



Oregon

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Psychiatric Security Review Board

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TO: Oregon State Legislators
CC: Oregon State Police, OHA-Addictions and Mental Health
and Oregon Judicial Department
FROM: Juliet Britton, J.D.
Executive Director, PSRB
DATE: March 17, 2015
SUBJECT: PSRB Gun Relief Model and History

Psychiatric Security Review Board Gun relief- rights and restoration of firearms' privileges in Oregon

SUMMARY: Under current law, Oregonians who have ever had a court determine them as “mentally ill” are barred under State and Federal law from purchasing or possessing a firearm, unless the State’s ATF certified gun relief authority has returned an individual’s firearm privileges. Oregon did not have an ATF certified gun relief program until 2009 – when the Oregon Legislature transferred relief authority from the courts to the PSRB (2009 HB 2853 and later extended in 2011, HB 2662). Gun relief means that someone who was previously barred from possession a firearm has the legal right to possess or own a firearm. The PSRB has been Oregon’s ATF certified gun relief authority since 2009 and the program is currently set to sunset on January 1, 2016.

HISTORY: Gun control laws have existed at the federal (e.g. Brady Bill) and state level for many years. For example, those with adjudications such as “civil commitments”, “unable to aid and assist in a criminal defense” and a finding of “guilty except for insanity” have always been barred from purchasing or possessing a firearm. However, very few states, including Oregon, communicated these names to the FBI for inclusion in the National Instant Criminal Background Check System (NICS) database. NICS “tells” licensed firearm dealers and law enforcement that someone is not authorized under federal or state law to purchase or possess a firearm.

That changed when the FBI Criminal Justice Information Services Division offered States federal grant money, beginning in 2009, to assist states with the reconciliation of records and upload of names into NICS (also known as the “Records Reconciliation Program”). Oregon applied for, and received grant money on the condition that it also created an ATF Certified Relief Program. During this same time, the 2009 Oregon Legislature provided statutory authority for the following agencies to create an Oregon Records Reconciliation and Relief Program: Oregon State Police, Oregon Judicial Department, Oregon Health Authority and the Psychiatric Security Review Board. The PSRB was designated by the Oregon Legislature as the state’s agency to implement the Relief Program and provide an opportunity for these barred individuals to request that their firearm rights be restored when they are no longer a danger to others or themselves.

Between 2009 and 2014, Oregon State Police has used federal grant money to ensure the names of those barred under State and federal law are uploaded into NICS. Due to federal and State legislation in 2009, as well as federal grant money, the names of almost 30,000 Oregonians were uploaded by the Oregon State police into the NICS firearm database in 2010 and continue to be uploaded in a timely manner when new individuals receive a mental health determination.

Prior to 2009, Oregon law allowed for these 30,000 prohibited persons due to a mental health determination to request the restoration of their gun rights in Oregon peace courts in the county of residence. If the court found the petitioner should have his firearms restored, the court would grant him relief. However, under federal law, the Oregon gun relief was never recognized because until the 2008 passage of the federal NICS Improvement Amendments Act, the federal government *never* allowed someone to legally possess a firearm once they had a court mental health determination. Since 2008, the federal firearm ban can be lifted only if a state's ATF Certified Relief Program approves the restoration of gun rights. The pre-2009 Oregon judicial model of gun relief does not meet ATF certified criteria.

Since 2009 in Oregon, the right to petition for relief must be directed to the Psychiatric Security Review Board (PSRB). The Board is comprised of a psychiatrist, psychologist, attorney, probation officer and member of the public. The PSRB created an ATF Certified gun relief hearing process that includes an assessment of risk by a licensed psychologist or psychiatrist, consideration of the current and previous mental health and the petitioner's criminal history. Existing FTE are able to absorb the responsibility the program creates for the agency.

GUN RELIEF FEATURES	Courts (pre-2009)	PSRB (post-2009)
Mental health evaluations by licensed psychologist or psychiatrist	Not required	Mandatory
Mental health records from mental health determination /civil commitment	Not required	Mandatory
Criminal Background check	Not required	Mandatory FBI Criminal Background Check
Restores federal gun rights	No	Yes
ATF Certified*	No	Yes

*Required for OSP to receive federal grant money to continue funding the records reconciliation program which ensures inclusion of prohibited person names into NICS.