



**Statement on Behalf of the National Coalition Against Domestic Violence
Submitted for the hearing on**

Red Flag Laws: Examining Guidelines for State Action

Senate Committee on the Judiciary

March 26, 2019

The National Coalition Against Domestic Violence (NCADV) applauds the Senate Judiciary for holding a hearing on red flag laws. NCADV supports red flag laws, which are a vital tool to protect people experiencing crises that make it temporarily unsafe for them to possess firearms. However, it is important to consider red flag laws as only one in a toolbox of remedies. In cases of domestic violence, red flag laws do not provide the comprehensive protections that domestic violence protection orders do for survivors. Red flag laws should be seen as a supplement to, rather than a replacement for, domestic violence protective orders and domestic violence firearms prohibitors.

Confusion abounds about the difference between red flag laws and domestic violence prohibitors. Reporting by both Politico¹ and Roll Call², in addition to other news outlets, incorrectly referred to ‘red flag’ provisions in the House VAWA reauthorization bills in both the 115th and 116th Congresses. Neither bill contains red flag laws, for which VAWA is not an appropriate vehicle. Instead, VAWA’s provisions close loopholes created by anachronistic definitions and imprecise language. VAWA’s proposed provisions would protect a broader range of survivors who are currently facing lethal danger; red flag laws cannot do that. The conflation of red flag laws and intimate partner violence prohibitors is concerning for a number of reasons, not the least of which is that red flag laws are seen by some as a panacea for disarming domestic abusers.

Domestic violence protective orders provide a variety of remedies in addition to prohibiting respondents from possessing firearms. Depending on the situation and the needs of the victim, a protective order can require the respondent to stay away from the survivor, her workplace, her family, and other places she is likely to be. The order can also give the survivor temporary custody of children and temporary control of residences. Domestic violence protective orders address abusive situations holistically, looking at victim safety from multiple angles including the danger armed abusers pose to their victims and their communities; red flag laws, by their very nature, only address gun violence.

Furthermore, survivors are the foremost experts about the protections they need to be safe, and survivors must be at the helm when seeking civil remedies. Under red flag laws, law enforcement seeks a court order to prohibit the respondent from possessing firearms and to allow law enforcement to remove firearms (some laws also allow family members and others to seek court orders, as well). In cases where the respondent is experiencing a crisis, this is entirely appropriate. However, in domestic violence situations, this process can actually increase the risk of harm to victims, because abusers can use law enforcement intervention as an excuse to escalate their violence. In domestic violence cases, if the removal of the firearm is not accompanied by extensive safety planning and by other forms of court-ordered relief, removing the firearm may quickly result in a lethal situation.

That being said, red flag laws can, when used appropriately, provide a pathway to safety for some survivors. Every domestic violence situation is different, as are the needs of every survivor. In some cases, the only remedy the survivor might need is for the abuser's firearms to be removed. Some survivors might also be safer if law enforcement interfaces with the court rather than if they do so. Survivors need as many options as possible, and red flag laws can provide an important potential avenue to safety. Ultimately, it is up to the survivor, who knows the abuser better than anyone else, to determine whether a red flag order will help or hurt.

Red flag laws are a powerful protective tool to address safety concerns when a person is experiencing a crisis. In addition to supporting red flag laws across the country, we urge Congress to address the intersection between domestic violence and firearms directly by closing loopholes based on outdated definitions and outdated cultural views that allow dating abusers and stalkers to access firearms. Congress should also take measures to improve enforcement of domestic violence court orders requiring the relinquishment of firearms to law enforcement, which may run parallel to the enforcement of red flag court orders; improve communication between law enforcement and prosecutors at different levels of the government; and make a technical fix to ensure the existing misdemeanor crime of domestic violence prohibitor is applied uniformly across the country. Red flag laws are important, but they are not enough; they are not a panacea for victims of domestic violence.

¹ <https://www.politico.com/story/2019/02/13/violence-against-women-act-budget-talks-1168924>

² <https://www.rollcall.com/news/politics/violence-women-act-lapse-latest-spending-proposal>