

97PERCENT

Empowering Enforcement:

MAXIMIZING RED FLAG LAWS FOR GUN VIOLENCE PREVENTION

A law is only effective if understood and enforced. Red flag laws, which remove access to firearms to those deemed a threat to themselves or others, are a proven tool for reducing gun deaths. However, multiple high-profile tragedies across the country – from [Colorado](#) to [Indiana](#) and [Buffalo](#) – have revealed critical gaps in usage.

While other organizations do good work advocating for red flag legislation at the statehouse level, 97Percent is focused on assisting states with red flag laws already on the books. Through better implementation, we can ensure that those in need of this critical tool are aware that it exists and know how to use it, and those who enforce the law know how to do so without encroaching on due process.

Our organization has conducted an audit of all 50 states to identify which states are enforcing red flag laws well and which are not, as well as which states are currently considering red flag law legislation. Following are the preliminary findings as of February 2024. Our intent is to raise awareness about the challenges and opportunities that exist and conduct thorough first-person interviews to glean best practices from those enforcing red flag laws well to share with those struggling and those contemplating new legislation and reforms.



What Are Red Flag Laws? _____

Formally known as Extreme Risk Protection Orders, or ERPOs, red flag laws enable law enforcement – and in some states, household members, educators, healthcare providers, and co-workers – to petition a court to remove access to firearms for a person deemed an immediate risk to themselves or others.

Petitioners must present evidence before a judge, who determines whether to issue the order and what the duration of the order will be (typically one year). The subject has the ability to appeal the decision, and the petitioner has the opportunity to request an extension.

History of Red Flag Laws _____

Connecticut was the first state to pass a red flag law, following the [1998 Connecticut Lottery shooting](#), in which the shooter displayed clear signs of danger prior to the tragedy – including an attempted suicide to which police responded, and a leave of absence from a job due to mental illness. Two decades later, just four additional states joined Connecticut in passing a red flag law: Indiana, California, Washington, and Oregon.

But after the [2018 shooting at Marjory Stoneman Douglas High School](#), where subsequent investigations revealed dozens of 911 calls about the shooter, FBI tips, an expulsion from school, and social media posts threatening a school shooting, additional states quickly took action – with a Republican-led Florida legislature among them.

The [Bipartisan Safer Communities Act](#) passed by Congress in June 2022, in the wake of the [school shooting in Uvalde, Texas](#), incorporated state funding for the establishment and implementation of crisis intervention programs, including red flag laws. With Michigan and Minnesota's passage in 2023, a total of 21 states now have red flag laws.

Red Flag Laws

Dates Enacted 

2023  

2020

2020  

2019     

2018       

2017 

2016  

2015

2005 

1998

1998 

Why Focus on Red Flag Laws?

97Percent is committed to reducing gun deaths by including gun owners in the solutions. Using [data](#) from a poll of 1,000+ gun owners and an empirical evidence review of 60+ gun safety policies, 97Percent crafted a [roadmap](#) of four policies – including red flag laws – that could reduce gun-related homicides by 28% and gun-related suicides by 6%.

Gun owners told us their number one priority with regard to gun safety laws is to prohibit those at high risk of violence from accessing guns. While the majority of our roadmap focuses on ways to prevent those convicted of past violence from possessing a gun (i.e., [violent misdemeanor laws](#) and [state-level background checks](#)), red flag laws empower those observing signs in real time that someone is a threat to themselves or others to take action before a crime has occurred and prevent a tragedy.

Studies in [Indiana](#) and [Connecticut](#) have shown red flag laws are effective at preventing gun suicide. In Connecticut, for example, researchers discovered [one suicide was averted per every 10-20 gun removals](#). And [research](#) conducted by the UC Davis Violence Prevention Research Program found that, from 2016-2018, [red flag laws were used to prevent 58 mass shootings in California](#).

[Survey](#) after [survey](#) has shown that gun owners support red flag laws, and our [research](#) revealed that including specific provisions to protect due process (i.e., a fine for vindictive use, a timely trial where the subject can present evidence, quick return of firearms when the order expires) significantly increases support for the policy: from 69% to 81%.

