

## SENATE AMENDMENTS TO SENATE BILL 1546

By COMMITTEE ON JUDICIARY

February 13

1 On page 1 of the printed bill, line 2, after “131.925,” insert “166.257, 181A.485,”.

2 In line 3, after the semicolon delete the rest of the line and insert “repealing ORS 181A.287; and  
3 declaring an emergency.”.

4 Delete lines 5 through 19 and delete page 2.

5 On page 3, delete lines 1 through 38 and insert:

### “FIREARM PROHIBITION PROCEDURES

6  
7  
8  
9 “**SECTION 1.** Upon charging a defendant with an offense described in ORS 166.255 (1)(b),  
10 the district attorney shall allege in the charging instrument one of the following relation-  
11 ships existing between the defendant and the person alleged to be the victim of the offense,  
12 at the time of the offense:

13 “(1) The defendant is the current or former spouse of the victim;

14 “(2) The defendant is the parent or guardian of the victim;

15 “(3) The defendant shares a minor child in common with the victim;

16 “(4) The defendant is cohabiting with or has cohabited with the victim;

17 “(5) The defendant and the victim are adults related by blood or marriage; or

18 “(6) The defendant and the victim have been involved in a sexually intimate relationship.

19 “**SECTION 2.** (1)(a) When a defendant is charged with an offense described in ORS 166.255  
20 (1)(b), the district attorney shall, unless waived by the defendant or for good cause shown,  
21 at arraignment or no later than 45 days prior to trial or entry of a guilty or no contest plea,  
22 serve on the defendant and file with the court a notice stating that, due to the nature of the  
23 relationship between the defendant and the alleged victim, the defendant will be prohibited  
24 from possessing firearms and ammunition if convicted of the offense. The notice must spec-  
25 ify a type of relationship listed in section 1 of this 2020 Act.

26 “(b) When a defendant is charged with stalking under ORS 163.732, the district attorney  
27 shall, unless waived by the defendant or for good cause shown, at arraignment or no later  
28 than 45 days prior to trial or entry of a guilty or no contest plea, serve on the defendant and  
29 file with the court a notice stating that, due to the nature of the offense, the defendant will  
30 be prohibited from possessing firearms and ammunition if convicted of the offense.

31 “(2) The Department of Justice, in consultation with the State Court Administrator, shall  
32 develop a form to be used to provide a notice described in subsection (1) of this section. The  
33 form must:

34 “(a) Allow the district attorney, if applicable, to specify the relationship between the de-  
35 fendant and the alleged victim, and whether the relationship between the defendant and the

1 alleged victim would cause the defendant to be prohibited from possessing firearms and am-  
2 munition under Oregon law or under both Oregon and federal law; and

3 “(b) Advise the defendant that the failure to allege any specified relationship between the  
4 defendant and the victim, or the absence of a court determination or order under section 3  
5 of this 2020 Act, does not affect the lawfulness of the defendant’s possession of firearms or  
6 ammunition under ORS 166.250 or 166.255, other Oregon law or federal law.

7 “SECTION 3. (1) If a defendant has been charged with an offense described in ORS 166.255  
8 (1)(b) on a charging instrument alleging that the relationship existing between the defendant  
9 and the person alleged to be the victim of the offense, at the time of the offense, is a type  
10 listed in section 1 of this 2020 Act, the specified relationship may be established as follows:

11 “(a) At any time prior to entry of a plea of guilty or no contest, the defendant may  
12 stipulate, orally on the record or in writing, to the nature of the relationship. Upon the  
13 stipulation, the court shall find that the relationship has been established and shall proceed  
14 under subsection (2) of this section.

15 “(b) If the defendant enters a plea of guilty or no contest to the offense described in ORS  
16 166.255 (1)(b), but does not stipulate or admit to the nature of the relationship between the  
17 defendant and the victim, the district attorney has the burden of proving the nature of the  
18 relationship beyond a reasonable doubt. If the court finds that the burden of proof has been  
19 met, the court shall proceed under subsection (2) of this section.

20 “(c) If the defendant proceeds to trial on the offense described in ORS 166.255 (1)(b), the  
21 district attorney has the burden of proving the nature of the relationship beyond a reason-  
22 able doubt. The fact finder shall return a special verdict of ‘yes’ or ‘no’ on the issue of  
23 whether the nature of the relationship between the defendant and victim is as alleged. If the  
24 fact finder returns a verdict of ‘yes,’ the court shall proceed under subsection (2) of this  
25 section.

26 “(2) If the nature of the relationship between the defendant and the victim has been es-  
27 tablished under subsection (1) of this section, upon conviction of the offense described in  
28 ORS 166.255 (1)(b), the court shall:

29 “(a) Make a written determination concerning the nature of the relationship;

30 “(b) Enter an order prohibiting the defendant from possessing firearms and ammunition;  
31 and

32 “(c) Inform the defendant that the Department of State Police and the sheriff will be  
33 notified concerning the order for purposes of entry into state and federal databases.

34 “(3)(a) The court shall notify the Department of State Police and the county sheriff when  
35 the court enters an order described in subsection (2) of this section.

36 “(b) Upon receipt of the notification described in paragraph (a) of this subsection:

37 “(A) The Department of State Police shall enter the information into any appropriate  
38 state or national databases; and

39 “(B) The sheriff shall enter the information into any appropriate state or national data-  
40 bases.

