

# Congress wants more red-flag laws. But GOP states, gun groups resist.

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After 17 high school students and staff were killed by a mass shooter in 2018, Pennsylvania state Rep. Todd Stephens watched his GOP cohorts in Florida rally around a new red-flag law.

Such measures, which aim to temporarily remove guns from people at risk of harming themselves or others, found rare bipartisan accord there after the Marjory Stoneman Douglas High School massacre as a way to reduce gun violence without violating the Second Amendment.

But when Stephens was inspired by Florida's success to propose a similar measure in Pennsylvania, his Republican colleagues stalled it out, arguing that it could infringe gun owners' constitutional rights, spark costly court battles or become a vengeful tool for people to disarm their enemies.

"It was frustrating and disappointing," Stephens said. "It took children dying in Florida and a police officer dying in Indiana before they passed their [red-flag] laws. I pray to God that is not what it will take for us to act in Pennsylvania."

Now, red-flag laws have once again become a focal point, thanks to the bipartisan gun deal signed into law last month by President Biden, which aspires to spark more states to adopt the measures by providing a legislative framework and implementation grants, and to improve public education about the laws in states that already have them. Proponents say they are common-sense laws backed by numerous studies showing they save lives.

But thus far, Stephens's experience in Pennsylvania has been more common in Republican-controlled statehouses than the accord reached in Florida.

While 19 states and the District of Columbia have passed red-flag laws — mostly in the years following the shooting in Parkland, Fla. — numerous other red-flag bills like Stephens's have fizzled out in the same time period, mostly in GOP state legislatures.

A Washington Post review of legislative battles in those states suggests that the bills were defeated through campaigns organized by local and national gun rights groups, including the NRA. Faced with heavy lobbying, Republican lawmakers have echoed the groups' concerns in hearings and public venues.

States that have enacted the laws have also faced significant challenges in applying them. More than 1,000 cities and counties in red-flag states have declared themselves "Second Amendment sanctuaries," where local police have vowed to not use the laws. At the same time, GOP leaders in five states have recently proposed "anti-red-flag laws" to preemptively ban or repeal the measures.

Even in supportive states, dangerous people are often not reported to police, according to experts and numerous studies — often because of a lack of public knowledge about the laws. That has led critics to question their effectiveness, pointing to recent mass shootings in states with red-flag laws, including the July 4 killings at an Illinois parade or the May 14 massacre at a Buffalo grocery store.

Some advocates say there's reason to believe the political grounds have shifted. Educational campaigns have dispelled common false claims, including that spiteful ex-spouses can easily abuse the system to permanently disarm former partners. This has helped alleviate concerns from hesitant state lawmakers, as well as 29 Republican members of Congress who voted last month to pass the bill.

The public, and even a majority of gun owners, also broadly support the laws, according to recent surveys. An NPR-PBS NewsHour-Marist poll taken after the May 24 shooting inside an elementary school in Uvalde, Tex., found that 73 percent of Americans back red-flag laws, including 60 percent of Republicans and 61 percent of gun owners.

"There is greater support for red-flag laws because most other gun policies address what can be done after tragedy strikes," said T. Christian Heyne, vice president of policy at Brady: United Against Gun Violence. "This does something that prevents the tragedy."

But that shift has not included a change in stance from the National Rifle Association or other gun groups. And given the groups' long-running success of opposing such measures, some experts doubt the new federal law can budge reluctant state legislatures.

“In the places where red-flag laws haven’t passed, the reason was not tightfisted fiscal restraint on the part of the legislature,” said David Kopel, an attorney and gun rights advocate who has testified before Congress against red-flag laws. “It was pro-gun groups and the sheriffs in some cases saying, ‘No, we think this is terrible and violates due process.’ ”

The efficacy of the new federal law isn’t likely to be clear for months, as this year’s sessions for most state legislatures have already come to a close. Some advocates are eager to start fighting for a new round of bills, while others are prepared to renew efforts if their proposals falter in the waning days or months of the legislative sessions.

Stephens said if his bill fails before Pennsylvania’s session ends in December, he plans to reintroduce the measure for the fourth time — and thinks the congressional action might sufficiently blunt opposition from gun rights groups.

“I’m hopeful that my colleagues from very red, rural areas of Pennsylvania see the support that the federal bill gained from senators from very red, rural states. I hope it will give them some comfort to support the red-flag legislation that I’ve proposed,” Stephens said. “The sad truth is a firearm is a really effective way to kill. And if you’re going through a tough time, having that firearm available to you is a recipe for disaster.”

