

House Bill 2013

Sponsored by Representative WILLIAMSON

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that person subject to certain court protective orders is prohibited from possessing firearms if person had opportunity to be heard on order and did not request hearing or withdrew request before hearing occurred. Punishes violation of prohibition by maximum of 364 days' imprisonment, \$6,250 fine, or both.

Requires court to order relinquishment of firearms when person is convicted of certain domestic violence offenses or subject to certain court orders. Requires person to transfer firearms within 24 hours of court order. Requires court to notify district attorney and Department of State Police if person does not file affidavit or declaration concerning possession of firearms.

Requires law enforcement agency that takes custody of firearms pursuant to relinquishment order to notify Department of Justice and perform criminal background check prior to law enforcement agency's return of firearms.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to court orders; creating new provisions; amending ORS 166.255; and declaring an emer-
3 gency.

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

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

7 166.255. (1) It is unlawful for a person to knowingly possess a firearm or ammunition if:

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

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

11 **(ii) Remains in effect after the person received notice of the opportunity to request a**
12 **hearing in which to be heard on the order, and did not request a hearing during the time**
13 **period in which the opportunity was available or withdrew the request before the hearing**
14 **occurred;**

15 (B) Restrains the person from stalking, intimidating, molesting or menacing a family or house-
16 hold member of the person, a child of a family or household member of the person or a child of the
17 person; and

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

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

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

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

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

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

5 (3) As used in this section:

6 (a) “Convicted” means:

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

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

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

12 (b) “Deadly weapon” has the meaning given that term in ORS 161.015.

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

14 (d) “Possess” has the meaning given that term in ORS 161.015.

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

17 **SECTION 2. Section 3 of this 2019 Act is added to and made a part of ORS 166.250 to**
 18 **166.270.**

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

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

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

25 (c) **Order in writing that the person transfer all firearms in the person’s possession in**
 26 **accordance with subsection (2) of this section.**

27 (2)(a) **Within 24 hours of the court’s order under subsection (1) of this section, the person**
 28 **shall transfer all firearms in the person’s possession to a local law enforcement agency, to**
 29 **a gun dealer as defined in ORS 166.412 or to a third party in accordance with ORS 166.435,**
 30 **and shall obtain a proof of transfer under paragraph (b) of this subsection.**

31 (b) **A law enforcement agency, gun dealer or third party receiving a firearm pursuant to**
 32 **this section shall issue to the person a written proof of transfer. The proof of transfer must**
 33 **include the person’s name, the date of transfer and the serial number, make and model of**
 34 **each transferred firearm.**

35 (c) **In addition to issuing the proof of transfer described in paragraph (b) of this sub-**
 36 **section, a third party receiving a firearm under this subsection shall file with the court a**
 37 **declaration confirming receipt of the firearm and stating that:**

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

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

42 (3)(a) **A law enforcement agency may accept any firearm transferred under this section.**

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

45 (4) **Within 48 hours, excluding Saturdays, Sundays and holidays, of the court’s order un-**

1 **der subsection (1)(c) of this section, the person may file with the court:**

2 **(a) An affidavit or declaration, accompanied by a copy of the proof of transfer, attesting**
 3 **that all firearms in the person’s possession at the time of sentencing have been transferred**
 4 **under subsection (2) of this section and that the person no longer is in possession of any**
 5 **firearms; or**

6 **(b) An affidavit or declaration attesting that the person was not in possession of any**
 7 **firearms at the time of the court’s order and continues to not possess any firearms.**

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

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

12 **(b) The firearm is unloaded; and**

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

15 **(6)(a) If the person does not file an affidavit or declaration described in subsection (4) of**
 16 **this section, the court shall notify the district attorney and the Department of State Police.**
 17 **Upon receiving a notification from the court under this subsection, the department shall**
 18 **determine whether, based on all available information, probable cause exists that the person**
 19 **is unlawfully in possession of a firearm, and may accordingly apply for a search warrant**
 20 **under ORS 133.545.**

21 **(b) If the court finds that probable cause exists, the court may issue a warrant pursuant**
 22 **to ORS 133.525 to 133.703 for the search for and seizure of firearms in the possession of the**
 23 **person.**

