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# When the Right to Bear Arms Includes the Mentally Ill

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Last April, workers at Middlesex Hospital in Connecticut called the police to report that a psychiatric patient named Mark Russo had threatened to shoot his mother if officers tried to take the 18 rifles and shotguns he kept at her house. Mr. Russo, who was off his medication for paranoid schizophrenia, also talked about the recent elementary school massacre in Newtown and told a nurse that he “could take a chair and kill you or bash your head in between the eyes,” court records show.

The police seized the firearms, as well as seven high-capacity magazines, but Mr. Russo, 55, was eventually allowed to return to the trailer in Middletown where he lives alone. In an interview there recently, he denied that he had schizophrenia but said he was taking his medication now — though only “the smallest dose,” because he is forced to. His hospitalization, he explained, stemmed from a misunderstanding: Seeking a message from God on whether to dissociate himself from his family, he had stabbed a basketball and waited for it to reinflate itself. When it did, he told relatives they would not be seeing him again, prompting them to call the police.

As for his guns, Mr. Russo is scheduled to get them back in the spring, as mandated by Connecticut law.

“I don’t think they ever should have been taken out of my house,” he said. “I plan to get all my guns and ammo and knives back in April.”

The Russo case highlights a central, unresolved issue in the debate over balancing public safety and the Second Amendment right to bear arms: just how powerless law enforcement can be when it comes to keeping firearms out of the hands of people who are mentally ill.

Connecticut’s law giving the police broad leeway to seize and hold guns for up to a year is actually relatively strict. Most states simply adhere to the federal standard, banning gun possession only after someone is involuntarily committed to a psychiatric facility or

designated as mentally ill or incompetent after a court proceeding or other formal legal process. Relatively few with mental health issues, even serious ones, reach this point.

As a result, the police often find themselves grappling with legal ambiguities when they encounter mentally unstable people with guns, unsure how far they can go in searching for and seizing firearms and then, in particular, how they should respond when the owners want them back.

“There is a big gap in the law,” said Jeffrey Furbee, the chief legal adviser to the Police Department in Columbus, Ohio. “There is no common-sense middle ground to protect the public.”

A vast majority of people with mental illnesses are not violent. But recent mass shootings — outside a Tucson supermarket in 2011, at a movie theater last year in Aurora, Colo., and at the Washington Navy Yard in September — have raised public awareness of the gray areas in the law. In each case, the gunman had been recognized as mentally disturbed but had never been barred from having firearms.

After the Newtown killings a year ago, state legislatures across the country debated measures that would have more strictly limited the gun rights of those with mental illness. But most of the bills failed amid resistance from both the gun lobby and mental health advocates concerned about unfairly stigmatizing people. In Washington, discussion of new mental health restrictions was conspicuously absent from the federal gun control debate.

What remains is the uncertain legal territory at the intersection of guns and mental illness. Examining it is difficult, because of privacy laws governing mental health and the limited availability of information on firearm ownership. But The New York Times obtained court and police records from more than 1,000 cases around the country in which guns were seized in mental-health-related episodes.

A systematic review of these cases — from cities and counties in California, Colorado, Connecticut, Florida, Indiana, Ohio and Tennessee — underscores how easy it is for people with serious mental health problems to have guns.

Over the past year in Connecticut, where The Times obtained some of the most extensive records of seizure cases, there were more than 180 instances of gun confiscations from people who appeared to pose a risk of “imminent personal injury to self or others.” Close to 40 percent of these cases involved serious mental illness.

Perhaps most striking, in many of the cases examined across the country, the authorities said they had no choice under the law but to return the guns after an initial seizure for safekeeping.

For example, in Hillsborough County, Fla., 31 of 34 people who sought to reclaim seized firearms last year were able to do so after a brief court hearing, according to a count by The Times.

Among them was Ryan Piatt, an Afghanistan veteran with a history of treatment for depression, anxiety and paranoia. The police had descended on Mr. Piatt's workplace in November 2011, after mental health workers at the veterans hospital in Tampa reported that he had made intimations of violence to his psychiatrist and had tried to renounce his citizenship, mailing his Social Security card, birth certificate and other documents to a judge. Officers confiscated two guns from his car and one more from his toolbox; he got them back less than a year later.

Similarly, the sheriff in Arapahoe County, Colo., had to return a .45-caliber pistol last year that officers had seized four months earlier after receiving a call that Jose Reynaldo Santiago, an Army veteran with post-traumatic stress, was walking around his home in the middle of the night in a catatonic state with a gun in the pocket of his bathrobe.

