

HB19-1177 Red Flag Bill, now 13-14.5-101

As an American citizen, professional law enforcement officer, and supporter of the US constitution, I support the concept that firearms should be kept out of the hands of convicted felonious criminals and individuals deemed by mental health professionals, after a thorough evaluation, to be severely mentally ill and a risk to public safety. That being said, there needs to be a process by which to evaluate a person's mental status which adheres to the US Constitution.

In my official capacity as Sheriff, I have received numerous phone calls and engaged in conversations with citizens concerned about HB19-1177, otherwise known as the Red Flag Bill. I listened intently as people voiced their concerns about this new law. From the viewpoint of a concerned citizen and a law enforcement professional, we discussed the stated justification for this new law as well as the potential harm that could result. During these conversations, I realized some individuals were misinformed, had not read the actual bill and/or were basing their opinions on inaccurate rumors. Although I was able to clear some of their misconceptions with the law, many concerns still remained.

The Second Amendment was mentioned during most of these conversations and it should be no surprise that the Second Amendment is currently a point of division in America where most people have strong beliefs supporting one philosophical viewpoint.

During these discussions, I often asked the question if they believed convicted felons or the severely mentally ill who are proven to be a threat to public safety should have the right to possess firearms. 100% of the time, the answer was an immediate "No" with little hesitation. Anecdotally speaking, I think it is safe to assume that most law abiding citizens agree that people proven to be a threat to the public should never possess firearms. The key word to that statement is "proven", which seems to be the common denominator causing concern.

HB19-1177 does not require that the accused person be evaluated or **proven** mentally unstable to the point of being a risk to the public safety, but allows the court to decide a person's mental status based on preponderance of the evidence. Preponderance of the evidence is a lesser standard than probable cause (PC) which is the standard law enforcement adheres to when making an arrest or search as detailed within the Fourth Amendment of the US Constitution.

Many people, including myself, conceptually support the intent of the law which is to reduce violence and death but there is great concern with the efficacy and legality of enforcing this law. There is frustration by many who believe our legislators have used political diversion to force law enforcement to take on the burden of mental health in lieu of adequately addressing this complicated issue. Mental illness is not a crime and should not be treated as such! Mental illness is a medical condition that should be addressed by trained medical and mental health professionals.

In this country, a person is innocent until proven guilty! This newly signed law treats mental illness more aggressively than criminal behavior by granting the court the authority to determine an accused person's mental condition based solely on the word of an untrained individual. During the initial hearing where the decision is made to issue the temporary Extreme Risk Protection Order (ERPO), the accused is not allowed to be present to refute the allegations. Once the temporary ERPO is issued, the burden is then upon the accused to prove they are innocent. This rule reverses the innocent until proven guilty concept that most Americans support.

If a temporary ERPO is issued, the issuing court has the authority to demand that law enforcement agencies serve search warrants on the respondent's private property. Serving warrants is considered a "high risk" procedure and one of the most dangerous procedures for law enforcement personnel and the property owners. Court issued search warrants detailing the reasons for the ERPO will generally include the belief that the respondent: *1. has made aggressive or deadly threats to others, 2. Is believed to be a threat to themselves or others, 3. The respondent possesses firearms and 4. Is unable to make rational decisions.* All these elements increase the risk factor substantially and usually requiring the use of special teams trained in high risk warrants. Even though safety is top priority, this dynamic process has the potential to cause additional harm to someone experiencing a mental crisis.

Deadly consequences have already resulted in other states that have passed ERPO laws. While serving ERPO warrants, lives have been lost which I am sure is an unintended consequence. Weapons have been used to threaten law enforcement personnel attempting to serve ERPO search warrants forcing the deadly encounter by someone going through mental crisis. This factor alone should give us all pause and question if this new authority is wise or if there is a better way.

Under current Colorado statute 27-65-105, referred to as emergency procedures, a person experiencing a mental health crisis who poses an imminent danger to themselves or others, based upon a probable cause affidavit sworn before a judge, an intervening person (*to include a certified peace officer*) may take the person into custody and placed in an approved medical/mental facility (*not a jail*) for up to 72 hours. If the person experiencing a mental health crisis is deemed to be in need of treatment, they may be ordered by the court to be transported to an outpatient mental health facility for treatment. If, in the opinion of the professional person in charge of the evaluation, the person can be properly cared for without being detained, he or she shall be provided services on a voluntary basis.

This current program provides a mechanism for treating people experiencing a mental health crisis who poses a threat to themselves or others, and at the same time, maintains the dignity of the individual. This process provides due process, confidentiality, evaluations by trained mental health professionals, and treatment options. This process creates trust between citizens and the police while reducing the possibility of public embarrassment. *Most importantly, it removes the person in crisis from **all types of weapons** or objects that can be used to cause harm, not just guns.*

Unless exigent public safety conditions exist, the Routt County Sheriff's Office will continue addressing mental health situations through our existing law. Although our mental health system is not perfect, I believe our system of dealing with people experiencing a mental crisis is better

served through treatment by trained mental health professionals. This system respects a person's rights, provides temporary protection to the individual as well as the public and provides treatment options for the person in crisis.

Garrett Wiggins,

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