

# Ready, Aim, Fire

Envisioning the Open Carry Debate Inside the Beltway







AN ACT -

Relating to the issuance  
of firearm

licensing and the  
carrying of firearms in  
public locations.





# NATIONAL RIFLE ASSOCIATION

Public Affairs Director

TRIGGER WESSON



# NATIONAL RIFLE ASSOCIATION

- \*4.5 Million Active Members

- \*Child Safety Program has taught 25 million young people firearm safety

- \*Fatal firearms accidents are at the lowest level in 100 years



# OPEN CARRY

6 out of 50 states already have open carry laws





*District of Columbia v. Heller*, 554 U.S. 570 (2008)

The Supreme Court determined that the Second Amendment grants: “the individual right to possess and carry weapon in case of confrontation.”

The Court stated that self-defense “was the central component of the right itself”



*McDonald v. City of Chicago*, 561 U.S. 742 (2010)

Second Amendment “most notably for self-defense within the home.”

Justice Stevens’s dissent acknowledges that *Heller* contains the possibility of a more expansive arms-bearing right, one that would travel with the individual to an extent into public places as “in case of confrontation.”







U.S. Department  
of Veterans Affairs

# ROSIE REDTAPE





## **Gun Control Act of 1968**

### **18 USCA § 922 (Unlawful Acts)**

#### **Unlawful for any person:**

(d) “to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person” ---

Or (g) “to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce” by a person who ---



(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

**(4) has been adjudicated as a mental defective or has been committed to any mental institution;**

(5) who, being an alien--

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

**(6) who has been discharged from the Armed Forces under dishonorable conditions;**

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) has been convicted in any court of a misdemeanor crime of domestic violence.



**18 USC § 925 (c)**

On petition, the Attorney General may grant such relief from the federal prohibition **“if it is established to his satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.”**

**22 VETERANS  
DIE BY SUICIDE  
EACH DAY**



**30%** of active duty  
and reserve military  
personnel **deployed in  
Iraq and Afghanistan**  
have a mental health  
problem requiring  
treatment

Of the 30%,  
**less than half**  
of returning veterans  
in need receive any  
mental health treatment

Source: Mental Health First Aid USA @MHFirstAidUSA





# Active Records in the NICS Index

UPDATED: As of January 31, 2016

<u>Rank</u>	<u>Prohibited Category Description</u>	<u>Total</u>
1	Illegal/Unlawful Alien	6,704,579
2	Adjudicated Mental Health	4,307,234
3	Convicted of a crime punishable by more than one year or a misdemeanor punishable by more than two years	2,400,472
4	Fugitive from Justice	496,629
5	State Prohibitor	251,123
6	Misdemeanor Crime of Domestic Violence Conviction	127,307
7	Protection/Restraining Order for Domestic Violence	60,979
8	Under Indictment/Information	45,524
9	Renounced U.S. Citizenship	32,919
10	Unlawful User/Addicted to a Controlled Substance	23,160
11	Dishonorable Discharge	10,843
Total Active Records in the NICS Index		14,460,769

# Federal Denials

Reasons Why the NICS Section Denies

November 30, 1998 - January 31, 2016

<u>Rank</u>	<u>Prohibited Category Description</u>	<u>Total</u>
1	Convicted of a crime punishable by more than one year or a misdemeanor punishable by more than two years	703,929
2	Fugitive from Justice	149,520
3	Misdemeanor Crime of Domestic Violence Conviction	121,429
4	Unlawful User/Addicted to a Controlled Substance	110,803
5	State Prohibitor	65,093
6	Protection/Restraining Order for Domestic Violence	51,138
7	Under Indictment/Information	35,284
8	Adjudicated Mental Health	21,750
9	Illegal/Unlawful Alien	16,806
10	Federally Denied Persons File	5,890
11	Dishonorable Discharge	973
12	Renounced U.S. Citizenship	69
Total Federal Denials		1,282,684



