

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
SENATE BILL 1546**

1 On page 1 of the printed bill, line 2, after “131.925,” insert “166.257,”.
2 Delete lines 5 through 19 and delete page 2 and insert:

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“FIREARM PROHIBITION PROCEDURES

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**“SECTION 1. Upon charging a defendant with a an offense described
in ORS 166.255 (1)(b), the district attorney shall allege in the charging
instrument one of the following relationships existing between the
defendant and the person alleged to be the victim of the offense, at the
time of the offense:**

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

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

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

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

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

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

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**“SECTION 2. (1)(a) When a defendant is charged with an offense
described in ORS 166.255 (1)(b) the district attorney shall, unless**

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1 waived by the defendant or for good cause shown, at arraignment or
2 no later than 45 days prior to trial or entry of a guilty or no contest
3 plea, serve on the defendant and file with the court a notice stating
4 that, due to the nature of the relationship between the defendant and
5 the alleged victim, the defendant will be prohibited from possessing
6 firearms and ammunition if convicted of the offense. The notice must
7 specify a type of relationship listed in section 1 of this 2020 Act.

8 “(b) When a defendant is charged with stalking under ORS 163.732
9 the district attorney shall, unless waived by the defendant or for good
10 cause shown, at arraignment or no later than 45 days prior to trial or
11 entry of a guilty or no contest plea, serve on the defendant and file
12 with the court a notice stating that, due to the nature of the offense,
13 the defendant will be prohibited from possessing firearms and ammu-
14 nition if convicted of the offense.

15 “(2) The Department of Justice, in consultation with the State
16 Court Administrator, shall develop a form to be used to provide a no-
17 tice described in subsection (1) of this section. The form must:

18 “(a) Allow the district attorney, if applicable, to specify the re-
19 lationship between the defendant and the alleged victim, and whether
20 the relationship between the defendant and the alleged victim would
21 cause the defendant to be prohibited from possessing firearms and
22 ammunition under Oregon law or under both Oregon and federal law;
23 and

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

30 **SECTION 3.** (1) If a defendant has been charged with an offense

1 described in ORS 166.255 (1)(b) on a charging instrument alleging that
2 the relationship existing between the defendant and the person alleged
3 to be the victim of the offense, at the time of the offense, is a type
4 listed in section 1 of this 2020 Act, the specified relationship may be
5 established as follows:

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

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

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

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

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

1 **“(b) Enter an order prohibiting the defendant from possessing**
2 **firearms and ammunition; and**

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

6 **“(3)(a) The court shall notify the Department of State Police and**
7 **the county sheriff when the court enters an order described in sub-**
8 **section (2) of this section.**

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

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

13 **“(B) The sheriff shall enter the information into any appropriate**
14 **state or national databases.**

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

17 **“(A) Enter an order prohibiting the defendant from possessing**
18 **firearms and ammunition; and**

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

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

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

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

29 **“(B) The sheriff shall enter the information into any appropriate**
30 **state or national databases.**

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

9 “(6) The absence of a court determination or order under this sec-
10 tion does not affect the lawfulness of the defendant’s possession of
11 firearms or ammunition under ORS 166.250 or 166.255, other Oregon
12 law or federal law.

13 “SECTION 4. The Department of State Police, when entering in-
14 formation received under section 3 of this 2020 Act into a state or na-
15 tional database, shall ensure, and shall develop a process if necessary
16 to ensure, that the information specifies whether the defendant is
17 prohibited from possessing firearms and ammunition under Oregon
18 law or under both Oregon and federal law.

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

20 “166.257. (1) Upon receiving a request to return a firearm or ammunition
21 relinquished to a law enforcement agency pursuant to ORS 166.256, the law
22 enforcement agency shall:

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

25 “(b) Hold the firearm or ammunition for 72 hours after receiving the re-
26 quest.

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

29 “(a) Confirm that the person to whom the law enforcement agency will
30 return the firearm or ammunition is the lawful owner of the firearm or am-

1 munition, or a person with a possessory right to the firearm or ammunition;
2 and

3 “(b) Perform a criminal background check as defined in ORS 166.432 to
4 confirm that the person is not prohibited from possessing a firearm or am-
5 munition under state or federal law.”.

6 On page 3, delete lines 1 through 38.

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