

## POLITICS &amp; ELECTIONS

# Shots Not Fired: A new Oregon law takes guns from people who may do harm

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## Comments



Guns surrendered by a person under a gun confiscation order, pictured at the evidence locker of the Carlton Police Department in rural Yamhill County. Beth Nakamura/Staff

By **GORDON R. FRIEDMAN**  
The Oregonian | OregonLive

Jason had but one item on his shopping list when he pulled into the store parking lot, rage seething within him: a .40-caliber Smith & Wesson handgun just like his father's.

Jason's life was coming apart. He was 35 and the previous day, his wife of eight months had told him she was having an affair. Stunned, he tried to talk things through with her. She began packing her bags instead.

All night Jason stewed.

He'd come to get the gun because he wanted to go blow off some steam, he said. Head to the hills near his home in rural Brookings to blast some tin cans.



But Jason, who asked to be identified only by his first name, didn't go to the hills that February morning. He drove home where his wife waited and headed inside, carrying the pistol still in its box.

An American's right to own guns is enshrined in the Second Amendment, and broadly speaking, little except a felony, domestic violence conviction or commitment to a mental hospital can block it.

But Oregon lawmakers felt a growing sense of unease about people in potentially life-endangering circumstances like Jason's having unfettered access to guns.

On the heels of a gun suicide in one lawmaker's family and amid confessions of domestic violence in another's, the Oregon Legislature **narrowly passed a law in 2017** giving judges discretion to pry guns from people not convicted of a crime who show signs they might shoot themselves or someone else.

Under the new law, police, family members or roommates can petition a judge for an "**extreme risk protection order**" barring gun possession. If an order is granted, the person named in it has 24 hours to turn over all guns to law enforcement, a qualified third party or gun dealer. The order stands for a year but can be extended indefinitely by a judge.

To understand the ramifications of Oregon's law since it took effect in January, The Oregonian/OregonLive reviewed hundreds of pages of court filings, listened to hours of courtroom audio and conducted interviews with people who lost their gun rights or tried to get someone's weapons taken away. Apart from law enforcement officers, nearly all who spoke on the record did so on the condition that their name not be used, given the personal and sensitive nature of the cases.

That analysis revealed that, in the law's first four months, Oregonians in 16 counties used it to try to get weapons out of the hands of nearly 30 people, most of whom were operating at a potentially deadly nexus of substance abuse, anger and gun ownership.

Tracking those cases wasn't easy. There is no clearinghouse, and records aren't listed on public dockets. The Oregonian/OregonLive filed public records requests with state court administrators, who sought documents from their counterparts in all 36 counties.

The news outlet reviewed case files showing 27 instances in which a person sought a no-guns order. They represent all or virtually all cases brought from January 1 through April 30. None of those cases has been previously reported.

Judges ordered guns taken away in 24 of them.



Judges declined to order guns removed in three cases and reversed the initial decision in three others, citing the high bar necessary to justify taking away a person's guns. Under Oregon's law, evidence the person is at risk to harm themselves or others has to be "clear and convincing," not merely a preponderance, and must point to likely harm in the very near future.

## Where guns were seized

Judges ordered guns taken away from 24 Oregonians in the first four months of 2018. This shows where those people lived.

Sources: Records provided by court administrators in Oregon's 36 counties.

Mark Graves/Staff

Details of the cases of people who lost their gun rights paint a disquieting portrait:

A Portland man who posed for photos with a semi-automatic rifle and had spoken openly about planning a school shooting.

A Beaverton veteran who threatened to gun down people at his church.

A Vale man who fired his .357 Magnum into the ceiling of his home, believing he was shooting at people in his attic who were poisoning him.

A man in Pendleton stopped by his sister from returning to work to shoot the boss who'd just fired him.

Most of the people denied the right to own weapons were white men in their 20s through 50s. They live in big cities, small towns and rural hamlets. Nearly all were reported to be drug users or drinkers or face mental health challenges or both.

Some were suicidal, as shown in cases from Tillamook to Portland to Redmond. Most, witnesses told judges, were very angry.

At a time when many in the nation are searching for ways to stop would-be shooters before they can massacre innocents at a school or at a mall, the Oregon cases suggest preemptive gun removals may prove an effective tool. Of those who lost gun rights so



far, at least four had threatened to shoot people in public places.