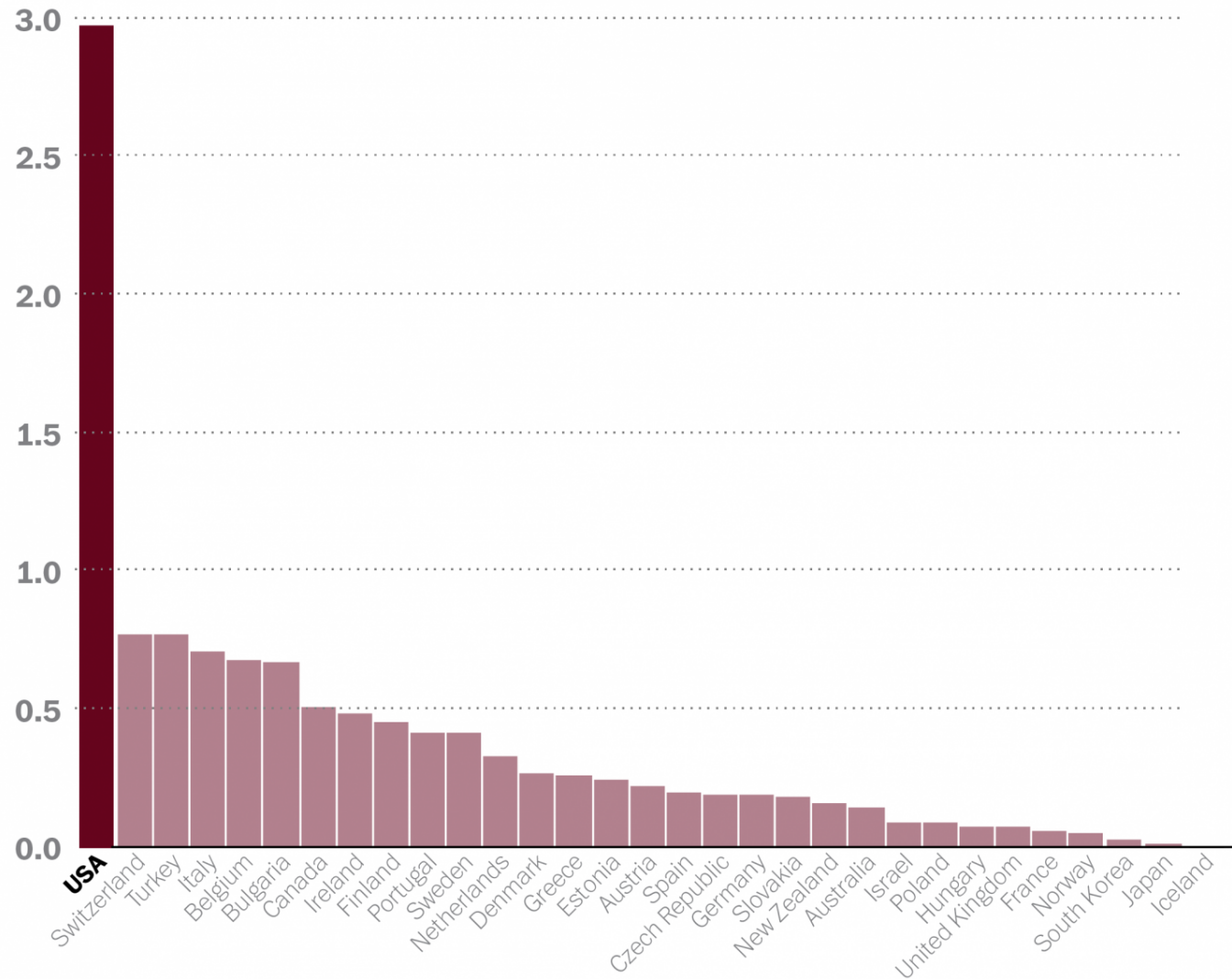


# NATIONAL ALLIANCE ON MENTAL ILLNESS

Richard McBreen

# The U.S. stands out on gun homicide

Firearm homicides per 100,000 population among wealthy nations





Except as otherwise provided in this section or [ORS 166.260](#), [166.270](#), [166.274](#), [166.291](#), [166.292](#) or [166.410](#) to [166.470](#) or section 5, chapter 826, Oregon Laws 2009, a person commits the crime of unlawful possession of a firearm if the person knowingly

(a) Carries any firearm concealed upon the person;

(b) Possesses a handgun that is concealed and readily accessible to the person within any vehicle; or

(c) Possesses a firearm and:

(A) Is under 18 years of age;

(B)(i) While a minor, was found to be within the jurisdiction of the juvenile court for having committed an act which, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in [ORS 166.470](#); and

(ii) Was discharged from the jurisdiction of the juvenile court within four years prior to being charged under this section;

(C) Has been convicted of a felony;

(D) Was committed to the Oregon Health Authority under [ORS 426.130](#);

(E) Was found to be a person with mental illness and subject to an order under [ORS 426.130](#) that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness;

(F) Is presently subject to an order under [ORS 426.133](#) prohibiting the person from purchasing or possessing a firearm; or

(G) Has been found guilty except for insanity under [ORS 161.295](#) of a felony.

PSYCHIATRIC  
HELP 5¢



THE DOCTOR  
IS IN



Person with mental illness” means a person who, because of a mental disorder, is one or more of the following:

A) Dangerous to self or others.