In the wake of the [Lewistown, Maine shooting](#), red flag laws are receiving national attention, spurring states to evaluate the efficacy of their own policies and consider adopting new legislation. 97Percent intends to work with states that currently have red flag laws, as well as those considering such laws, to encourage incorporation of these provisions to increase the probability that red flag legislation will pass and aid in enforcement once in place.

Which states are enforcing red flag laws well, and which are struggling to enforce them? _____

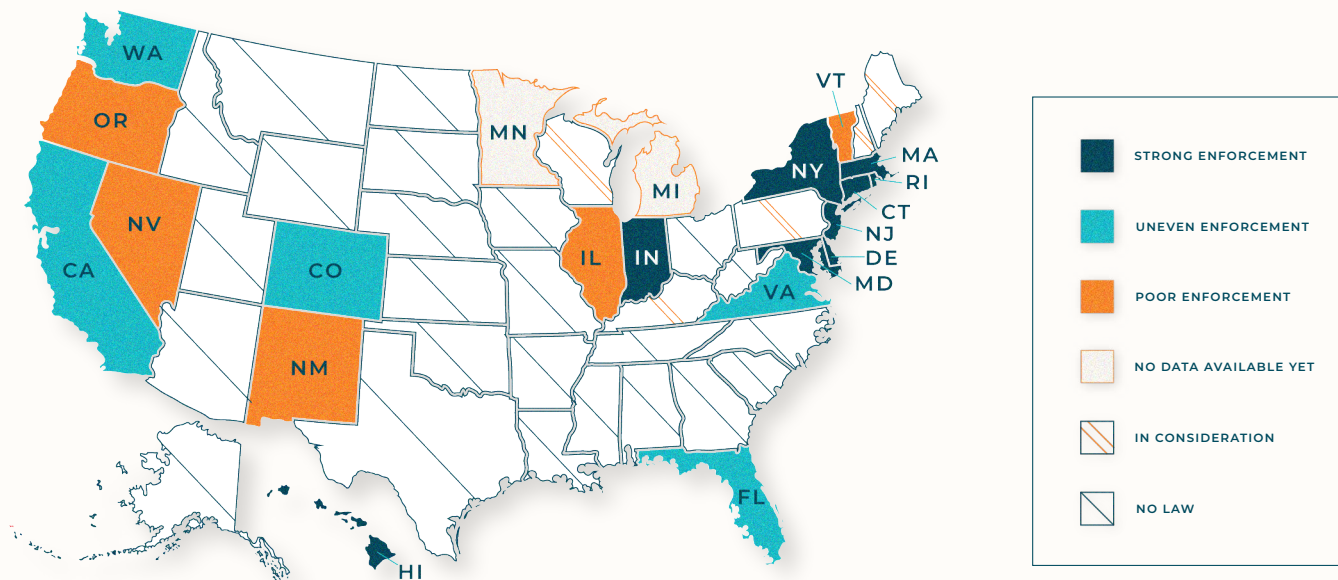
To evaluate if and how states are using their red flag laws effectively for our initial assessment, 97 percent reviewed usage statistics, an [Associated Press analysis](#), state rates of gun violence, academic research, and national and local news coverage.

- In the graphic below, states highlighted in navy blue are effectively using their red flag laws writ large: Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, Indiana, and Hawaii.
- In many cases, we discovered uneven enforcement across the state. Those highlighted in light blue are states struggling with enforcement statewide but who boast counties or cities doing excellent work, such as Polk and Broward Counties in Florida, San Diego County in California, the City of Denver and Douglas County in Colorado, Fairfax County in Virginia, and King County in Washington.

- States highlighted in orange are those significantly struggling to enforce their red flag laws: Oregon, Nevada, New Mexico, Illinois, and Vermont.

Note: While Massachusetts and Hawaii rank low in usage, they have very low rates of both gun violence and gun ownership, likely leading to fewer orders; they have been marked as navy blue.

- Michigan and Minnesota are highlighted in grey, as there is no available data yet, given their policies just took effect.