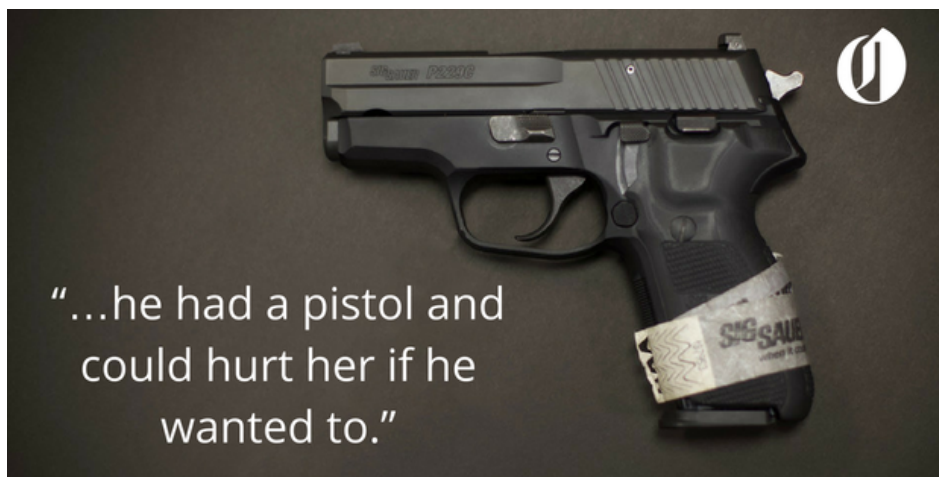
But Oregon's law has been used most often to try to preempt shootings that draw far fewer headlines but claim far more lives: suicides and domestic violence.

\* \* \*

Carrying the gun in its box, Jason entered the house, his wife inside.

"She got afraid," he said. "I started drinking because she didn't want to talk to me."

Ten beers later, Jason said, the silence had given way to argument. He unboxed the gun.



Source: An extreme risk protection order petition filed in Jason's case by a Brookings Police Department officer. Jason relinquished a .40-caliber handgun similar to the one pictured.

Jason's wife texted her new boyfriend, further enraging Jason.

He pulled out an empty magazine and loaded it. The argument was spiraling out of control, he recalled.

He put the magazine in the gun. His wife called her boyfriend, telling him Jason wouldn't let her leave. Jason snapped.

He grabbed the phone, yelled into it that he was going to kill the boyfriend and broke it in two over his knee.

Minutes later, police arrived.

\* \* \*





Gun-toting demonstrators pictured rallying outside the Oregon Capitol in 2013. Thomas Boyd/Staff

Despite its promise to prevent mass shootings and suicides, Oregon's gun confiscation law is not without potential flaws.

The law allows a judge to order guns seized without the gunowner being so much as notified that a gun-removal petition has been filed and a court hearing scheduled. That's atypical for court actions, but mirrors what happens in elder abuse, stalking and domestic violence cases, in which only the accusing side is present at the initial court hearing. A review of case records shows only a single gun owner was present or had their side represented when a judge first decided how much of a risk they posed.

If the judge orders guns taken away, the affected person is told he or she can challenge the decision. But so far, few affected gunowners have done that. They are not provided government-paid lawyers if they wish to.

Before the law passed, lobbyists for the National Rifle Association and Oregon Firearms Federation questioned whether it is legal to seize guns from people without their knowledge. (The NRA reversed its position this year, and its top lobbyist, Chris Cox, **declared** "we need to stop dangerous people before they act" and called for Congressional funding for state risk protection orders systems.)

In one case, Linn County Judge Daniel Murphy echoed the concerns about the lack of notice to gun owners, declaring from the bench that "our court has a serious question about the constitutionality of seizing weapons" when only one side is present in court.

No Oregon court has ruled on the constitutionality of the new gun confiscation law, but the Oregon Court of Appeals mentioned it in footnotes to three April opinions, noting it as a possible less-onerous alternative to involuntary commitment to the state mental hospital.



Murphy granted a gun removal order nevertheless in a case in which police accused a man who owns an AK-47 rifle of suicidal and stalking behavior. At the time, Murphy said he realized it could be easily thrown out.

“I’ll have to admit it’s a close case. If he challenges it there’s a good likelihood it could be set aside,” the judge said.

The man did challenge the case, and Murphy dismissed the order after finding “no compelling evidence” the man was a serious threat to himself or others. At the hearing, state troopers testified about the man’s concerning Facebook posts, but Murphy said the posts were “somewhat vague,” adding, “Unfortunately, people make all kinds of outrageous and bizarre comments on Facebook.” Two of the man’s family members testified about behavior they found alarming but conceded those events were years ago.

