

Enrolled House Bill 2013

Sponsored by Representative WILLIAMSON, Senators BURDICK, PROZANSKI; Representatives ALONSO LEON, HELT, KENY-GUYER, PRUSAK, SANCHEZ, SOLLMAN, WILDE, WILLIAMS, Senators FAGAN, MANNING JR, TAYLOR

CHAPTER

AN ACT

Relating to court orders; creating new provisions; amending ORS 166.255; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 166.255, as amended by section 1, chapter 5, Oregon Laws 2018, is amended to read:

166.255. (1) It is unlawful for a person to knowingly possess a firearm or ammunition if:

(a) The person is the subject of a court order that:

(A)(i) Was issued or continued after a hearing for which the person had actual notice and during the course of which the person had an opportunity to be heard; **or**

(ii) **Was issued, continued or remains in effect, by order or operation of law, after the person received notice of the opportunity to request a hearing in which to be heard on the order, and either requested a hearing but did not attend the hearing or withdrew the request before the hearing occurred, or did not request a hearing during the time period in which the opportunity was available;**

(B) Restrains the person from stalking, intimidating, molesting or menacing a family or household member of the person, a child of a family or household member of the person or a child of the person; and

(C) Includes a finding that the person represents a credible threat to the physical safety of a family or household member of the person, a child of a family or household member of the person or a child of the person;

(b) The person has been convicted of a qualifying misdemeanor and, at the time of the offense, the person was:

(A) A family or household member of the victim of the offense; or

(B) A parent or guardian of the victim of the offense; or

(c) The person has been convicted of stalking under ORS 163.732.

(2) The prohibition described in subsection (1)(a) of this section does not apply with respect to the transportation, shipment, receipt, possession or importation of any firearm or ammunition imported for, sold or shipped to or issued for the use of the United States Government or any federal department or agency, or any state or department, agency or political subdivision of a state.

(3) As used in this section:

(a) "Convicted" means:

(A) The person was represented by counsel or knowingly and intelligently waived the right to counsel;

(B) The case was tried to a jury, if the crime was one for which the person was entitled to a jury trial, or the person knowingly and intelligently waived the person's right to a jury trial; and

(C) The conviction has not been set aside or expunged, and the person has not been pardoned.

(b) "Deadly weapon" has the meaning given that term in ORS 161.015.

(c) "Family or household member" has the meaning given that term in ORS 135.230.

(d) "Possess" has the meaning given that term in ORS 161.015.

(e) "Qualifying misdemeanor" means a misdemeanor that has, as an element of the offense, the use or attempted use of physical force or the threatened use of a deadly weapon.

SECTION 2. Section 3 of this 2019 Act is added to and made a part of ORS 166.250 to 166.270.

SECTION 3. (1) When a person is convicted of an offense described in ORS 166.255 (1)(b) or (c), the court shall, at the time of conviction:

(a) Indicate in the judgment of conviction that the person is prohibited from possessing firearms and ammunition under ORS 166.250 and 166.255;

(b) Inform the person, orally and in writing, that the person is prohibited from possessing firearms and ammunition;

(c) Order in writing that the person transfer all firearms and ammunition in the person's possession in accordance with subsection (2) of this section; and

(d) Order that the person file a declaration as described in subsection (4) of this section.

(2)(a) Within 24 hours of the court's order under subsection (1) of this section, the person shall transfer all firearms and ammunition in the person's possession to a local law enforcement agency, to a gun dealer as defined in ORS 166.412 or to a third party who does not reside with the person, and shall obtain a proof of transfer under paragraph (b) of this subsection. A transfer to a third party under this subsection must be in accordance with ORS 166.435, except that the criminal background check exceptions in ORS 166.435 (4) do not apply.

(b) A law enforcement agency, gun dealer or third party receiving a firearm or ammunition pursuant to this subsection shall issue to the person a written proof of transfer. The proof of transfer must include the person's name, the date of transfer and the serial number, make and model of each transferred firearm. A proof of transfer issued by a third party must also include the unique approval number from the Department of State Police from the criminal background check conducted under ORS 166.435.