Red Flag Law Best Practices

The red flag law best practices we discovered among the states, counties, and cities enforcing their red flag laws well — and as illustrated by the deficiencies of those struggling to enforce red flag laws — can be grouped into four categories: Staffing, Training, Policy, and Reporting.

Staffing

A trend we observed among those enforcing their red flag laws well is a dedicated red flag law unit.

Florida leads the nation in red flag law usage, filing more than 8,000 petitions since the law was passed in 2018. Enforcement varies across the Sunshine State, with its most populous county – Miami-Dade – barely using the gun violence prevention tool. But Fort Lauderdale – a city in Broward County that has filed more than 900 petitions – has created a [6-person threat response](#) unit credited with preventing another tragedy at a school just 30 minutes away from Marjory Stoneman Douglas High School.

Colorado is a state known for its [Second Amendment sanctuaries](#) and sheriffs resistant to enforcing gun legislation. The Club Q shooting in Colorado Springs, where [a red flag law could have made a difference but wasn't used](#), brought that to the fore. But Denver, Colorado – where the police department leads the state in [filing](#) red flag petitions (88 in 2022 compared to next-in-line Lakewood Police Department's 8) – is an example of an innovative approach to making red flag laws work. In Denver, [a team](#) of three detectives and a sergeant handle all red flag cases. Every Denver police officer is trained on red flag laws basics, and when they encounter a situation where the law may apply, they immediately reach out to one of the on-call detectives, who follows up on the lead. Mental health clinicians often ride with officers executing a red flag gun seizure.

Though Virginia is outside the Top 10, according to AP's analysis of red flag law usage, Fairfax County, which leads the state in filing petitions ([77 orders](#) in 2022 compared to the next highest, Virginia Beach's 38 and Richmond's 0), has implemented several impressive initiatives to maximize red flag laws. They've designated a single officer to be the red flag law coordinator to "track ESROs as they progress, liaise with the Office of the Commonwealth's Attorney, attend risk order hearings, and provide guidance to officers and detectives during the course of their investigations," according to reporting by [WJLA](#). And just this fall, the county launched a [Threat Assessment and Management \(TAM\) Unit](#) focused on red flag cases.

Staffing cont.

In addition to forming specialized units within police departments, in California and Washington, cities and counties have expanded the units to include attorneys and judges.

In San Diego, California, for instance, the police department and city attorney's office collaborated to [create a team](#) of three attorneys, a paralegal, a legal secretary, a police officer, and two retired police officers who work part-time as investigators, preparing cases for review. San Diego [leads the state](#) in red flag law usage, taking on more than 1,000 cases since California's red flag law went into effect in 2016.

In King County, Washington, where a red flag law was passed by ballot initiative in 2016, [a team of prosecutors and law enforcement officers from King County and the city of Seattle](#) are working together to guide petitioners through the often complicated red flag process. The unit has hosted summits for police, judges, lawyers, and advocates. It has led trainings for county crisis line workers and created training resources for the state's policy academy.

Training

Training is imperative for officers tasked with carrying out the law to do so properly. Funding for training has largely been left out of state red flag law legislation. The Bipartisan Safer Communities Act included funds that could be used for training. Over the next several months, we intend to find out if and how states are using those funds. But our research revealed a persistent trend: a passionate law enforcement officer(s) who believes in the power of red flag laws to save lives takes initiative and creates their own program, often without directives or funding.

In Maryland, which serves as a unique model for strong red flag law enforcement statewide – third among the states most likely to use their red flag law, according to the AP analysis – [Stateline](#) reported that “in the five months between the passage of the law and its implementation, Montgomery County, Md., Sheriff Darren Popkin traveled around the state training local law enforcement agencies, state police officers, and sheriffs. With that knowledge, officers responding to incidents of domestic violence or other related calls can introduce families to the red flag law and walk them through the process.”

Rhode Island's Cranston Police Department files more red flag laws than any other department in the state. As Police Chief Michael J. Winquist told the [Newport Daily News](#): “We incorporated the red flag law into department policy and educated all of our officers.”