Pro-gun lobbyists also complained that the new law does not connect people who have their guns taken to social services that may help with underlying problems. Connecticut’s law, by contrast, requires the state health agency to be notified of those served with a no-guns order so they can give them mental health advice and a list of places to turn for help.

Kevin Martinez, chief of the rural Carlton Police Department, raised yet another concern. In his view, he said, Oregon’s law allows too much time for a person to turn over their guns.

“A lot can happen in 24 hours,” he said. “There probably needs to be a little more work on how that’s addressed.”

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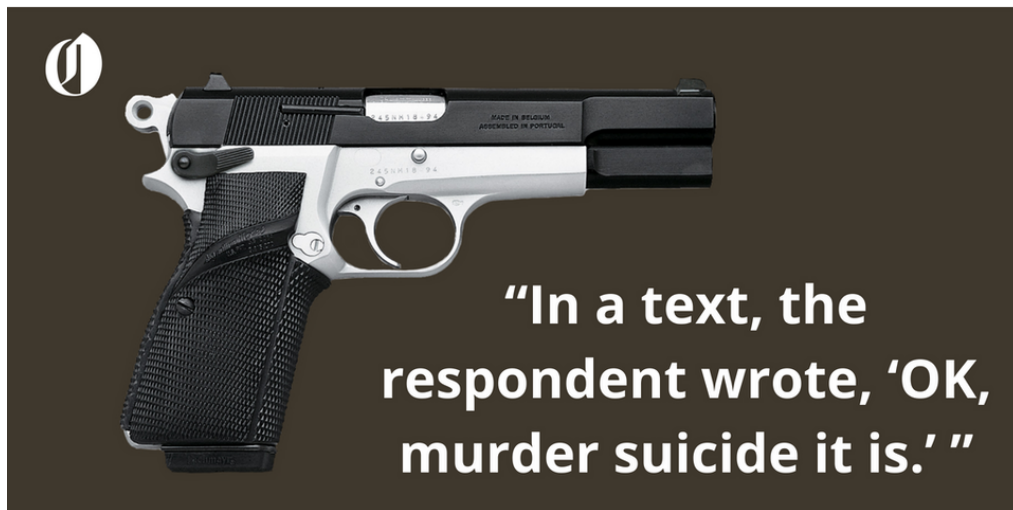


Officers working out of the police station in rural Carlton, Oregon handled one of the state's extreme risk protection order cases. Beth Nakamura/Staff

Among the bucolic vineyards of Yamhill County, the tiny town of Carlton sits placid, its Main Street quiet but for an occasional truck hauling hay bales to market. The town police force is just three people: the chief and two officers.

One of them, Officer Tim Jordan, filed a petition for an extreme risk protection order in January, just four days after the law took effect.

According to the affidavit Jordan wrote, a Carlton man had threatened to kill his dog and then himself and later texted his girlfriend, "OK, murder suicide it is." While at home with the man, the girlfriend tried to call 911 and the man reacted violently, the affidavit said. He retrieved a loaded pistol, it said, and cornered her in their bathroom between a wall and the toilet in a tussle to grab her phone.



Source: An extreme risk protection order petition filed by Officer Tim Jordan of the Carlton Police Department. The department seized a gun like the one pictured in connection with the case.



At one point, he pounced on top of her while holding the gun, the document says. The woman, who sustained bruises in the struggle, managed to get away. That same night, the man shot their television with a shotgun.

Police officers arrived at the home and, with the man's permission, seized 10 guns for safekeeping. The extreme risk protection order Jordan filed and won days later kept the man from getting them back.



Officer Tim Jordan of the Carlton Police Department wrote an extreme risk protection order petition.  
Beth Nakamura/Staff

"It was really good timing," Jordan recalled in a recent interview at the town's tiny police station. He had just been trained on the new no-guns orders at a meeting of local law enforcement officials, he said. "Such a good tool."

Kevin Martinez, the town police chief, said he believes a life was saved by its use in the case.

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The grasslands near Redmond in Deschutes County, Oregon, where one extreme risk protection order case was filed, but ultimately failed. Terry Richard/Staff

Not all who seek to confiscate guns under Oregon's new law are successful.

In Jackson County, a judge denied a petition brought by a man who sought to confiscate the guns of a California man who worked for him. A Marion County judge denied a mother's petition to remove her son's guns after the woman left nearly all the required paperwork blank.