24 **SECTION 4. (1)(a) When a respondent becomes subject to an order described in ORS**
 25 **166.255 (1)(a) prohibiting the respondent from possessing firearms, the court shall:**

26 **(A) Indicate in the order that the respondent is prohibited from possessing firearms un-**
 27 **der ORS 166.250 and 166.255 while the order is in effect.**

28 **(B) Ensure that the respondent is subject to an additional order requiring the respondent**
 29 **to transfer all firearms in the respondent’s possession in accordance with subsection (2) of**
 30 **this section.**

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

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

35 **(B) Order in writing that the respondent transfer all firearms in the respondent’s pos-**
 36 **session in accordance with subsection (2) of this section.**

37 **(2)(a) Within 24 hours of becoming subject to the court order under subsection (1)(a)(B)**
 38 **of this section or receiving the court order under subsection (1)(b)(B) of this section, the**
 39 **respondent shall transfer all firearms in the respondent’s possession to a local law enforce-**
 40 **ment agency, to a gun dealer as defined in ORS 166.412 or to a third party in accordance with**
 41 **ORS 166.435, and shall obtain a proof of transfer under paragraph (b) of this subsection.**

42 **(b) A law enforcement agency, gun dealer or third party receiving a firearm pursuant to**
 43 **this section shall issue to the respondent a written proof of transfer. The proof of transfer**
 44 **must include the respondent’s name, the date of transfer and the serial number, make and**
 45 **model of each transferred firearm.**

1 (c) In addition to issuing the proof of transfer described in paragraph (b) of this sub-
 2 section, a third party receiving a firearm under this subsection shall file with the court a
 3 declaration confirming receipt of the firearm and stating that:

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

6 (B) The third party is subject to criminal penalties if the third party allows the re-
 7 spondent access to the firearm during the prohibition.

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

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

11 (4) Within 48 hours, excluding Saturdays, Sundays and holidays, of becoming subject to
 12 the court order under subsection (1)(a)(B) of this section or receiving the court order under
 13 subsection (1)(b)(B) of this section, the respondent may file with the court:

14 (a) An affidavit or declaration, accompanied by a copy of the proof of transfer, attesting
 15 that all firearms in the respondent's possession at the time of the court order have been
 16 transferred under subsection (2) of this section and that the respondent no longer is in pos-
 17 session of any firearms; or

18 (b) An affidavit or declaration attesting that the respondent was not in possession of any
 19 firearms at the time of the court order and continues to not possess any firearms.

20 (5) A respondent in possession of a firearm in violation of ORS 166.255 (1)(a) may not be
 21 prosecuted under ORS 166.250 if:

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

24 (b) The firearm is unloaded; and

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

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

29 (a) A law enforcement agency shall return any stored firearms to the respondent in ac-
 30 cordance with section 5 of this 2019 Act.

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

34 (c) A third party shall return any stored firearms to the respondent in accordance with
 35 ORS 166.435.

36 (7)(a) If the respondent does not file an affidavit or declaration described in subsection
 37 (4) of this section, the court shall notify the district attorney and the Department of State
 38 Police. Upon receiving a notification from the court under this subsection, the department
 39 shall determine whether, based on all available information, probable cause exists that the
 40 respondent is unlawfully in possession of a firearm, and may accordingly apply for a search
 41 warrant under ORS 133.545.

42 (b) If the court finds that probable cause exists, the court may issue a warrant pursuant
 43 to ORS 133.525 to 133.703 for the search for and seizure of firearms in the possession of the
 44 respondent.

45 **SECTION 5.** (1) Upon receiving a request to return a firearm relinquished to a law

1 enforcement agency pursuant to section 4 of this 2019 Act, the law enforcement agency shall:

2 (a) Notify the Department of Justice of the return request for the purposes of victim
3 notification; and

4 (b) Hold the firearm for 72 hours after receiving the request.

5 (2) Prior to returning the firearm, the law enforcement agency shall:

6 (a) Confirm that the person to whom the law enforcement agency will return the firearm
7 is the lawful owner of the firearm or a person with a possessory right to the firearm; and

8 (b) Perform a criminal background check as defined in ORS 166.432 to confirm that the
9 person is not prohibited from possessing a firearm under state or federal law.

10 **SECTION 6.** This 2019 Act being necessary for the immediate preservation of the public
11 peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect
12 on its passage.

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