It's important to note that in addition to enforcing red flag laws, law enforcement officers also file petitions. In states like Florida, they are the only eligible petitioner. And in a state like California, which has an expansive list of petitioners, research shows that [97%](#) of red flag petitions are filed by law enforcement – underscoring the importance of introducing LEOs to the tool and how to use it to its efficacy.

Training cont.

Data across multiple states also show that petitions introduced by law enforcement are more likely to be approved by judges. In [Colorado](#), more individuals than police officers submitted red flag petitions – 186 compared to the Denver Police Department’s 88 – but just 16% of those filed by individuals resulted in a judge granting a one-year order, compared to 84% of those filed by Denver Police.

While training law enforcement is a top priority for red flag enforcement for the reasons cited above, many states – as with California and Colorado – allow for household members, healthcare providers, and coworkers to file petitions. Thus, training other potential petitioners is also important. Public-facing materials explaining what a red flag law is and instructions for how to file one are immensely beneficial. While it may seem intuitive, many states do not have these types of materials readily available on a state or county website, for instance, and many have not engaged in any kind of public awareness campaign.

When the Oregon Audits Division released an [advisory report](#) examining how the state uses its red flag law, passed back in 2017, [KGW](#) reported: "Auditors pointed out multiple barriers that may discourage people from seeking an ERPO. For one thing, the process to petition can be immensely time-consuming and may require petitioners to attend multiple court hearings. For another, petitioners may be unfamiliar with court forms and procedures. Language barriers could come into play — by statute, the form to request an ERPO must be filled out in English, and court proceedings are conducted entirely in English." Just 564 red flag orders were filed in Oregon in the last four and half years, according to the report released in August 2023.

Nevada, which ranked last in the [AP analysis](#) of red flag usage (outside of Hawaii and Massachusetts), similarly does not provide instructions for how to file a red flag petition. [8 News Now](#) documented how a doctor at the Human Behavioral Institute tried to file a petition to have one of his psychiatric patient’s guns removed. After failing to comprehend how to fill out the online form, he sent a colleague to file it in-person without success, and then ultimately mailed in the application – only to be denied.

Policy

ENSURING LAW ENFORCEMENT IS AT THE TABLE ■

Effectiveness of the law correlates to how it was written in the first place. Again using Maryland as an example, the legislature involved law enforcement in the drafting of its red flag law, passed back in 2018 under Republican Gov. Larry Hogan. Incorporating the feedback and knowledge of those responsible for carrying out the law builds trust and [legitimacy](#) and ultimately enhances enforcement.

ENSURING LAW ENFORCEMENT IS AT THE TABLE CONT. ■

While Michigan's red flag law has yet to go into effect after passing in May 2023, it's an example of the potential pitfalls of not including law enforcement in drafting legislation. The sheriff of Livingston County has [vowed](#) not to enforce red flag laws, and [Detroit News](#) reported that the executive director of the Michigan Sheriffs' Association said "his organization was never asked to comment on conversations of how to enforce the new law," that "he asked multiple times to be part of the enforcement process with the governor's office...but was instead left in the dark, not sure what to strategize for and what to envision when it takes effect."

COURTS AVAILABLE 24/7 ■

When drafting its red flag law, Maryland also ensured all state courts would be available 24/7 to receive petitions, eliminating delays in seizing firearms in critically dangerous situations. The head of the Albuquerque Police Department Crisis Intervention Unit in New Mexico – one of the states most struggling to enforce its red flag law – told [CNN](#) that "he wishes judges were available 24/7 to make emergency approvals after business hours – when they are often needed most urgently – as is the case in Maryland."

SEARCH AND SEIZURE WARRANT ■

Having an immediate search and seizure warrant is imperative. An ambiguous timeline and no ability for law enforcement to search the property – merely a hope that the subject of the order, who is likely in mental distress, is honest and open in voluntarily handing over their weapons – presents huge flaws. In Illinois – another state struggling to enforce its red flag law – law enforcement officers "do not have the authority to search their subjects' property and seize their weapons. People facing orders of protection are expected to surrender their firearms to police or transfer them to someone with a valid firearms owners identification card. There is no timeline for how quickly that must be done," according to [The Trace](#). [Oregon](#) is plagued by a similar issue.

