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COLORADO'S NEW "RED FLAG" LAW

Jim Chalats talks about Colorado's new law for Extreme Risk Protection Orders.

It doesn't matter which side you take in the gun debate. Everybody wants the killing to stop. Red flag laws were proposed after the February 14, 2018 shooting at the Marjory Stoneman Douglas High School in Parkland, Florida. These laws change the focus away from reaction to prevention. Colorado is one of 12 states to enact a red flag law since the Parkland shooting.

Technically, a red flag law is an "Extreme Risk Protection Order" (ERPO) statute. Ours goes into effect on January 1, 2020. CRS 13-14.5-101, *et seq.* It is named the *Deputy Zachary Parrish III Violence Prevention Act*. Parrish was a Douglas County Sheriff's deputy who was shot and killed on December 31, 2017 by a mentally ill man.

The *Parrish Act* allows a court to order the relinquishment of firearms upon evidence from family members or other concerned parties that a person poses a "significant risk of causing personal injury to self or others in the future by" having or purchasing a firearm. The *Parrish Act* is complex and abstract. It provides for expedited hearings, the admission of credible evidence, and notice to the person who is alleged to pose the "significant risk."

As with any new law, there will be disagreements. Some public officials threaten court challenges. Act sponsor Rep. Tom Sullivan, whose son Alex was murdered on July 20, 2012 at the Aurora Theater shooting, has weathered a recall effort by gun lobbyists and extremists.

History and context help to understand the policy tensions of gun safety legislation. The Second Amendment of the United States Constitution provides, "A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." The United States Supreme Court has held that an individual's right to keep and bear arms is unconnected to service in a militia. *District of Columbia v. Heller*, 554 U.S. 570 (2008). No law can bar the right to bear arms for defensive purposes. However, even Justice Scalia, who wrote *Heller*, recognized that 2nd Amendment rights are not unlimited. The right is "not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose."

The *Brady Handgun Violence Prevention Act* established a national instant criminal background check system which can block a dealer's gun sale to a convicted felon. Over 200 million background checks have been conducted since 1998. About .06 percent (120,000) of these background checks result in a block

of the dealer's sale. A less well-known provision of the *Brady Act* empowers state courts to order the relinquishment of firearms in cases of sexual abuse, domestic abuse, stalking, or conduct which places an intimate partner or family member "in reasonable fear of bodily injury."

Since 2013, Colorado has been one of 17 states which allow a court to enter a Brady-type order for the relinquishment of firearms or ammunition. After proof, by a preponderance of evidence, a history of abuse, domestic violence, or threatened physical harm, directed at an intimate partner, family member or former spouse, a Court may order firearms relinquishment under our Civil Protection Order (CPO) law, CRS 13-14-101, *et seq.*

I have represented victims in CPO cases both privately and pro bono. CPO cases can become very complicated, very quickly. To meet the victim's burden of proof may require medical or mental health testimony, information from a firearms expert, and/or the detailed research of hunting licenses, police reports, and transcripts from prior court proceedings.

When drafting the *Parrish Act*, Colorado law-makers were working within the context of the 2nd Amendment, *Heller*, the *Brady Act*, and Colorado's existing CPO statute. *Parrish* broadens the scope of inquiry concerning the risk - from an identified victim - to the public at large. For a court to make a finding that a gun owner is a credible threat to the public, the court must give the gun owner notice of the hearing and an opportunity to appear and present evidence. After an evidentiary hearing, the court must make detailed findings of fact to support any order of relinquishment. The *Parrish Act* maintains appropriate constitutional safeguards against unlawful seizure of firearms.

Gun right absolutism must acknowledge our tragic experiences. Doctrinaire logic must be tempered by practical wisdom. The Second Amendment is not a "suicide pact." Colorado's new ERPO statute may save lives. We can recognize and uphold the right to bear arms while also upholding everyone's right to safety.

Jim Chalats
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