## Gun rights groups push back

Connecticut enacted the first red-flag law in 1999, after a disgruntled state lottery employee with a history of suicidal ideation shot and killed four of his supervisors and then himself. Six years later, Indiana followed suit after a police officer was shot and killed by a man with a history of mental health problems. More than a decade passed before other states followed: California and Washington, two Democratic strongholds.

The Parkland shooting sparked a surge in the legislation, with the number of states with red-flag laws more than quadrupling. Florida — the site of the mass killing — was the only GOP-controlled state to adopt the measure.

Although the laws vary, all allow judges to take firearms if they are convinced a person is in danger of using them to hurt themselves or others. In some states, only police can petition the court, but in others family members, employers or doctors can ask for a court order.

More recent pushes for red-flag laws, however, make it clear that stiff opposition from gun rights groups, county sheriffs and other elected officials can doom the legislation.

In 2018 and again in 2019, the Arizona Citizens Defense League was at the forefront of a lobbying effort against a red-flag bill. The gun rights group directed members to contact legislators, and argued on its website and in opinion pieces that guns could be seized based on flimsy evidence and that red-flag orders are futile since there is no “crystal ball” that foretells when a person is going to kill with a firearm. The bills failed both years.

In 2020, the Nebraska Firearms Owners Association helped organize a successful campaign against a state red-flag bill. Hundreds of gun owners filled the statehouse, some carrying firearms and wearing T-shirts that said “We the People Shall Not Be Infringed.” The NRA also sent out numerous alerts to its Nebraska members, urging them to lobby lawmakers against the bill.

Oklahoma went a step further that same year, when Nathan Dahm, a Republican state senator, proposed a bill that became the nation’s first law to explicitly ban red-flag laws — a move that launched four copycat bills in other states. The Oklahoma 2nd Amendment Association, a gun rights group, led the lobbying efforts in the state for the anti-red-flag bill and Gun Owners of America also supported the legislation. None of the copycat bills has passed.

Gun rights groups have also pursued legal challenges against the laws. Thus far, courts have consistently found that the laws violate neither the Second Amendment nor the Fourth Amendment, which protects law-abiding citizens from unreasonable searches and seizures. Federal district courts in Indiana in 2013, in Connecticut in 2016 and in Florida last year have all upheld red-flag laws.

But Mark Hammond, a lobbyist and legislative counsel with Gun Owners of America, said groups like his believe they now stand a better chance at prevailing, thanks to the Supreme Court’s ruling last month tossing out a century-old gun-control measure in New York. The ruling could create a new framework for judges to evaluate gun-control challenges, according to several constitutional experts.

“I think that a lot of us were just holding our fire, so to speak, until we found out how the Supreme Court was going to rule,” Hammond said. “Given how they ruled, you’ll see a large number of challenges coming up subsequently.”

## Spreading sanctuaries

In states that have red-flag laws, using the legislation to remove guns from dangerous residents has proved challenging.

One hurdle, in hundreds of communities, has been law enforcement agencies who refuse to enforce the rule. In 37 states, counties and cities have declared themselves “safe havens” from red-flag laws and other gun-control measures they deem unconstitutional. Four entire states have also done so: Alaska, Idaho, Kansas and Wyoming.

The trend has been fueled in part by far-right “constitutional sheriffs,” who argue that their power to interpret the law is above that of any state or federal authority — even the president. It has been boosted by the NRA and other guns rights groups that campaign and help craft language for laws and proclamations.

“Red-flag laws have been fueling Second Amendment sanctuary cities for years now,” said Daniel Stuebs, executive director of American Police Officers Alliance, which tracks the movement. “This new legislation passed by Congress and signed by Biden, we expect this is just the beginning.”

In New Mexico, which passed a red-flag law in 2020, 27 of the state’s 33 counties have declared themselves “sanctuaries” after a push from the New Mexico Sheriffs’ Association. Although red-flag orders are granted through a civil court proceeding, the sheriffs framed their arguments around the protections afforded in criminal law.

“It was taking personal property from an individual who hasn’t even committed a crime yet,” said Tony Mace, president of the state sheriffs association and sheriff in Cibola County, which declared itself a sanctuary. “You are doing away with a presumption of innocence until proven guilty.”

