

# 114 Update from the Oregon Association of Chiefs of Police

On December 13, 2022, Circuit Court Judge Robert Rashio held a hearing on BM 114. Here are portions of a social media post from Plaintiff's lawyer Tony Aiello recapping this hearing:

*The Court has ruled that the temporary restraining order on the permit to purchase portion of Measure 114 will stay in place until the State gives us notice that they're ready to implement the program. At that point, we will have another oral argument (much like today). That will not be expected until February, approximately sometime after February 8. So, for now, Oregonians do not have to obtain a permit to purchase a firearm.*

*Next, the State made a new argument regarding what it characterized as a background check "loophole." As this was not the subject of this hearing, the Court has scheduled further proceedings for 12/23. The State must file its objections by this Friday (12/16) and then I will be working on a response to that filing in advance of the hearing.*

*Last, the Court will be issuing a written ruling based on this hearing and the briefing on the ban on magazines. If we prevail, the magazine ban will be enjoined for the entirety of this case until a final determination of the constitutionality of the magazine ban. If that is put in place Friday, the State will most likely petition for a writ of mandamus \*again,\* to ask the Supreme Court to intervene.*

**Previous OACP Communication re BM 114 (So you have resources and documents without having to search for them):**

As you know, OACP is actively involved in an aggressive effort to help law enforcement agencies implement the requirements of Ballot Measure 114. A number of workgroups are tackling various challenges created by the measure in partnership with the Oregon State Police and the Oregon State Sheriffs' Association. The purpose of this update is to provide you with details and a status update regarding our progress with the hopes it will be helpful as you take steps to implement BM 114 and to keep the public informed. We are hoping to have a series of specific resources available to you ASAP so you can take steps to implement if/when the Ballot Measure takes effect. Here is the update:

**Bottom Line/Key Takeaways:**

The following update is long and includes a number of important updates related to the implementation of Ballot Measure 114. Here is a summary of the information we have currently regarding the effective date of the measure:

**Effective date:** The original effective date of BM 114 was December 8th. The measure is currently under a restraining order due to a decision by Harney County Circuit Court Judge Robert Raschio. Judge Rashio suspended the entire measure including portions dealing with magazine capacity and the permit to purchase process requirements. As a result, the whole measure is suspended at least until December 13th when Judge Rashio scheduled a hearing to further consider the case. Judge Rashio can continue the restraining order, adjust it or remove it in response to the hearing. If Judge Rashio continues the restraining order preventing the Ballot Measure from taking effect, I expect the Oregon DOJ to appeal to the Oregon Supreme Court. As you recall, the Oregon Supreme Court chose not to overturn Judge Rashio's initial decision and didn't provide reasons for their decision not to intervene at the time.

In a separate Court decision, U.S. District Court Judge Karin Immergut delayed implementation of the permit to purchase requirements in Ballot Measure 114 for 30 days to give police agencies impacted by the measure additional time to implement. Based on the extension, and if the Oregon Supreme Court decides to remove the restraining order issued by Judge Rashio, the effective date for the permit to purchase process will be **January 6th**. Note: Judge Immergut indicated that she is willing to consider an additional extension on the effective date for permit to purchase based on a request from the Oregon Department of Justice in coordination with plaintiffs from the currently filed cases.

### **BM 114 Implementation Steering Committee and Work Groups**

The implementation process includes a steering committee comprised of representatives from OACP, OSSA & OSP and workgroups that include subject matters from OACP and OSSA member agencies. Special thanks to all who are giving their time to assist with this implementation process. Here is the structure and OACP members serving as part of the implementation effort;

- **BM 114 Steering Committee:** The Steering Committee is tasked with overseeing the entire implementation process, ensure that agencies throughout Oregon understand the requirements of the measure and have the resources and information necessary to fully implement the law in keeping with the requirement of the measure. The Steering Committee will create workgroups as necessary and identify subject matter experts to assist with the process:

**Members:** Chief Kathy McAlpine (Tigard PD), Chief Matt Workman (Warrenton PD), Chief Chuck Byrum (Pendleton PD), **Chief Tim Addleman (Umatilla Tribal PD)** & Kevin Campbell, OACP Executive Director. OSSA members include **Sheriff Curtis Landers (Lincoln County SO)**, Sheriff Shane Nelson (Deschutes County SO), Tim Svenson (Yamhill County SO), Elmer Dickens (OSSA

Legal Counsel) and Jason Myers (OSSA Executive Director). OSP Representatives include Superintendent Terri Davie, Deputy Superintendent Jon Harrington, Becki David, Wendy Landers, Casey Coddling, Kyle Kennedy, Andy Heider Greg Withers Ted Phillips & Ryan Martin

- **BM 114 Procedures Workflow Workgroup** (Includes support services and police records subject matter experts). The workgroup is tasked with designing the specific step-by-step process & procedures agencies can utilize to handle the new permit to purchase process:

**Members: Athena Payne (Tualatin PD),** Liz Amason (Ontario PD), Paula Collins, (Keizer PD) & Kevin Campbell (OACP Executive Director). OSSA members include Sterrin Ward (Umatilla County SO), Nicole Heidt (Yamhill County SO), Lisa Miner (Clatsop County SO), Sandy Smith (Wasco County SO), Elmer Dickens (OSSA Legal Counsel) & Jason Myers (OSSA Executive Director)

- **BM 114 “In Person” Demonstration Workgroup** (Includes agency range masters and firearm instructors). This workgroup is tasked with creating a consistent “in-person” demonstration procedure for agencies to utilize that satisfies the requirements of BM 114 and the process for certifying trainers that are qualified to perform the demonstration of proficiency:

**Members:** Chief Kevin Martin (Oakridge PD), Lt. Lance Diede (Keizer PD), Sgt. Charlie Hall (Mt. Angel PD), Sgt Todd Jochum (Sutherlin PD), Josh Nieminen and Andrew Aguinaga (Grants Pass PD) & Kevin Campbell (OACP Executive Director). OSSA Members include Kyle Malizia (Clackamas County SO), Greg Kisor (Washington County SO), Zach Steward & Mike Sundberg (Deschutes County SO), Pete Hughes (Hood River County SO), Dave Nelson (CIS), Elmer Dickens (OSSA Legal Counsel) & Jason Myers (OSSA Executive Director)

As resources and procedures are finalized, we will make them available to OACP Member agencies. We are also continuing to seek answers to process and legal questions that were submitted during our last statewide OACP zoom meeting on BM 114. We will make answers available once we receive them.

#### **Court Cases/Legal Challenges (Additional Details):**

As you know, the OACP filed a “declaration” with the court on December 5th expressing concerns about implementing the permit to purchase program created by Ballot Measure 114. The declaration was made as part of one of the three legal challenges filed against the measure over the past few weeks. We made it clear both in the declaration and our statewide press statement that our focus was exclusively on our inability to implement the permit to purchase process by the December 8th effective date due to the tight timeline, inadequate staffing and resources and the need for clarity necessary for law enforcement to move forward without legal liability. We also made it clear that the questions about the constitutionality of the measure is exclusively the jurisdiction of the courts. In our press statement, we communicated the following:

*"We, and our 125 member agencies, are committed to following the rule of law and are doing everything we can to meet the requirements set forth in this measure," the statement reads in part. "It is a challenge. BM 114 is scheduled to take effect on December 8, yet the infrastructure, processes and resources necessary to make that happen do not exist."*

Following the status of the various court cases that are filed and in play and their impact on your agency implementation efforts can be confusing. Here is what we know:

- **Harney County Judge blocks BM 114 from going into effect:** On Tuesday, Harney County Circuit Court Judge Robert Raschio issued a temporary restraining order, blocking Measure 114 from going into effect. Less than 24 hours later, the Oregon Department of Justice filed an appeal to the state Supreme Court saying Raschio committed fundamental errors and requesting an immediate review of his decision. The Supreme Court allowed Judge Raschio's restraining order to stand and a hearing before **Judge Rashio** is scheduled for December 13th (Today). It is important to note that the Harney County restraining order blocks the entire measure from going into effect. If Judge Rashio decides to keep the restraining order in place, I expect the Oregon DOJ to appeal to the Oregon Supreme Court where they may take action including but not limited to upholding the restraining order, overturning the order or other actions within their authority.
- **Federal Judge denies Oregon Firearms Federation request to declare BM 114 unconstitutional:** On December 8th, wrote in her decision to reject the Oregon Firearms Foundation complaint; "Plaintiffs have failed to demonstrate that they will suffer immediate and irreparable harm if this Court does not block Measure 114 from taking effect on December 8, 2022." Judge Immergut did agree to postpone the permit requirement portion of the ballot measure. Judge Immergut stated: "In light of the difficulty the State has conceded in terms of implementation of the permitting provisions at this stage, implementation of those permitting provisions is stayed for thirty days." **IMPORTANT: As a result, the new effective date for the permit to purchase process part of BM 114 is January 6th, but the Oregon Department of Justice and plaintiffs from all the cases filed to challenge BM 114 are expected to request an additional extension.** Details of a extension request are not final and Judge Immergut has the final say.
- **Federal Judge Schedules National Shooting Sports Foundation Case for Hearing on January 6th:** The complaint filed on December 1st, **KATERINA B. EYRE, TIM FREEMAN, MAZAMA SPORTING GOODS, NATIONAL SHOOTING SPORTS FOUNDATION, and OREGON STATE SHOOTING v. ELLEN F. ROSENBLUM, Attorney General of Oregon, and TERRI DAVIE, Superintendent of the Oregon State Police**, was also filed in the United States District Court for the District of Oregon by Virginia based Clement & Murphy, PLLC and Oregon based JurisLaw, LLP. The case is scheduled for a hearing in front of U.S. District Court Judge Immergut on January 6th. If the judge denies the claim, the case will be appealed to the 9th Circuit Court of Appeals. OACP and OSSA submitted our declarations in connection with this case. Click on the following to read the complaint in its entirety, the declaration submitted by Kevin L Campbell on behalf of the Oregon Association Chiefs of Police and the OACP Press Statement on BM 114 and the

declaration:

