

Firearms Licensing Update: Red Flag Law

January 2019

Similar to other states across the nation, the Massachusetts General Court, with the support of law enforcement, adopted a so-called “Red Flag Law,” Chapter 123 of the Acts of 2018. The new law, G.L. c. 140, §§131R-131Z, empowers courts to order individuals suspected to be at risk of potential gun-related violence or harm to immediately surrender firearms licenses and weapons.

The Law authorizes family and household members, or the local firearms licensing authority, to petition the District Court for an ERPO, an extreme risk protection order, if the petitioner believes the firearms holder is at risk of causing bodily injury to self or others by owning or possessing firearms. The term “family or household member” is broadly defined to include a spouse, or a person who is or was related by blood or marriage, resides in the same household as the firearms holder, or has or is having a child in common.

To implement the Law, municipal police departments will need to work closely with District Court personnel. After a petition is filed for an ERPO, the District Court must hold a hearing within 10 days, or, if the firearms holder files an affidavit that firearms are used within the scope of their employment, within two days. In determining whether an ERPO should issue, the court will determine whether there is “reasonable cause to conclude” that the holder poses a risk of causing bodily harm to self or others. G.L. c. 140, §131T. If the court determines that an individual poses such a threat, the court will issue an ERPO requiring the immediate surrender to the Police Chief of any licenses to carry, firearms identification cards and all firearms, rifles, shotguns, machine guns, weapons and ammunition. In the event of an emergency, the District Court may, consistent with law, issue a temporary ERPO without notice to the firearms holder and prior to a hearing.

Of particular import to municipal police departments, while an ERPO is in effect the respondent is disqualified from obtaining a firearms license. In addition, the Law requires police chiefs to implement procedures to properly serve court orders, provide timely notice to household or family members of the expiration of an ERPO, provide information as to appropriate support resources, and suspend or revoke licenses to carry or firearms identification cards. G.L. c. 140, §§129B and 131. The police chief must also, within 48-hours of surrender, file with the District Court a receipt listing all surrendered firearms, with a copy to the license holder. Violations of an ERPO constitute a criminal offense, with a maximum fine of \$5,000, 2 ½ years’ imprisonment, or both. Lastly, ERPOs will be recorded in criminal justice databases, including the National Instant Criminal Background Check System (NICS), for review as part of the firearms licensing background check process required by G.L. c. 140.

Chiefs of police and firearms licensing officers may contact Attorney Janelle M. Austin (jaustin@k-plaw.com) at (617) 556-0007 with any questions regarding the Red Flag Law.

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