B) Unable to provide for basic personal needs that are necessary to avoid serious physical harm in the near future, and is not receiving such care as is necessary to avoid such harm.

C) A person:

(i) With a chronic mental illness, as defined in [ORS 426.495](#);

(ii) Who, within the previous three years, has twice been placed in a hospital or approved inpatient facility by the authority of the Department of Human Services under [ORS 426.060](#);

(iii) Who is exhibiting symptoms or behavior substantially similar to those that preceded and led to one or more of the hospitalizations or inpatient placements referred to in sub-subparagraph (ii) of this subparagraph; and

(iv) Who, unless treated, will continue, to a reasonable medical probability, to physically or mentally deteriorate so that the person will become a person described under either subparagraph (A) or (B) of this paragraph or both.



AMERICAN INSURANCE ASSOCIATION

Carrie Coverage



## ***Cal. Ins. Code § 533***

An insurer is not liable for the willful act of the insured;  
but he is not exonerated by the negligence of the  
insured, the insured's agents or others.

## ***State Farm Mutual Auto Ins. Co. v. Davis,*** **7 F3d 180 (1993)**

“On the basis of these state criminal proceedings, the district court held that Painter’s intent to aid and abet the shooting of Charles Keukelaar has been conclusively determined...the Keukelaars are collaterally estopped from relitigating the issue of Painter’s intent. As a result, no genuine issue of material fact as to whether the policy cover’s Painter’s actions.”





***Allstate Ins. Co. v. Simms,***  
**597 FSupp 64 (1984)**

“The majority of courts hold, however, that an intentional injury exclusion precludes coverage for intentional injuries caused by the insured, even where the insured is acting in self-defense....[E]ven if Zinn was acting in self-defense when he shot Simms, he is precluded from coverage by the intentional injury exclusion of his policy.”



## ***Jordan v. Lee*, 76 OrApp 472 (1985)**

“We hold that an injury does not arise out of the use of an automobile when, as here, it was directly caused by some act wholly disassociated from and independent of the vehicle’s use.....The majority of courts have held that the accidental discharge of a gun inside a vehicle while an occupant is handling the gun is not covered under an ownership, maintenance or use provision.”

# NATIONAL TEACHERS AGAINST VIOLENCE ASSOCIATION

Alecia Darm



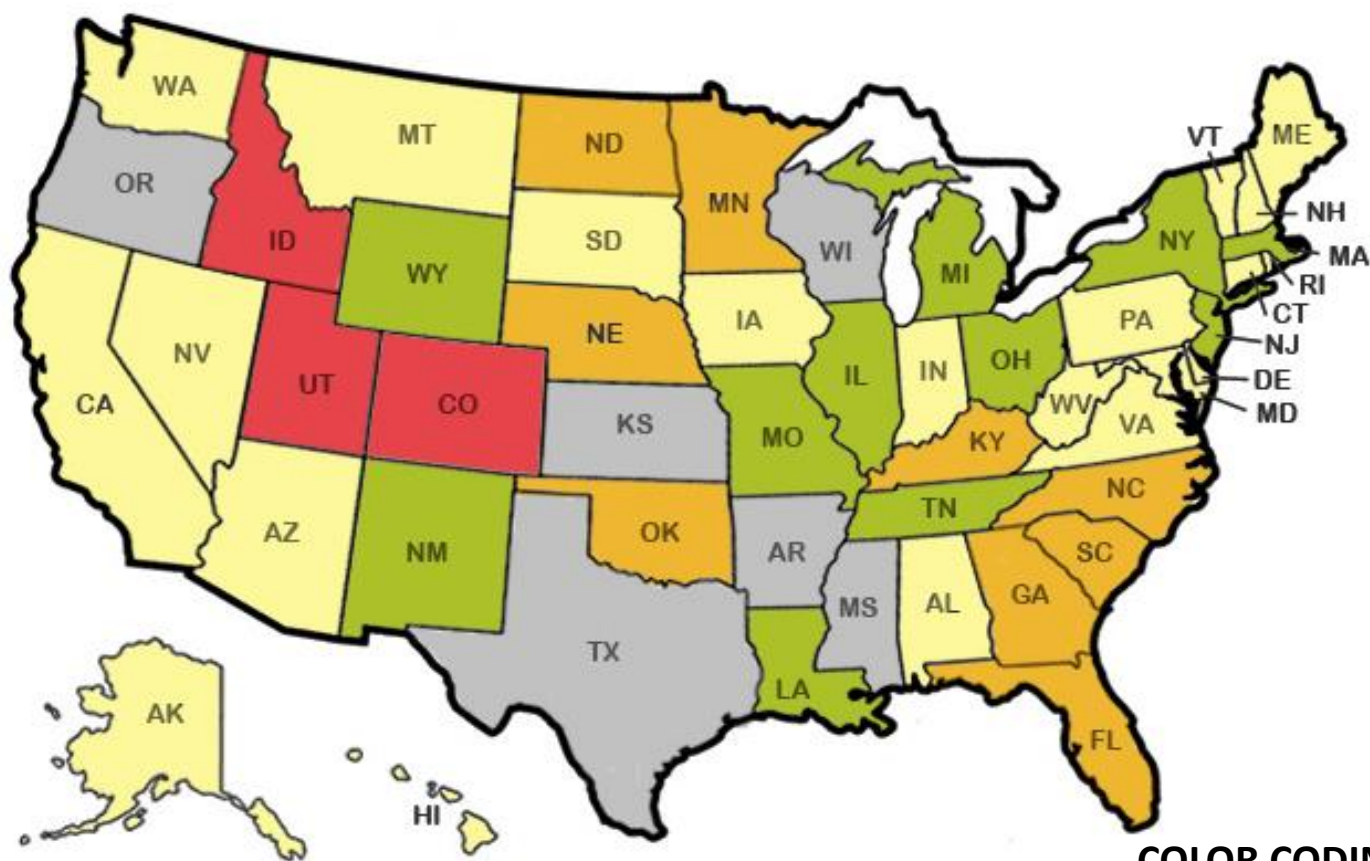
**Oregon Firearms Educational Foundation v. Board of Higher Education,  
264 P.3d 160, 165 (Or. Ct. App. 2011)**

