

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

4 Delete lines 5 through 19 and delete page 2 and insert:
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6 **“FIREARM PROHIBITION PROCEDURES**
7

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

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

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

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

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

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

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

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

1 law.

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

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

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

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

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

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

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

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

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

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

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

15 “(B) The sheriff shall enter the information into any appropriate
16 state or national databases.

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

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

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

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

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

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

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

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

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

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

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

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

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

27 **“(b) Hold the firearm or ammunition for 72 hours after receiving the re-**
28 **quest.**

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

1 “(a) Confirm that the person to whom the law enforcement agency will
2 return the firearm or ammunition is the lawful owner of the firearm or am-
3 munition, or a person with a possessory right to the firearm or ammunition;
4 and

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

8 On page 3, delete lines 1 through 38.

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

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

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

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

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

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

15

16

“MISCELLANEOUS

17

18 **“SECTION 13. The unit captions used in this 2020 Act are provided**
19 **only for the convenience of the reader and do not become part of the**
20 **statutory law of this state or express any legislative intent in the**
21 **enactment of this 2020 Act.**

22 **“SECTION 14. (1) Sections 1 to 4 of this 2020 Act become operative**
23 **on January 1, 2021.**

24 **“(2) The repeal of ORS 181A.287 by section 5 of this 2020 Act becomes**
25 **operative on January 1, 2021.**

26 **“(3) The amendments to ORS 131.920, 131.925, 166.257 and 801.208 by**
27 **sections 4a and 6 to 8 of this 2020 Act become operative on January 1,**
28 **2021.**

29 **“SECTION 15. This 2020 Act being necessary for the immediate**
30 **preservation of the public peace, health and safety, an emergency is**

1 **declared to exist, and this 2020 Act takes effect on its passage.”.**

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