

D R A F T

SUMMARY

Specifies procedures for providing notice to defendant in charging instrument and at arraignment when conviction would result in firearm prohibition. Specifies procedures for proving nature of relationship between defendant and alleged victim for certain crimes. Directs court to make determination concerning relationship and enter order prohibiting defendant from possessing firearms. Directs court to notify Department of State Police and county sheriff concerning prohibition order for entry into databases. Appropriates moneys to department to fund entry of order into Law Enforcement Data System.

Requires law enforcement agency to directly notify restraining order petitioner, instead of Department of Justice, when respondent requests return of firearm or ammunition.

A BILL FOR AN ACT

1
2 Relating to firearm notifications; creating new provisions; amending ORS
3 166.257; and repealing ORS 181A.287.

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

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

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

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

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

13 (4) **The defendant is cohabiting with or has cohabited with the vic-**
14 **tim;**

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

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

5 **SECTION 2.** (1)(a) When a defendant is charged with an offense
6 described in ORS 166.255 (1)(b), the district attorney shall, unless
7 waived by the defendant or for good cause shown, at arraignment or
8 no later than 45 days prior to trial or entry of a guilty or no contest
9 plea, serve on the defendant and file with the court a notice stating
10 that, due to the nature of the relationship between the defendant and
11 the alleged victim, the defendant will be prohibited from possessing
12 firearms and ammunition if convicted of the offense. The notice must
13 specify a type of relationship listed in section 1 of this 2021 Act.

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

21 (2) The Department of Justice, in consultation with the State Court
22 Administrator, shall develop a form to be used to provide a notice de-
23 scribed in subsection (1) of this section. The form must:

24 (a) Allow the district attorney, if applicable, to specify the re-
25 lationship between the defendant and the alleged victim, and whether
26 the relationship between the defendant and the alleged victim would
27 cause the defendant to be prohibited from possessing firearms and
28 ammunition under Oregon law or under both Oregon and federal law;
29 and

30 (b) Advise the defendant that the failure to allege any specified re-
31 lationship between the defendant and the victim, or the absence of a

1 court determination or order under section 3 of this 2021 Act, does not
2 affect the lawfulness of the defendant's possession of firearms or am-
3 munition under ORS 166.250 or 166.255, other Oregon law or federal
4 law.

5 **SECTION 3.** (1) If a defendant has been charged with an offense
6 described in ORS 166.255 (1)(b) on a charging instrument alleging that
7 the relationship existing between the defendant and the person alleged
8 to be the victim of the offense, at the time of the offense, is of a type
9 listed in section 1 of this 2021 Act, the specified relationship may be
10 established as follows:

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

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

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

30 (2) If the nature of the relationship between the defendant and the
31 victim has been established under subsection (1) of this section, upon

1 conviction of the offense described in ORS 166.255 (1)(b), the court
2 shall:

3 (a) Make a written determination concerning the nature of the re-
4 lationship;

5 (b) Enter an order prohibiting the defendant from possessing
6 firearms and ammunition; and

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

10 (3) Upon conviction of stalking under ORS 163.732, the court shall:

11 (a) Enter an order prohibiting the defendant from possessing
12 firearms and ammunition; and

13 (b) Inform the defendant that the Department of State Police and
14 the sheriff will be notified concerning the order for purposes of entry
15 into state and federal databases.

16 (4)(a) The court shall notify the Department of State Police and the
17 county sheriff when the court enters an order described in subsection
18 (2) or (3) of this section.

19 (b) Upon receipt of the notification described in paragraph (a) of
20 this subsection:

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

23 (B) The sheriff shall enter the information into any appropriate
24 state or national databases.

25 (5) The State Court Administrator shall develop a form to be used
26 for the determination and order described in subsection (2) of this
27 section and the order described in subsection (3) of this section. The
28 form must allow the court to designate the crime of conviction, specify
29 the relationship between the defendant and the victim, if applicable,
30 and specify whether the conviction or relationship causes the defend-
31 ant to be prohibited from possessing firearms and ammunition under

1 **Oregon law or under both Oregon and federal law.**

2 **(6) The absence of a court determination or order under this section**
3 **does not affect the lawfulness of the defendant's possession of firearms**
4 **or ammunition under ORS 166.250 or 166.255, other Oregon law or fed-**
5 **eral law.**

6 **SECTION 4. The Department of State Police, when entering infor-**
7 **mation received under section 3 of this 2021 Act into a state or na-**
8 **tional database, shall ensure, and shall develop a process if necessary**
9 **to ensure, that the information specifies whether the defendant is**
10 **prohibited from possessing firearms and ammunition under Oregon**
11 **law or under both Oregon and federal law.**

12 **SECTION 5. ORS 166.257 is amended to read:**

13 166.257. (1) Upon receiving a request to return a firearm or ammunition
14 relinquished to a law enforcement agency pursuant to ORS 166.256, the law
15 enforcement agency shall:

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

18 (b) Hold the firearm or ammunition for 72 hours after receiving the re-
19 quest.

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

22 (a) Confirm that the person to whom the law enforcement agency will
23 return the firearm or ammunition is the lawful owner of the firearm or am-
24 munition, or a person with a possessory right to the firearm or ammunition;
25 and

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

29 **SECTION 6. ORS 181A.287 is repealed.**

30 **SECTION 7. In addition to and not in lieu of any other appropri-**
31 **ation, there is appropriated to the Department of State Police, for the**

1 **biennium beginning July 1, 2021, out of the General Fund, the amount**
2 **of \$115,000, to fund the Law Enforcement Data System for the purposes**
3 **of implementing sections 1 to 4 of this 2021 Act.**

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