The Oregon State Board of Higher Education's rule imposing sanctions on persons who possessed or used firearms on university property was determined to be invalid.

# **Oregon State Board of Higher Education – 2012 Policy**

- In 2012, the Oregon Board of Higher Education, using its statutory authority to control and manage its properties, banned guns, including licensed concealed carry, from:
  - Classrooms
  - Buildings
  - Dormitories
  - Sporting & Entertainment Events





### COLOR CODING KEY

**RED** = Concealed guns allowed by law

**GREY** = Concealed guns allowed by law, but schools decide locations/who carries

**GREEN** = Concealed guns on campus prohibited by law

**YELLOW** = Schools decide weapons policy

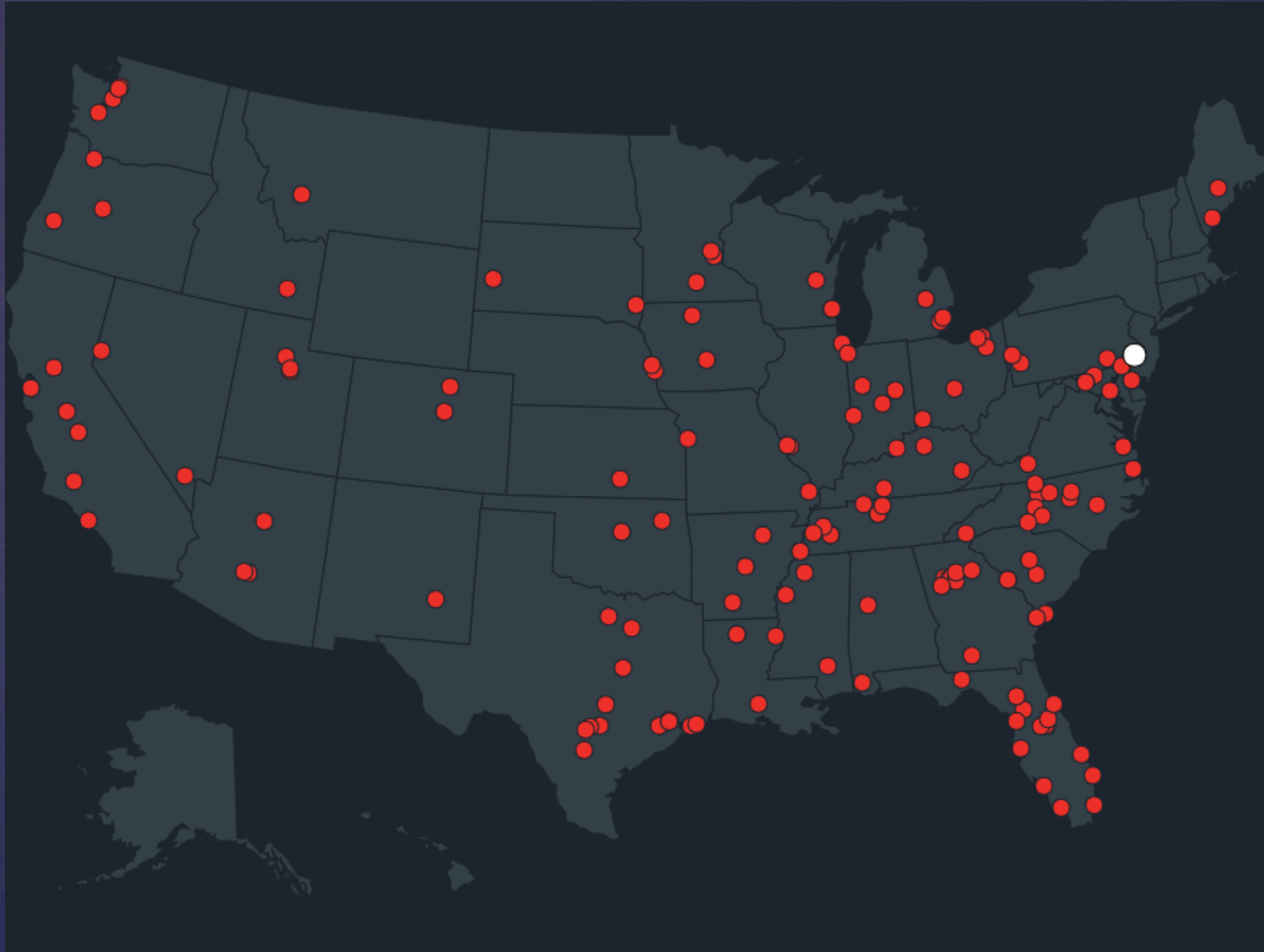
**ORANGE** = Concealed guns allowed only in locked car or parking lots