Even in Indiana, one of the few states that have expanded the power of law enforcement to hold on to guns seized from people who are mentally ill, the examination revealed a significant loophole: there is nothing preventing them from going out and buying new guns.

The state's seizure law does not address the question, and as a result, records from gun confiscation cases are not entered into the federal background check database that dealers must consult when making sales, according to officials from the Indiana Supreme Court.

Connecticut had a similar vulnerability until this year. Unlike in Indiana, the Connecticut State Police handle gun background checks, running names in the federal system and checking its own records. Judicial officials are unsure, however, if the agency was receiving all gun seizure records. As a fail-safe and a way to prevent people from simply going to another state to buy a gun, the state has now begun submitting these records to the federal system.

Adding to the uncertainty for law enforcement, federal courts have ruled that an emergency involuntary psychiatric evaluation is not grounds to bar someone from possessing firearms.

The police in Caribou, Me., discovered this after repeated run-ins with a troubled resident, Curtis Zetterman, who was sent to a hospital after talking about shooting people; he was released, and was later accused of threatening a neighbor with a gun, according to court records.

Mr. Zetterman's conviction on a charge of illegally possessing a firearm was dismissed on appeal because his emergency hospitalization did not rise to the level of a formal involuntary commitment.

"We don't want to violate anybody's rights," said the Caribou police chief, Michael Gahagan. "But if you're in the apartment next door to this guy, what about your rights?"

### **Outliers Toughen Laws**

It was the shock of a potentially avoidable tragedy that pushed Indiana lawmakers to act. Reports of gunfire brought Officer Timothy Laird to Indianapolis's south side one night in August 2004. Kenneth C. Anderson, a schizophrenic man who the police later learned had just killed his mother in her home, was stalking the block with an SKS assault rifle and two handguns. As Officer Laird stepped from his patrol car, he was fatally shot. Four other officers were wounded before one of them shot and killed Mr. Anderson.

At the beginning of that year, the police had seized nine guns from Mr. Anderson after being called to his home by paramedics because he was being combative. Deemed delusional and dangerous, he was taken to a hospital for a mental health evaluation. He was not, however, committed, and when he sought the return of his guns, police officials concluded that they had no legal grounds to keep them.

Several months after Officer Laird's death, the Indiana legislature passed its seizure bill, giving the police explicit authority to search for and confiscate guns from people who are considered dangerous or who are mentally ill and off their medication. The police can keep the guns, upon court approval, for five years.

Connecticut's law, passed in 1999, was also a response to a high-profile shooting rampage: a disgruntled employee with a history of psychiatric problems fatally shot four people at the state lottery offices before killing himself.

This year, in the wake of the Newtown shooting, in which 20 children and six adults were killed, the mental health debate in state legislatures focused largely on two areas: requiring mental health professionals to report dangerous people to the authorities and expanding the mental health criteria for revoking gun rights.

One legislature that ultimately did act was New York's, which passed a far-reaching — and controversial — measure that requires mental health professionals to report to county authorities anyone who “is likely to engage in conduct that would result in serious harm to self or others.” If county officials agree with the assessment, they must submit the information to the state's Division of Criminal Justice Services, which alerts the local authorities to revoke the person's firearms license and confiscate weapons.

Maryland, too, amended its laws, barring anyone with a mental disorder who has a history of violence from having firearms.

And California adopted a five-year firearms ban for anyone who communicates a violent threat against a “reasonably identifiable victim” to a licensed psychotherapist. Previously, the ban was six months.

The state already had a five-year gun ban for anyone deemed to be a danger to himself or others and admitted on a 72-hour psychiatric hold for emergency evaluation and treatment or a longer 14-day hold. (Both steps fall short of the criteria for an involuntary commitment under federal law.) Even in cases where people are sent for emergency evaluations but not admitted, the police may confiscate their weapons and petition a court to keep them.

California, Maryland and New York, however, are outliers. (Hawaii and Illinois also stand out for their strict — some would argue onerous — mental health standards for gun ownership.) Most states have been content to follow the federal government's lead.

In fact, the issue has long been a political quagmire.

Gun rights advocates worry that seizure laws will ensnare law-abiding citizens who pose no threat. In Connecticut, with its imminent-risk standard for seizure, the law sometimes “reaches pretty normal people,” said Rachel Baird, a lawyer who has sued police departments over gun confiscations.

“People make comments all the time when they're angry or frustrated — ‘I'm going to come down there, and it won't be pretty' — but if you say that and you own a firearm, it immediately takes on a context that it otherwise wouldn't,” said Ms. Baird, a former prosecutor.