- [COMPLAINT - National Shooting Sports Foundation v Ellen F. Rosenblum \(Click Here\)](#)
- [DECLARATION - Submitted by Kevin Campbell for OACP \(Click Here\)](#)
- [OACP PRESS STATEMENT - Ballot Measure 114 & Declaration \(Click Here\)](#)

#### **OSP Launches BM 114 Permit to Purchase Website w/Standardized Application & FAQ:**

This past week, the Oregon State Police added a BM 114 Permit to Purchase link on their website designed to provide the public with information regarding the ballot measure, timelines and updates regarding implementation. The webpage includes the statewide permit to purchase process and standardized application, answers to frequently asked questions and rules and firearms purchase requirements. Click on the following link to access the webpage:

- [OSP Ballot Measure 114 Webpage \(Click Here\)](#)
- [Permit to Purchase Application](#)

As a part of the website, OSP identifies the anticipated steps in the Permit to Purchase Application Process include the following:

1. The applicant is responsible for completing a certified firearm safety course and obtaining proof of completion.
2. The applicant submits a completed Permit to Purchase application and proof of completion of an approved safety course to a Permit Agent which is defined as a local Police Department or Sheriff's Office.
3. The Permit Agent will review documents and if applicable, they will collect the required fees, take a photograph of the applicant, and obtain fingerprints.
4. The Permit Agent will do an initial review of the application packet for possible disqualifiers, before submitting the packet to the Oregon State Police for a national and state background check.
5. The application and fingerprints are submitted to Oregon State Police for a comprehensive background check.
6. Oregon State Police will run the background check and respond to the Permit Agent with a qualified or disqualified after all research is complete.
7. The Permit Agent makes the final decision to issue a Permit to Purchase or deny the applicant which must be completed within 30 days of the response from the Oregon State Police's background check.

#### **OSP Issues Temporary Rules Necessary to Implement BM 114 Permit to Purchase Process:**

On December 8th, the Oregon State Police issued Temporary Rules needed to implement the permit to purchase portion of BM 114. The ballot measure authorized OSP to issue the rules as a part of the implementation process and is necessitated by the insufficient time to adopt permanent rules by the effective date. By Oregon statute, a temporary rule is effective for a 180-day period. At the end of the 180-day period, a permanent rule can be adopted after a process that includes consultation with a Rules Advisory Committee, public hearings and public comment. The content of the rule includes the following 6 key provisions:

1. OSP shall determine the format and shall assign the unique application and permit number to each Oregon State Permit-to-Purchase application and permit that shall be used by all permit agents for Permit-to-Purchase applications. The Permit-to-Purchase application is hereby incorporated by reference.
2. When submitting Permit-to-Purchase application packets to OSP for background checks, permit agents shall use either"
  - ~ US Mail,
  - ~ hand delivery by the permit agent, or
  - ~ delivery by courier.The packet must include both the paper fingerprint cards and the Permit-to-Purchase application form.
3. OSP shall create the Permit-to-Purchase format that shall be issued by all permit agents. Permit agents shall print the issued State of Oregon Permit-to-Purchase permit form in quadruplicate (four copies). The State of Oregon Permit-to-Purchase permit form is hereby incorporated by reference.
4. Permit agents may designate permit agent responsibilities only to other Oregon law enforcement agencies and only as follows (NOTE: a draft agreement is being created for use by local agencies and sheriffs association):
  - ~ Local police chiefs may designate permit agent responsibilities to other local police chiefs or the Oregon Sheriff having jurisdiction over the residence of a person making an application for a permit-to purchase; or
  - ~ An Oregon Sheriff may designate permit agent responsibilities to a local police chief having jurisdiction over the residence of a person making an application for a permit-to-purchase.
5. Designations conducted under subsection (4) of this rule shall be made using an Intergovernmental Agreement or other similar agreement
6. Only law enforcement agencies working in the permit agent role may initiate the fingerprint-based background check for Oregon and the FBI. A non-law enforcement agency designee may not initiate the fingerprint-based background check.

**Glossary of Key Resource Documents:**

[Ballot Measure 114 - FULL TEXT \(Click Here\)](#)

[COMPLAINT - National Shooting Sports Foundation v Ellen F. Rosenblum \(Click Here\)](#)

[DECLARATION - Submitted by Kevin Campbell for OACP \(Click Here\)](#)

[OACP PRESS STATEMENT - Ballot Measure 114 & Declaration \(Click Here\)](#)

[OSP Ballot Measure 114 Webpage \(Click Here\)](#)

[Permit to Purchase Application](#)

[OSP Temporary Rules](#)