## **ORS 341.290(4) – General Powers of Board**

The board of education of a community college district shall be responsible for the general supervision and control of any and all community colleges operated by the district. Consistent with the applicable rules of the Higher Education Coordinating Commission, the board of education of a community college district may:

(4) Control use of and access to the grounds, buildings, books equipment and other property of the district.





Since 2013 there have been over 165 School Shootings in America

# Federal Laws Governing Firearms in Schools

1. Gun Free School Zones Act: Prohibits the possession of a gun within a school, on school property or within 1,000 feet of the school grounds.
2. Gun Free Schools Act 20 U.S. Code §7151: Requires that school districts take a zero tolerance policy and expel students for a minimum of one year if they are found to have possessed a gun on school property.



## **ORS 166.370 - Possession of firearm or dangerous weapons in public building or court facility**

) Any person who intentionally possesses a loaded or unloaded firearm or any other instrument used as a dangerous weapon, while in or on a public building shall upon conviction be guilty of a Class C felony.

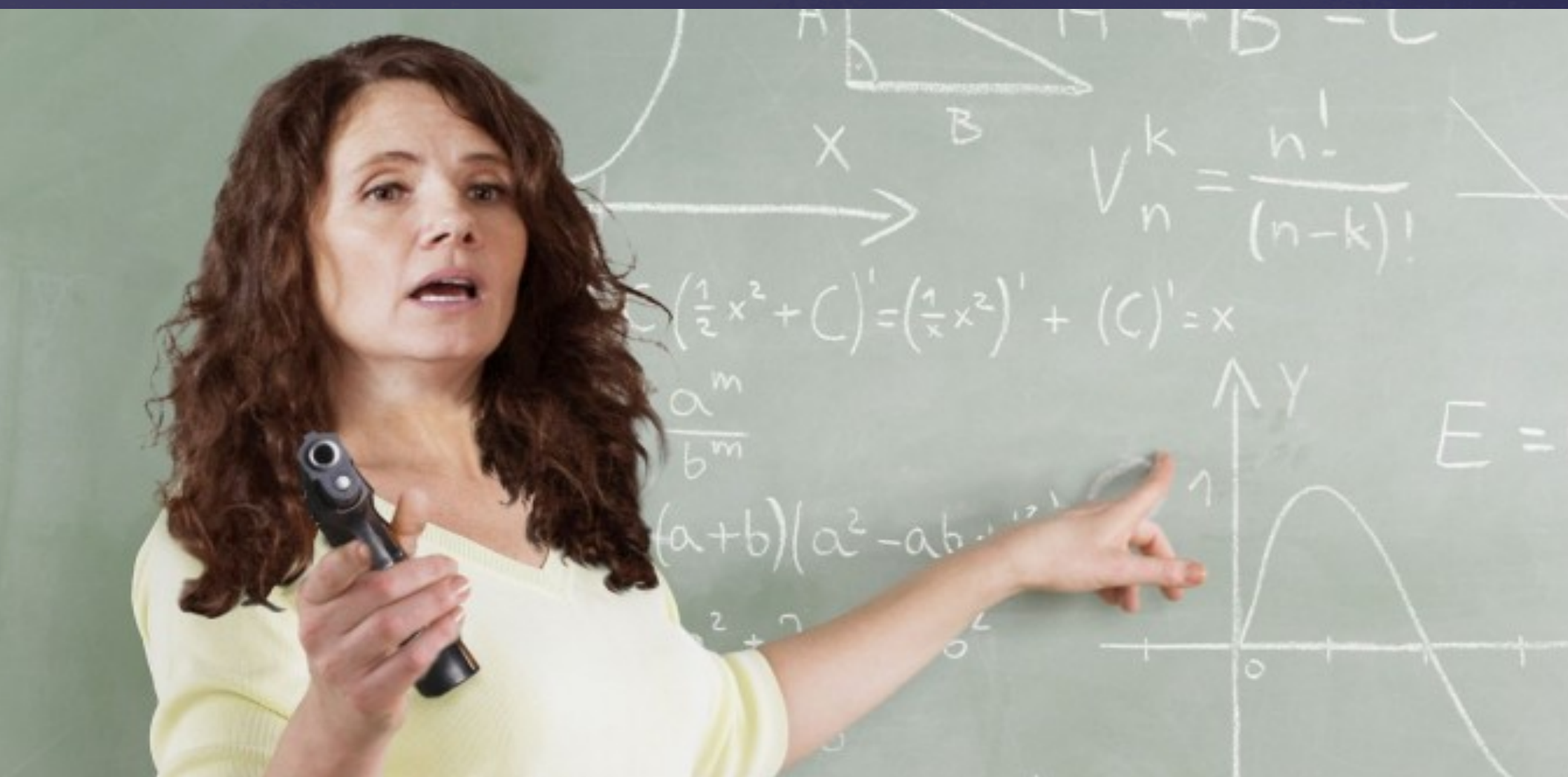
) Subsection (1) does not apply to:

- a. A police officer
- b. A probation officer acting within the scope of employment
- c. A federal officer acting within the scope of employment
- d. A person summoned by an officer to assist with making an arrest
- e. An honorably retired law enforcement officer
- f. An active member of the military force while engaged in the performance of duty
- g. A person who is licensed under ORS 166.291 and 166.292 to carry a concealed handgun**
- h. A person who is authorized by the officer or agency that controls the public building to possess a firearm