(c) A person transferring a firearm or ammunition to a third party under this subsection shall additionally obtain from the third party a declaration under penalty of perjury confirming receipt of the firearm or ammunition and attesting that:

(A) The third party understands that the person is prohibited from possessing firearms and ammunition; and

(B) The third party is subject to criminal penalties if the third party allows the person access to the firearm or ammunition during the prohibition.

(3)(a) A law enforcement agency may accept a firearm or ammunition transferred under this section.

(b) A gun dealer may purchase or may accept for storage a firearm or ammunition transferred under this section.

(4)(a) Within two judicial days of the court's order under subsection (1) of this section, the person shall file with the court a declaration under penalty of perjury attesting that:

(A) All firearms and ammunition in the person's possession have been transferred under subsection (2) of this section to:

(i) A law enforcement agency;

(ii) A gun dealer; or

(iii) A third party;

(B) The person was not in possession of any firearms at the time of the court's order and continues to not possess any firearms; or

(C) The person is asserting the person's constitutional right against self-incrimination.

(b) The person shall file with the declaration a copy of the proof of transfer, if applicable, and a copy of the third party declaration, if applicable.

(5) The person shall concurrently file with the district attorney copies of the declaration, proof of transfer and third party declaration filed with the court under subsection (4) of this section.

(6) A person in possession of a firearm or ammunition in violation of ORS 166.255 (1)(b) or (c) may not be prosecuted under ORS 166.250 if:

(a) The person is in possession of a court order described in subsection (1) of this section issued within the previous 24 hours;

(b) The firearm is unloaded; and

(c) The person is transporting the firearm or ammunition to a law enforcement agency, gun dealer or third party for transfer in accordance with subsection (2) of this section.

(7) If the person does not file the declaration required under subsection (4) of this section, the district attorney may commence contempt proceedings under ORS 33.015 to 33.155.

SECTION 4. (1)(a) When a respondent becomes subject to an order described in ORS 166.255 (1)(a) prohibiting the respondent from possessing firearms or ammunition, the court shall:

(A) Indicate in the order that the respondent is prohibited from possessing firearms and ammunition under ORS 166.250 and 166.255 while the order is in effect.

(B) Ensure that the respondent is subject to an additional order:

(i) Requiring the respondent to transfer all firearms and ammunition in the respondent's possession in accordance with subsection (2) of this section; and

(ii) Requiring the respondent to file a declaration as described in subsection (4) of this section.

(b) If the respondent becomes subject to the order while the respondent is present in court, the court shall:

(A) Inform the respondent, orally and in writing, that the respondent is prohibited from possessing firearms and ammunition;

(B) Order in writing that the respondent transfer all firearms and ammunition in the respondent's possession in accordance with subsection (2) of this section; and

(C) Order that the respondent file a declaration as described in subsection (4) of this section.

(2)(a) Within 24 hours of becoming subject to the court order under subsection (1)(a)(B) of this section or receiving the court order under subsection (1)(b)(B) of this section, the respondent shall transfer all firearms and ammunition in the respondent's possession to a local law enforcement agency, to a gun dealer as defined in ORS 166.412 or to a third party who does not reside with the respondent, and shall obtain a proof of transfer under paragraph (b) of this subsection. A transfer to a third party under this subsection must be in accordance with ORS 166.435, except that the criminal background check exceptions in ORS 166.435 (4) do not apply.

(b) A law enforcement agency, gun dealer or third party receiving a firearm or ammunition pursuant to this subsection shall issue to the respondent a written proof of transfer. The proof of transfer must include the respondent's name, the date of transfer and the serial number, make and model of each transferred firearm. A proof of transfer issued by a third party must also include the unique approval number from the Department of State Police from the criminal background check conducted under ORS 166.435.