41 “(4)(a) Upon conviction of stalking under ORS 163.732, the court shall:

42 “(A) Enter an order prohibiting the defendant from possessing firearms and ammunition;  
43 and

44 “(B) Inform the defendant that the Department of State Police and the sheriff will be  
45 notified concerning the order for purposes of entry into state and federal databases.

1       “(b) The court shall notify the Department of State Police and the county sheriff when  
2 the court enters an order described in paragraph (a) of this subsection.

3       “(c) Upon receipt of the notification described in paragraph (b) of this subsection:

4       “(A) The Department of State Police shall enter the information into any appropriate  
5 state or national databases; and

6       “(B) The sheriff shall enter the information into any appropriate state or national data-  
7 bases.

8       “(5) The State Court Administrator shall develop a form to be used for the determination  
9 and order described in subsection (2) of this section and the order described in subsection  
10 (4)(a) of this section. The form must allow the court to designate the crime of conviction,  
11 specify the relationship between the defendant and the victim, if applicable, and specify  
12 whether the conviction or relationship causes the defendant to be prohibited from possessing  
13 firearms and ammunition under Oregon law or under both Oregon and federal law.

14       “(6) The absence of a court determination or order under this section does not affect the  
15 lawfulness of the defendant’s possession of firearms or ammunition under ORS 166.250 or  
16 166.255, other Oregon law or federal law.

17       “SECTION 4. The Department of State Police, when entering information received under  
18 section 3 of this 2020 Act into a state or national database, shall ensure, and shall develop  
19 a process if necessary to ensure, that the information specifies whether the defendant is  
20 prohibited from possessing firearms and ammunition under Oregon law or under both Oregon  
21 and federal law.

22       “SECTION 4a. ORS 166.257 is amended to read:

23       “166.257. (1) Upon receiving a request to return a firearm or ammunition relinquished to a law  
24 enforcement agency pursuant to ORS 166.256, the law enforcement agency shall:

25       “(a) Notify the *[Department of Justice of the return request for the purposes of notifying the]*  
26 petitioner of the order **of the return request**; and

27       “(b) Hold the firearm or ammunition for 72 hours after receiving the request.

28       “(2) Prior to returning the firearm or ammunition, the law enforcement agency shall:

29       “(a) Confirm that the person to whom the law enforcement agency will return the firearm or  
30 ammunition is the lawful owner of the firearm or ammunition, or a person with a possessory right  
31 to the firearm or ammunition; and

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

34       On page 7, line 1, after “waive” delete the rest of the line.

35       In line 2, delete “hearings” and insert “a review hearing”.

36       In line 9, delete “to” and insert “shall”.

37       In line 29, delete “419C.319” and insert “419C.349”.

38       On page 8, line 45, delete “137.712 (1)” and insert “137.707 (4)”.

39       On page 9, delete lines 15 through 20 and insert:

40  
41                               **“LAW ENFORCEMENT PSYCHOLOGICAL SCREENINGS**

42  
43       “SECTION 13. ORS 181A.485 is amended to read:

44       “181A.485. (1) As used in this section:

45       “(a) ‘Law enforcement agency’ means a public body, as defined in ORS 174.109, that employs law

1 enforcement officers to enforce criminal laws.

2 “(b) ‘Law enforcement officer’ means a police officer, reserve officer or certified reserve officer,  
3 as those terms are defined in ORS 181A.355.

4 “(2) A law enforcement agency may not employ a person as a law enforcement officer unless the  
5 person has completed a psychological screening to determine the person’s fitness to serve as a law  
6 enforcement officer.

7 “(3) The psychological screening required by subsection (2) of this section must be conducted  
8 by a licensed mental health professional who meets the qualifications and training requirements es-  
9 tablished by the Board on Public Safety Standards and Training by rule.

10 “(4) **Notwithstanding subsection (2) of this section, a law enforcement agency may employ  
11 a person as a law enforcement officer who has not completed the psychological screening  
12 required by this section if:**

13 “(a) **The person was previously employed within the same law enforcement agency as a  
14 corrections officer as defined in ORS 181A.355; and**

15 “(b) **Prior to or as a condition of the previous employment, the person completed a psy-  
16 chological screening conducted by a licensed mental health professional with qualifications  
17 and training similar to a professional conducting a screening under this section.**

18 “[~~(4)~~ (5) The board shall establish by rule:

19 “(a) The qualifications and training necessary for a licensed mental health professional to con-  
20 duct a psychological screening under this section; and

21 “(b) Standards and procedures for conducting a psychological screening under this section.

22  
23 **“MISCELLANEOUS**

24  
25 “**SECTION 14. The unit captions used in this 2020 Act are provided only for the conven-  
26 ience of the reader and do not become part of the statutory law of this state or express any  
27 legislative intent in the enactment of this 2020 Act.**

28 “**SECTION 15. (1) Sections 1 to 4 of this 2020 Act become operative on January 1, 2021.**

29 “**(2) The repeal of ORS 181A.287 by section 5 of this 2020 Act becomes operative on Jan-  
30 uary 1, 2021.**

31 “**(3) The amendments to ORS 131.920, 131.925, 166.257, 181A.485 and 801.208 by sections 4a,  
32 6 to 8 and 13 of this 2020 Act become operative on January 1, 2021.**

33  
34 **“EMERGENCY CLAUSE**

35  
36 “**SECTION 16. This 2020 Act being necessary for the immediate preservation of the public  
37 peace, health and safety, an emergency is declared to exist, and this 2020 Act takes effect  
38 on its passage.”.**