- i. An employee of the U.S. Department of Agriculture acting within the scope of employment who possesses a firearm in the course of the lawful taking of wildlife
- j. Possession of a firearm on school property if the firearm:
  - i. Is possessed by a person who is not otherwise prohibited from possessing the firearm, and
  - ii. Is unloaded and locked in a motor vehicle

## **ORS 166.291 – Concealed Handgun License**

- (1) The sheriff of a county, upon a person's application for an Oregon concealed handgun license, upon receipt of the appropriate fees and after compliance with the procedures set out in this section, shall issue the person a concealed handgun license if the person:
- (a) Is a U.S. Citizen
  - (b) Is at least 21 years of age
  - (c) Is a resident of the county
  - (d) Has no outstanding warrants for arrest
  - (e) Is not free on any form of pre-trial release
  - (f) Demonstrates competence with a handgun (7 possible ways to demonstrate competence)
  - (g) Has never been convicted of a felony or found guilty except...
  - (h) Has not been convicted of a misdemeanor or found guilty, except.....
  - (i) Has not been committed to the Oregon Health Authority under ORS 426.130
  - (j) Has not been found to be a person with a mental illness.....
  - (k) Has been discharged from the jurisdiction of the juvenile court for more than four years.....
  - (l) Has not been convicted of an offense involving controlled substances....
  - (m) Is not subject to a citation issued under ORS 163.735
  - (n) Has not received a dishonorable discharge from the Armed Forces of the United States
  - (o) Is not required to register as a sex offender in any state
  - (p) Is not presently subject to an order under ORS 426.133 prohibiting the person from purchasing or possessing a firearm





**Doe v. Medford School District,  
232 Or. App. 38, 221 P.3d 787 (2009)**

- The state law did not conflict with school policy prohibiting an employee from bringing a handgun to school, even though he/she had a valid concealed handgun license.