(c) A respondent transferring a firearm or ammunition to a third party under this subsection shall additionally obtain from the third party a declaration under penalty of perjury confirming receipt of the firearm or ammunition and attesting that:

(A) The third party understands that the respondent is prohibited from possessing firearms and ammunition; and

(B) The third party is subject to criminal penalties if the third party allows the respondent access to the firearm or ammunition during the prohibition.

(3)(a) A law enforcement agency may accept a firearm or ammunition transferred under this section.

(b) A gun dealer may purchase or may accept for storage a firearm or ammunition transferred under this section.

(4)(a) Within two judicial days of becoming subject to the court order under subsection (1)(a)(B) of this section or receiving the court order under subsection (1)(b)(B) of this section, the respondent shall file with the court a declaration under penalty of perjury attesting that:

(A) All firearms and ammunition in the respondent's possession have been transferred under subsection (2) of this section to:

(i) A law enforcement agency;

(ii) A gun dealer; or

(iii) A third party;

(B) The respondent was not in possession of any firearms at the time of the court's order and continues to not possess any firearms; or

(C) The respondent is asserting the respondent's constitutional right against self-incrimination.

(b) The respondent shall file with the declaration a copy of the proof of transfer, if applicable, and a copy of the third party declaration, if applicable.

(5) The respondent shall concurrently file with the district attorney copies of the declaration, proof of transfer and third party declaration filed with the court under subsection (4) of this section.

(6) A respondent in possession of a firearm or ammunition in violation of ORS 166.255 (1)(a) may not be prosecuted under ORS 166.250 if:

(a) The respondent is in possession of a court order described in subsection (1)(a)(B) or (1)(b)(B) of this section that went into effect or was issued within the previous 24 hours;

(b) The firearm is unloaded; and

(c) The respondent is transporting the firearm or ammunition to a law enforcement agency, gun dealer or third party for transfer in accordance with subsection (2) of this section.

(7) Upon the expiration or termination of the order described in ORS 166.255 (1)(a), at the request of the respondent:

(a) A law enforcement agency shall return any stored firearms and ammunition to the respondent in accordance with section 5 of this 2019 Act.

(b) A gun dealer shall return any stored firearms and ammunition to the respondent after performing a criminal background check as defined in ORS 166.432 to confirm that the respondent is not prohibited from possessing a firearm or ammunition under state or federal law.

(c) A third party shall return any stored firearms and ammunition to the respondent only after requesting a criminal background check in accordance with ORS 166.435, except that the criminal background check exceptions in ORS 166.435 (4) do not apply.

(8) If the respondent does not file a declaration described in subsection (4) of this section, the district attorney may commence contempt proceedings under ORS 33.015 to 33.155.

SECTION 5. (1) Upon receiving a request to return a firearm or ammunition relinquished to a law enforcement agency pursuant to section 4 of this 2019 Act, the law enforcement agency shall:

(a) Notify the Department of Justice of the return request for the purposes of notifying the petitioner of the order; and

- (b) Hold the firearm or ammunition for 72 hours after receiving the request.
- (2) Prior to returning the firearm or ammunition, the law enforcement agency shall:
 - (a) Confirm that the person to whom the law enforcement agency will return the firearm or ammunition is the lawful owner of the firearm or ammunition, or a person with a possessory right to the firearm or ammunition; and
 - (b) Perform a criminal background check as defined in ORS 166.432 to confirm that the person is not prohibited from possessing a firearm or ammunition under state or federal law.

SECTION 6. Sections 2, 3, 4 and 5 of this 2019 Act become operative on January 1, 2020.

SECTION 7. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.

Passed by House April 23, 2019

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 Timothy G. Sekerak, Chief Clerk of House

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 Tina Kotek, Speaker of House

Passed by Senate May 23, 2019

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 Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2019

Approved:

.....M,....., 2019

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 Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2019

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 Bev Clarno, Secretary of State