New Mexico Gov. Michelle Lujan Grisham (D) said the resolutions are nothing more than “an expression of opinion.” Mace also acknowledges that the status is “just people saying I don’t want my rights trampled on.”

However, data indicates that when local law enforcement refuse to petition the court for the orders, the law can be effectively neutralized.

Mace vowed to never use the tool, and he never has. And in the first two years of New Mexico’s red-flag law, just five extreme-risk orders were issued. During the first two years of Florida’s red-flag law, where sheriffs and other law enforcement were largely supportive, at least 3,831 petitions were granted. Even adjusting for the differences in population, a comparable number of red-flag orders for New Mexico would be about 400.

Studies have repeatedly shown that most red-flag protection orders are granted in response to petitions filed by law enforcement, even in states that allow for health-care workers, school superintendents or families to file petitions with the court. Research by the Injury and Violence Prevention Center at the Colorado School of Public Health found 85 percent of protection orders granted by judges were filed by law enforcement. And a study by University of California researchers of the state’s red-flag law found more than 96 percent were filed by police officers.

States with supportive law enforcement organizations have run into another recurring challenge with the laws: teaching residents to use them.

California serves as a case study for many of these problems.

A 2020 survey found that two-thirds of Californians were unaware of the state's red-flag law even though it had been in place for four years. Law enforcement officials also failed to establish a protocol for how to seek an order, which prompted the legislature last year to mandate that they do so. The state last month also rolled out a new \$11 million public education and training campaign.

“People have a natural reluctance to interfere in people's lives. Those are inhibitions that we need to help people overcome,” said Richard Bonnie, a University of Virginia law professor and one of the architects of modern red-flag laws that build in extra due process rights for gun owners. “Letting them know there are tools available, raising awareness about the risky behaviors to look for, is a very important part of making the laws effective.”

The new federal law includes grants for educational campaigns in states like Illinois, where red-flag orders were available but not used to seize firearms from Robert E. Crimo III, who is facing seven counts of first-degree murder for the July 4 mass shooting in Highland Park.

“Failure to implement these laws properly effectively leads to them not being used as much as they should be,” said Allison Anderman, senior counsel and director of local policy at Giffords Law Center. “First and foremost, it's about educating the community and law enforcement about the law, how to use it, when it's appropriate to use that, and what the steps are to obtain an order.”

## A new wave of laws

Although few state legislatures are still in session, two red-flag bills are pending in states other than Pennsylvania — New Jersey and California — where the legislative efforts have diametrically opposing goals.

In New Jersey, state Sen. Edward Durr (R) introduced a bill in May that would repeal his state's three-year-old red-flag law. It is not expected to get a hearing in the Democratically controlled legislature, experts said.

The California legislation, meanwhile, seeks to expand the pool of people who can seek the orders. The bill has passed the state assembly and, if it passes the senate, it would create perhaps the most expansive red-flag law in the nation.

In California, legislators are hoping to build on the success the law has already had in saving lives.

A 2019 study by researchers at the University of California at Davis found that 21 extreme-risk restraining orders were issued in response to mass shooting threats from 2016 to 2018, the first two years in which the law was in effect. In each case, the possible shootings were prevented. The lead researcher, Garen J. Wintemute, said that although it is impossible to know if each of the possible mass shooters would have followed through with their threats, “zero for 21 is really pretty good.”

Two separate Duke University studies have also suggested notable reductions in suicides in Indiana and Connecticut when guns are seized through the laws.

“The data is incredibly compelling. It’s why I introduced my bill,” said Stephens, the Republican Pennsylvania lawmaker. “The data is pretty clear that if we can provide that time and space for people to get the help they need, if we can get them through that period of crisis, chances are they’ll survive.”

That’s why even some GOP state lawmakers are still bullish on getting traction on red-flag laws — and why they’ve found some unlikely allies. Lobbying on Stephens’s behalf is Anthony Spangler, a lifetime NRA member and chairman of the Horsham Republican Party in Pennsylvania.

Spangler said his support for Stephens’s red-flag bill is “pragmatic.” He believes that if gun owners don’t step up and support laws that are shown to save lives, other more restrictive gun laws are sure to follow.

“I told my gun-loving friends that I look at this as a preemptive measure, because if we don’t do something like this to keep these shootings from happening, the alternative could be a ban on some of these weapons or egregious taxes on ammunition,” Spangler said. “This is the sort of law they should be able to get behind.”