At the same time, mental health professionals worry that new seizure laws might stigmatize many people who have no greater propensity for violence than the broader population. They also fear that the laws will discourage people who need help from seeking treatment, while doing little to deter gun violence.

Research has shown, however, that people with serious mental illnesses, like schizophrenia, major depression or bipolar disorder, do pose an increased risk of violence. In one widely cited [study](#), Jeffrey W. Swanson, now a psychiatry professor at Duke University, found that when substance abusers were excluded, 33 percent of people with a serious mental illness reported past violent behavior, compared with 15 percent of people without such a disorder. The study, based on epidemiological survey data from the 1980s, defined violent behavior as everything from taking part in more than one fistfight as an adult to using a weapon in a fight.

Substance abuse, the study found, was a powerful predictor of violence. The highest rate, 64 percent, was found among people who had major mental disorders as well as substance abuse issues. For substance abusers alone, the rate was 55 percent.

This month a consortium of mental health professionals, public health researchers and gun control advocates released a [52-page report](#) containing a series of recommendations on improving state laws regarding mental health and guns. The group focused largely on the gray area beyond the narrow federal standard of involuntary commitment, recommending that people admitted for short-term involuntary hospitalizations lose their gun rights temporarily, and that the police be given a mechanism for removing guns from people they believe to be dangerous.

“That could save a lot of lives,” said Dr. Swanson, a member of the consortium.

### **Varying Interpretations**

One place that has an intimate awareness of the dangers of guns, especially in the hands of people struggling with mental illness, is Arapahoe County in Colorado, where 12 people died in the Aurora movie theater rampage last year. And at a high school there just this month, an 18-year-old gunman critically injured another student before taking his own life, though there has been no indication that mental illness was a factor.

Still, when it comes to seizing firearms, the sheriff there, Grayson Robinson, says he is also acutely aware of the legal limitations. If his deputies encountered a man on the street with a gun acting irrationally or suicidal, they would probably confiscate that weapon for safekeeping, he said. But they would not have the legal authority to enter his home and even temporarily take any other guns. Nor would the authorities hold on to the confiscated weapon, he said, unless the owner is expressly barred by law from having it.

“We understand property rights,” he said. “We would return those weapons to him upon his request.”

In the absence of specific guidance under federal and state laws, local police departments vary widely in how they deal with the issue, The Times found. Some hew to a strict interpretation. Others appear to be searching for a middle ground, fearful of what may happen if they return guns to dangerous people but also aware that they are on difficult legal terrain.

In Arapahoe County, the Sheriff's Department has confiscated weapons from just 13 people it sent for emergency psychiatric evaluations in the past two years, records show. In 10 of those cases, the guns were returned to their owners. (One gun was scheduled for destruction at the owner's request; another was given to a third party; one recent seizure was still in the department's possession.)

Among the guns seized was the pistol from the bathrobe pocket of Mr. Santiago, the veteran found walking around his home in a trance in November 2011. It took five minutes after deputies arrived for Mr. Santiago, then 23, to emerge from his catatonic state, according to the incident report. When he came to, he asked if he had hurt anyone. He also told deputies that he had post-traumatic stress from his deployment in Afghanistan and had experienced a similar episode before. The Fire Department took Mr. Santiago to the hospital for a brief stay to be examined, and sheriff's deputies took his gun. It was returned the following March.

In an interview, Mr. Santiago said he had "spaced out" after learning that an Army friend had died in a motorcycle accident. He said that the police had told him he could get his gun back right away but that he had decided to wait to "make sure I was all good." He had expected to have to answer questions about his mental health and was shocked when he only had to fill out some paperwork.

"All I did was I walked in, walked through the metal detectors, walked downstairs to their holding area where they keep evidence for safekeeping," he said. "They handed it right back to me, no questions asked."

In August 2012, Arapahoe deputies were called to the home of Jarrod Thoma, 29, another veteran, who was holed up in his bathroom with a newly purchased Ruger pistol pointed at his head. A SWAT team eventually talked him out. According to the incident report, his wife told deputies that he had been discharged from the Army because of a "personality disorder." (Mr. Thoma says it was actually adjustment disorder, from difficulty coping with stress.) His wife also told the police that he had tried to commit suicide twice before in 2011, once by overdosing on antidepressants and Tylenol and then in an episode involving a gun. The Sheriff's Department returned Mr. Thoma's gun three months later.

In an interview, Mr. Thoma said that after his encounter with the police, he voluntarily admitted himself to the hospital, where he remained for two and a half weeks, receiving counseling and medication. When he got his gun back, he said, his problems were under control.