CLEAR DEFINITION OF PETITIONER ■

Clearly defining who can petition the court, and potentially expanding the list of possible petitioners, is also paramount. New Mexico is a cautionary tale of the failure to do so. [CNN reported](#) that a judge serving three of the state's largest counties denied all cases she presided over because she "has taken a technical approach to applying the law, and in so doing appears to have devoted more focus to determining who can initiate a red flag case than to considering the level of the threat." The Albuquerque Police Department is now the most active user of red flag laws in the state, but it filed zero petitions in the first two years after the red flag law was passed in 2020 because officers didn't realize they could.

CLEAR DEFINITION OF PETITIONER CONT. ■

When New Mexico's Attorney General Raúl Torrez clarified that the law includes law enforcement as petitioners (in fact, law enforcement are the only people who can petition the court in New Mexico – when given “credible information” by a household member, former household member, school administrator, or employer that someone is a threat to themselves or others), Albuquerque's Crisis Intervention Unit immediately put the tool to use. In the state's current legislative session, the legislature is considering reforms to its red flag law to better define the petitioner and expand the list of those who can provide information to law enforcement to include healthcare professionals.

MANDATORY PETITIONS ■

When a white supremacist killed 10 people at a Buffalo supermarket in 2022, the country questioned how New York failed to use its red flag law enacted in 2019 for the 18-year-old who had previously been taken into custody by police for threatening a school shooting and underwent psychiatric evaluation. Four days after the shooting, Gov. Kathy Hochul issued an executive order making it a requirement for law enforcement with credible information that someone is a threat to themselves or others to file a red flag petition. New York is the only state to have such a mandate, and since it went into effect, usage of the state's red flag law has skyrocketed: In 2023, [judges approved 4,300 red flag petitions compared to 222 in 2021](#).

Reporting

Tracking and sharing red flag law data is not only an important tool for accountability, but it also affords the opportunity to bring awareness to the public and enhance trust through transparency.

Fairfax County, Virginia, has created a continuously updated [digital dashboard](#) that tracks ongoing and past red flag law orders. As [WUSA9](#) reported, the county uses the dashboard to internally track cases and identify trends. Externally, it demystifies red flag laws. "As the public learns more and more about this, they use it more and more. What is important with this dashboard is it not only explains how the process works, but it shows the community that this is a thing that's attainable, it's a thing that's common. If you call for help and ask for a red flag law order, you are not an outlier. You are a regular person in Fairfax County who is asking for help and that they should reach out and ask for help and not feel shy about it."

Dr. Emmy Betz, director of the Firearm Injury Prevention Initiative at the University of Colorado, has been collecting data on who is filing petitions in Colorado and what kinds of requests are getting approved. She shares the data with community members, including gun dealers like Jacquelyn Clark, who told [FiveThirtyEight](#) that “Betz's data has helped her feel more confident that the system isn't being used as a weapon against gun owners.”

Where do we go from here?

97Percent is working with law enforcement officers who are effectively enforcing their red flag laws to further ascertain what's working well and where hurdles remain. We will facilitate knowledge-sharing sessions and guide states grappling with enforcement challenges, as well as states currently considering red flag law legislation, such as [Pennsylvania](#), [Kentucky](#), [Wisconsin](#), [Maine](#), and [New Hampshire](#).

Our organization will focus on raising awareness about red flag laws and their importance in preventing gun violence, educating communities about the process of implementing red flag laws and how individuals can take action, and encouraging the reporting of concerning behaviors or threats to law enforcement.

In 2024, 97Percent is committed to maximizing the effectiveness of red flag laws by focusing on enforcement. We will advocate for the comprehensive implementation of existing laws to save more lives. Gun owners tell us all the time: "Enforce the laws already on the books." It's time to harness the potential of red flag laws and ensure they fulfill their life-saving purpose.