The only denial so far of a petition brought by a police agency occurred in Deschutes County, in the heart of central Oregon.

In February, police in the city of Redmond were alerted to a suicidal woman. Officer Dex Dickson arrived at her house and reported hearing a gunshot "which came from the residence," according to police records. Although the woman wasn't injured in that instance, the officer was troubled by her behavior.

The case was forwarded to Steven Binstock, a detective in the small-town police department's investigative unit. He'd recently been trained on the new no-guns law, he said, and thought the case now on his desk would be a smart place to apply it.

He filled out the forms and filed them with the court. Things went downhill from there.

Binstock appeared before Judge Walter "Randy" Miller, himself a former police officer. Courtroom audio recordings indicate the judge was displeased Binstock was before him rather than Dickson, the officer who had been on scene with the suicidal woman.

"You weren't there for any of this?" the judge asked Binstock.



"I was not," the detective replied.

"So it's all hearsay?"

"Correct, from other officers."

"Everything you have here is hearsay. You have not witnessed a single thing?"

"Correct."

The judge asked Binstock for details about the situation with the armed woman. The detective hesitated in his answer.

"Are you guessing, or do you know? Don't assume," the judge admonished. "You've sworn an oath to tell the truth and to tell me what you know. That doesn't include assumptions."

The judge declared Binstock's proof that the woman was imminently dangerous to herself or others "hearsay within hearsay" and concluded the 18-minute hearing by denying his request for a no-guns order.

Days later, Deschutes County prosecutors charged the woman under a law that bars people from firing guns in residential areas, court records show. The felony charge was reduced to a misdemeanor when she pleaded guilty.

A judge sentenced the woman to two days in the county jail and a year of unmonitored probation with a special condition: no guns.

\* \* \*

Oregon was the fifth of nine states to adopt a law allowing guns to be taken from people showing signs of risk. Connecticut was first in 1999, following a shooting massacre at the state lottery building. Indiana passed a similar red flag law in 2005, after the shooting of an Indianapolis police officer. Later California passed one after a mass shooting in a beachside community, Washington voters adopted a similar law by citizen initiative, then Oregon passed its own law, based on Washington's.

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Verified Correct Copy  
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**EXTREME RISK PROTECTION ORDER**

*\*Amended\**

*Amended*  
**FILED**  
STATE OF OREGON  
COLUMBIA COUNTY COURTS  
DATE 1-3-18 5 AM/PM  
TRIAL COURT ADMINISTRATOR  
BY *[Signature]*

Hearing Date: 01/03/2018

**Parties appearing:**

- Petitioner ROBIN MAY  Petitioner's lawyer:
  - Respondent  Respondent's lawyer:
- Appearing by telephone or video:  Petitioner  Respondent

The court considered the following types of evidence:

- Testimony by  Petitioner  Respondent  Other:
- Written affidavits, including the *Extreme Risk Protection Order Petition and Affidavit in Support*
- Other evidence:

**FINDINGS:**

**The court:**

- finds** clear and convincing evidence that Respondent presents a risk of suicide and/or causing physical injury to another person in the immediate or near future
- does not find** clear and convincing evidence that Respondent presents a risk of suicide and/or causing physical injury to another person in the immediate or near future

A portion of the first extreme risk protection order granted in Oregon, in Columbia County.

One woman directly affected by Oregon's new no-guns law says she found herself in a relationship that, with little warning, turned abusive and potentially deadly, given her boyfriend's caustic combination of alcohol and guns. Things reached their worst when he introduced a loaded gun to an argument they were having. The woman left her home, running as fast as she could.

"I have never been more terrified in my entire life," she said. "It's debilitating. It's absolutely debilitating, that kind of fear."

The woman spoke to The Oregonian/OregonLive on the condition that her name not be used and certain identifying details about her case also be withheld. She spoke out despite intense fear of her ex-partner, she said, to highlight what she feels is an important tool other men and women at risk of gun violence should know about and use.

"I just don't want this to happen to anyone else," she said.

Days after she fled her house, a judge ordered her ex to turn in his guns. With the weapons stored safely in a police locker, she said she feels safer.

"I feel empowered," she said, "because I feel safe enough to walk out my door every morning."

She added, "I think this law is fantastic."

Today, she manages her anxieties the best she can. "I feel like I'm putting one foot in front of the other," she said. "I'm trying not to let this change my life."



But the calm she projects to the world belies a persistent fear beneath.

"I look over my shoulder every second of every day," she said.

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