sup>81</sup> Colo. H.B. 1299 (codified at Colo. Rev. Stat. Ann. § 25-20.5-1201 et seq.)

<sup>82</sup> Colo. Rev. Stat. Ann. § 25-20.5-1203.

<sup>83</sup> *Id.*

<sup>84</sup> Colo. Rev. Stat. Ann. § 25-20.5-1202(2).



educational efforts. Health care providers, domestic violence prevention organizations, educational organizations, and community groups with interests, experience, and expertise in gun violence prevention – including firearms dealers and firearms safety educators – should be brought into the conversation at this early stage. Indeed, the law creating the Office of Gun Violence Prevention recognizes the importance of precisely these types of public-private collaborations.<sup>85</sup> Simple, low-cost approaches, like one-page resource guides, process instructions, and community conversations can reach partners across the spectrum as infrastructure is built for the future.

Education efforts can build public awareness so that individuals and law enforcement recognize the red flag law as one tool within the gun violence prevention toolkit and know how to use the red flag law appropriately and effectively. Raising public awareness about the red flag law—its purpose, processes, and limits—as well as other ways to intervene or obtain support for a person experiencing a mental health crisis or engaging in dangerous behaviors, is a worthy goal that merits serious consideration from policymakers and others.

## Conclusion

After a year of implementation, Colorado's Deputy Zackari Parrish III Violence Prevention Act is a valuable addition to the evolving gun violence prevention toolkit. Data from its first year of implementation suggests that this new type of protective order, when used as intended, is an appropriately narrow intervention and an effective mechanism for public and individual safety.

As with any law, there are ample lessons that can be built upon to improve efficacy, awareness, and application. First, continued research and data analysis can help stakeholders understand the long-term implications of the law in the context of gun violence prevention. As red flag laws are a relatively new phenomenon in most states, continued evaluation is critical to identify successes and areas for improvement. Second, raising public awareness of the red flag law and its processes, as well as awareness of other intervention tools and resources available to prevent moments of violence, will be important in enabling this law to realize its public safety potential. By raising awareness, both law enforcement and the general public stand to gain a comprehensive suite of tools for gun violence prevention and community safety as a whole. Overall, the Deputy Zackari Parrish III Violence Prevention Act is an important step forward in Colorado's commitment to gun violence prevention.

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<sup>85</sup> *Id.*