## **ORS 339.250(7) – Duty of Students, Discipline, Suspension, Expulsion, Removal, Counseling**

h district school board shall adopt a written policy involving firearms, as defined in 18 U.S.C. 921. The policy shall

) Require expulsion from school for a period of not less than one year of any student who is determined to have:

- (A) Brought a firearm to a school, to school property under the jurisdiction of the school district or an activity under the jurisdiction of the school district;
- (B) Possessed, concealed or used a firearm in a school, on school property under the jurisdiction of the school district or at an activity under the jurisdiction of the school district; or
- (C) Brought to or possessed, concealed or used a firearm at an interscholastic activity administered by a voluntary organization.

) Allow exceptions:

- (A) For courses, programs and activities approved by the school district that are conducted on school property.....
- (B) Identified and adopted by the State Board of Education by rule

) Allow a superintendent of a school district to:

- (A) Modify the expulsion requirement for a student on a case-by-case basis
- (B) Propose alternative programs of instruction combined with counseling for a student that are appropriate and accessible to the student.

) Require a referral to the appropriate law enforcement agency of any student who is expelled under this subsection

) Require an annual reporting to the Department of Education of the name of each school that had an expulsion under this subsection and the number of students expelled from each school.





Chief Justice Hiram Carothers  
Grant County People's Court



## **Are there persons who cannot legally receive or possess firearms and/or ammunition**

person who —

- ❑ Has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;
- ❑ Is a fugitive from justice;
- ❑ Is an unlawful user of or addicted to any controlled substance;
- ❑ Has been adjudicated as a mental defective or has been committed to a mental institution;
- ❑ Is an alien illegally or unlawfully in the United States or an alien admitted to the United States under a nonimmigrant visa;
- ❑ Has been discharged from the Armed Forces under dishonorable conditions
- ❑ Having been a citizen of the United States, has renounced his or her citizenship;
- ❑ Has been convicted of a misdemeanor crime of domestic violence cannot lawfully receive, possess, ship, or transport a firearm or ammunition is prohibited from shipping, transporting, possessing, or receiving firearms and ammunition.

person who is under indictment or information for a crime punishable by imprisonment for a term exceeding 1 year cannot lawfully ship, transport, or receive a firearm or ammunition. Such persons may continue to lawfully possess firearms and ammunition obtained prior to the indictment or information but may not do so once the conviction becomes final.

[18 U.S.C. 922(g) and (n); 27 CFR 478.32]

**If a person has been convicted of a disabling offense, is there a means other than relief to have firearms rights restored?**

Persons convicted of a Federal offense may apply for a Presidential pardon. 28 CFR Part 201 specifies the rules governing petitions for obtaining Presidential pardons. You may contact the Pardon Attorney's Office at the U.S. Department of Justice, Washington, DC, to inquire about the procedures for obtaining a Presidential pardon.



### **3) Do antique firearms come within the purview of the GCA?**

o, assuming the antique firearm is not a replica designed or redesigned for using rimfire or conventional centerfire fixed ammunition. The antique firearm also can be a black powder muzzle loading weapon that incorporates a firearm frame or receiver, have been converted into a muzzle loading weapon, or uses fixed ammunition (or readily converted to do so).

8 U.S.C. 921(a)(3) and (16); 27 CFR 478.11 and 478.141(d)]

**If a buyer or transferee is unable to read and or write but wants to purchase a firearm, how may the transfer legally be completed?**

If the buyer or transferee is unable to read and/ or write, the answers (other than the signature) may be written on the form by another person, excluding the seller. Two persons not directly involved in the firearms transaction (excluding, for example, the licensee and employees of the licensee) must sign as witnesses to the buyer's answers and signature.



## 5) What form of identification must a licensee obtain from a transferee of a firearm

The identification document presented by the transferee must have a photograph of the transferee, as well as the transferee's name, residence address, and date of birth. The identification document must also be valid (*e.g.*, unexpired) and have been issued by a governmental entity for the purpose of identification of individuals. An example of an acceptable identification document is a current driver's license.

A combination of government issued documents may be used to meet the requirements of an identification document. For example, a passport which contains the name, date of birth, and photograph of the holder may be combined with a voter or vehicle registration card containing the residence address of the transferee in order to comply with the identification document requirements. A passport issued by a foreign government is also acceptable so long as it has all of the required information.

Whether a hunting license or permit issued by a retailer meets the definition of an identification document is State law specific. This license or permit meets the definition of an identification document if the State in which the retailer is located has authorized the retailer to supply State issued documents. If the State recognizes the hunting license or permit as government issued, then this license or permit would qualify as being government issued for the purposes of supplementing another government issued identification document.