“If I was a danger to others and if I was still suffering from some type of depression, I wouldn’t have went back and claimed my gun,” he said. “I’ve been through therapy. I put that stuff behind me.”

In Nashville, the police appear to be exercising greater discretion in returning seized firearms. Since 2010, they have confiscated weapons from 81 people in mental-health-related episodes, according to Don Aaron, a department spokesman. Guns were returned in just 18 of those cases.

Nashville police officials said they adhered to the same basic federal and state criteria as other departments. But because of problems obtaining full and accurate mental health records from the state’s background-check database, officials said, the department will sometimes ask for a doctor’s note certifying that the gun owner is no longer a danger or will agree to release guns only to a relative.

The Times found a similar rate of returns in Columbus. Last year, the police confiscated firearms from more than 40 people in mental-health-related episodes; in eight cases, the guns were returned.

Mr. Furbee, the Police Department’s chief legal adviser, said the detectives who handled these releases were “very deliberate.” Decisions can also be delayed, he said, because Ohio has no centralized registry of commitments to psychiatric institutions for the police to check. In addition, in several cases examined by The Times, the designation of the confiscated firearm was changed from “safekeeping” to “evidence,” which would delay its release.

Among those who did get their guns back relatively quickly was Paul Colflesh, whose 9-millimeter Beretta was confiscated in May 2012 after his wife, Melody Bowman, called 911. She told the police that Mr. Colflesh had stopped taking his medication for depression two weeks earlier and had begun drinking heavily, according to the incident report. On this night, he had gone up to the bedroom, grabbed his gun and said he was going to kill himself. She added that he had once before put the gun in his mouth and threatened suicide. (In an interview, Ms. Bowman said this had been about a year earlier, also while he was drinking.) Mr. Colflesh was so drunk that the police could not interview him.

A few days after being taken to the emergency room, Mr. Colflesh gave the police a note from his doctor, who said Mr. Colflesh had been off his medication for a month but realized that it was the “wrong thing to have done.” Mr. Colflesh, he concluded, “appears not in danger to himself or others since restarting his medications.”

A detective, who later contacted the doctor directly, scrawled notes that Mr. Colflesh was “not suicidal or dangerous to others if he takes meds.”

The police returned Mr. Colflesh’s gun two months after they took it.

“When somebody comes here and demands their weapon back, and there is no legal disability, we give it back, even when it makes us uncomfortable,” Mr. Furbee said.

Officials in Florida have also been grappling with ambiguities under the law. In 2009, the attorney general issued an advisory opinion saying that “in the absence of an arrest and criminal charge,” the police could not hold on to firearms confiscated from people sent for mental health evaluations under the state’s Baker Act, which authorizes the police to send mentally ill people who are potentially dangerous for involuntary examinations of up to 72 hours.

Across Florida, however, departments are still taking a variety of approaches, with some simply returning the weapons upon request — after performing the requisite checks — and others imposing additional hurdles.

This year, a judge ordered the Daytona Beach police to return 16 guns to Anthony Bontempo, 27, a veteran with a history of post-traumatic stress disorder and alcoholism. They had been confiscated after he called a suicide hotline in hysterics eight months earlier. A gun-rights group, Florida Carry, filed a lawsuit on behalf of Mr. Bontempo, arguing that the police had no right to hold on to the weapons.

In Hillsborough County, people whose weapons are seized in Baker Act proceedings are required to attend a brief court hearing, where a judge can confirm that they are not felons, have never been involuntarily committed and have nothing else on their records that bars them from having guns. Almost all walk out with orders allowing them to retrieve their guns.

Mr. Piatt, 30, whose guns were seized after the episode at the Tampa veterans hospital, said the police had overreacted by having a group of officers go to his workplace to take him forcibly into custody.

But his medical records, which he sent to The Times, show diagnoses for depression, generalized anxiety disorder, post-traumatic stress disorder and “psychotic disorder not

otherwise specified.” He had stopped taking his medication. Adding to his psychiatrist’s concern, Mr. Piatt’s roommate had called the veterans hospital worried about Mr. Piatt’s stability, saying he seemed paranoid and had woken him up in the middle of the night, screaming.

In an interview, Mr. Piatt said the judge who presided over his firearms-return hearing focused not on establishing his mental state but primarily on ensuring that he would store his weapons safely because he has a young son.

The judge, Claudia R. Isom, who at the time was responsible for all gun-return petitions in the county, said she simply required gun owners to affirm under oath that they met the various legal requirements and then determined if the police or the clerk’s office had found anything in their records checks. Judge Isom said she usually did not ask the petitioners if they were undergoing mental health treatment or taking their medication because “it was none of my business.”

