

## **Now, gun owners deemed dangerous could lose their weapons**

A new gun control law signed into law on Monday – February 25, 2019 - by Gov. Andrew Cuomo will allow law enforcement officials, family members or school officials to seek a petition to seize the guns of people that courts find are dangerous to themselves or others.

The Red Flag Law, also known as the “extreme risk protection order law,” will give authorities or household members the ability to seek a court order that would prohibit a person for up to one year from purchasing or possessing a firearm.

The claim is that the law will give school officials the ability to ensure troubled students do not have access to guns. Supposedly that will help limit school shooting.

When a teacher thinks there’s a problem, or a family member sees there’s a problem, and believes that a person could be a danger to themselves or others, they can go to a judge and ask for an evaluation.

The overriding concern about the law is that it will allow people to very easily strip away owners' guns.

Here's details on the new law, which will take effect in 180 days.

### **What will the law do?**

Police, district attorneys, family or household members, school administrators or their designees may now petition a court to have an order of protection issued to a person to prevent them from: "...purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun."

To grant the order, a judge must find probable cause to believe the respondent "is likely to engage in conduct that would result in serious harm to himself, herself, or others" as defined by the state's mental hygiene law.

### **What happens in court?**

Once the court rules, a temporary extreme risk protection order is issued.

That then prevents the person from having guns or going to purchase any.

Then, within three to six days later, there is a hearing on a final extreme risk protection order, which would be in effect for up to one year.

The official or family member seeking the order must provide:

"clear and convincing evidence that the petitioner is likely to engage in conduct that would result in serious harm to himself, herself, or others."

### **How are weapons removed?**

A final order is granted by a judge, the owner will have to relinquish their weapons to law enforcement, who will retain them during the length of the order.

Any firearm license will also be suspended during the duration of the order.

The owner can appeal a court's decision through the state's appeals courts. They can also request during the one-year order period for a hearing to reconsider the case.

Police must leave a receipt for any firearms confiscated from the gunowner.

### **What other appeals are there?**

Before the one-year period of the removal order is up, the person who sought the order may file a request for a renewal of the order within 60 days of its expiration.

Then there will be another round of hearings.

While the Red Flag bill may be well intended, it has too many loopholes.

The law does not provide that the person who is prohibited from having a firearm gets help.

The law also does not provide for punishment if the person who requested the removal order had malicious intent.

The way the law is written may cause people who are not a risk, to have their guns taken away because another person in the household has been deemed to be a risk.

Obviously, the best test of the new law will be when an owner's firearms are taken and that person challenges the order on the basis of the information provided to the court to impose the order.