A description of the location of the residence on an identification document, such as a rural route, is sufficient to constitute a residence address provided the purchaser resides in a State or locality where it is considered to be a legal residence address

[18 U.S.C. 922(t); 27 CFR 478.11 and 478.124]



## **Does Federal law require licensees to comply with State laws and local published ordinances when selling firearms?**

. It is unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver any firearm to any person if the person's purchase or possession would be in violation of any State law or local published ordinance applicable at the place of sale, delivery or other disposition.

[U.S.C. 922(b)(2); 27 CFR 478.99(b)(2)]

**May a licensee employ an individual who is less than 21 years of age to sell handguns and ammunition suitable for use in handguns?**

. An individual less than 21 years of age may sell handguns and ammunition suitable for use in handguns. However, a person less than 18 years of age must have the prior written consent of a parent or guardian and the written consent must be in the person's possession at all times. Also, the parent or guardian giving the written consent may not be prohibited by law from possessing a firearm. Moreover, State law must not prohibit a person less than 18 years of age from possessing the handguns or ammunition.



**Is a person who reloads ammunition required to be licensed as a manufacturer?**

Yes, if the person engages in the business of selling or distributing reloads for the purpose of livelihood and profit. No, if the person reloads only for personal use.

[18 U.S.C. 922(a) and 923(a); 27 CFR 478.41]



**(9) Who may qualify as a certifying official on an ATF Form 1 or ATF Form 4 for the making or transfer of an NFA firearm?**

As provided by regulations, certifications by the local chief of police, sheriff of the county, head of the State police, or State or local district attorney or prosecutor are acceptable. The regulations also provide that certifications of other

The regulations also provide that certifications of other officials are appropriate if found in a particular case to be acceptable to the Director. Examples of other officials who have been accepted in specific situations include State attorneys general and judges of State courts having authority to conduct jury trials in felony cases.

[27 CFR 479.63 and 479.85]





# Mothers Against Gun Violence

## Kathleen Profitt



Once per day, an American kid brings a gun to school.

- 7 children/teens under 20 are killed every day by guns—5 are murdered; 2 kill themselves
- In 2015, toddlers were involved in a shooting every week:
  - \*13 inadvertently killed themselves
  - \*18 more injured themselves
  - \*10 injured other people
  - \*2 killed other people

In the first five weeks of 2016, at least 6 children under the age of 5 have shot themselves or someone else in a grandparent's home or with a grandparent's gun.





**OCT**  
TARRANT COUNTY  
© TOV HENDERSON - 2014



**UNITED STATES SENATE COMMITTEE ON  
COMMERCE, TRANSPORTATION & SCIENCE**

114<sup>th</sup> Congress  
2d Session

S.B. No. 2016-164

AN ACT

relating to the issuance of firearm licensing and the carrying of firearms in public locations.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED:

TITLE 18, UNITED STATES CODE, CHAP. 44

Sec. 479        Provision of firearm licenses and carrying of firearms by license holders in public locations.

(a) For purposes of this section:

- 1) All definitions set forth in section 101, ch. 44 § 921 are incorporated herein.
- 2) Additionally:
  - i. "Background check" means the definition as set by the Administrator pursuant to section (g) below.
  - ii. "Firearm" means the definition as set forth in section 101, ch. 44, § 921(a)(3) (which for reference purposes only is reproduced here: "any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or fire- arm silencer; or (D) any destructive device. Such term does not include an antique firearm").



- iii. "Public location" means all land and buildings owned or leased by either a state, local, or federal government.
- (b) Upon application, the State shall provide a permit to openly carry a firearm, subject to a background check, to all persons, with the exception of:
  - 1) Persons who have been diagnosed with a mental disorder;
  - 2) Persons who have previously been convicted of a felony, regardless of whether the felony may have been expunged from the citizen's record;
  - 3) Persons who have been convicted of a crime involving drugs;
  - 4) Any refugee or foreign citizen admitted on a temporary or non-citizen basis to the United States; and
  - 5) Persons under the age of sixteen.
- (c) The following are not subject to a background check:
  - 1) Current and former members of the United States Armed Forces and law enforcement; and
  - 2) Members of a self-identified citizen's militia.
- (d) A license holder may carry a firearm on or about the license holder's person while the license holder is on public property.
- (e) Should insurance be required in order to carry a firearm, an insurance carrier shall not exclude coverage on the basis of gun possession or in self-defense.
- (f) Congress grants the Administrator the authority to establish rules governing the creation and application of background checks pursuant to this Act.
  - 1) In establishing rules related to background checks, the Administrator shall ensure that health effects with a substantial effect on the public shall be avoided.
    - i. The administrator shall also ensure that a person's right to bear firearms is not unduly burdened.