“I’m supposed to apply the law,” she said. “If there’s no legal objection, then there’s no legal reason not to give a weapon back.”

### **A Volatile Mix**

It is impossible to know just how many gun owners have serious mental health issues. But an examination of gun seizure records in Connecticut and Indiana, where the police have been granted greater leeway to confiscate firearms, offers perhaps the best sense of just how frequently gun ownership and mental instability mix. Officials with the Connecticut court system have collected records on more than 700 gun seizure cases since the law was enacted in 1999. That probably represents a partial count at best, however, because court officials did not make a concerted effort to ensure that all cases were reported to them until this year, after the Newtown shooting.

The Times analyzed this year’s cases in Connecticut and found that slightly more than half involved threats of suicide; 34 percent involved drugs or alcohol; and 42 percent clearly involved psychosis or some other serious mental health issue, such as bipolar disorder, schizophrenia or clinical depression. Just under 30 percent of the mental health cases also involved drugs or alcohol.

The results were similar in Marion County, Ind., which includes Indianapolis. In 2012, the police seized 67 guns from 30 people, according to court records. Documents in 40 percent of the cases mentioned some sort of mental illness; a quarter of those cases also involved substance abuse.

In one case in April, residents of Carlyle Place in Indianapolis flagged down a police cruiser because one of their neighbors, Michael Fishburn, 54, was screaming at cars and had pointed a handgun at a woman, according to a court affidavit. The day before, he had been strutting around his yard making rooster noises, they said. The police took Mr. Fishburn to the hospital and learned that he had been receiving mental health treatment there for the previous 10 years. They also discovered that he had a lifetime permit to carry a handgun. A judge ordered the police to retain Mr. Fishburn's pistol, as well as a shotgun, for five years.

The case of James Serapilia of Bristol, Conn., illustrates just how challenging it can be to assess mental stability and predict violence. Shortly after midnight on March 19, 2004, the sound of breaking glass drew the police to a small ranch-style house, where they found Mr. Serapilia, then 41, standing amid the shattered remains of his living room window.

"In the name of Jesus Christ, I command you demons to leave," he yelled, according to a police report. As officers struggled to gain entry, Mr. Serapilia grabbed a shard of glass, held it to his throat and said, "This is it." He was stopped only after a sergeant fired a Taser through the broken window. Inside, the police found two rifles in the living room, along with several rounds of ammunition on a table and two handguns in an upstairs closet. Officers seized the weapons.

But as a local prosecutor explained in a court hearing, "the state has the burden of showing that he's in imminent danger to himself or others" or must eventually return the firearms. So 10 months after the episode, Mr. Serapilia, supported by a positive report from his psychiatrist, got his guns back.

But the police had not seen the last of him. Early on the morning of Sept. 25, 2010, they were at his house again, this time for a Lifeline medical alert for an older person in distress. Officers discovered Mr. Serapilia's mother lying in the entryway, unable to get up. She pointed to her son, who was sitting on the floor nearby, appearing pale, sweating profusely and surrounded by empty beer cans. "He wouldn't call an ambulance," she said, according to a police report.

Mr. Serapilia bolted from the house, screaming that he was Jesus Christ, and proceeded to lead the police on a car chase through three towns before officers were able to deflate the tires of his Toyota Tacoma, smash a passenger-side window and drag him from the vehicle. He later told them that he had schizophrenia and depression, had stopped taking his medication and believed he was being chased by demons, the report said. This time, because Mr. Serapilia was criminally charged and his guns were seized as contraband, a judge ordered them destroyed. Mr. Serapilia, through his sister, declined to comment.

As for Mark Russo, the Middletown man who is looking forward to reclaiming his 18 guns in April, he acknowledged that public records indicated that he had made threats of violence, but he said they were untrue. He said he had had difficulty getting doctors to understand the real nature of his problem, which is not mental illness but paranormal activities that have afflicted him since his youth, including objects disappearing from his home and a bird once flying out of his forehead.

“I’ve offered to take a lie-detector test to prove what I’m saying is true,” he said. “But psychiatrists, they don’t want to hear about God and demons and all that.”

At the Middletown Police Department, Lt. Heather Desmond said there was little her agency could do to avoid returning guns to someone who is mentally ill, unless “there are new incidents or concerns that would justify seeking another risk warrant.” The police check their records for that before handing over the firearms, she said.

“But if a year has gone by and nothing new has happened, there’s nothing we can do,” Lieutenant Desmond said. “It’s unfortunate, and it’s something that has to be addressed.”