

A-Engrossed
House Bill 2013

Ordered by the House April 17
Including House Amendments dated April 17

Sponsored by Representative WILLIAMSON; Representative PRUSAK

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Provides that person subject to certain court protective orders is prohibited from possessing firearms if person had opportunity to be heard on order and did not request hearing, **failed to appear at hearing** or withdrew request before hearing occurred. Punishes violation of prohibition by maximum of 364 days' imprisonment, \$6,250 fine, or both.

Requires court to order relinquishment of firearms **and ammunition** when person is convicted of certain domestic violence offenses or subject to certain court orders. Requires person to transfer firearms **and ammunition** within 24 hours of court order. [*Requires court to notify district attorney and Department of State Police if person does not file affidavit or declaration concerning possession of firearms.*] **Requires person to file declaration concerning disposition of firearms and ammunition within two judicial days of order. Authorizes contempt proceedings against person who does not file declaration.**

Requires law enforcement agency that takes custody of firearms pursuant to relinquishment order to notify Department of Justice and perform criminal background check prior to law enforcement agency's return of firearms.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to court orders; creating new provisions; amending ORS 166.255; and declaring an emer-
3 gency.

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

5 **SECTION 1.** ORS 166.255, as amended by section 1, chapter 5, Oregon Laws 2018, is amended
6 to read:

7 166.255. (1) It is unlawful for a person to knowingly possess a firearm or ammunition if:

8 (a) The person is the subject of a court order that:

9 (A)(i) Was issued or continued after a hearing for which the person had actual notice and during
10 the course of which the person had an opportunity to be heard; **or**

11 **(ii) Was issued, continued or remains in effect, by order or operation of law, after the**
12 **person received notice of the opportunity to request a hearing in which to be heard on the**
13 **order, and either requested a hearing but did not attend the hearing or withdrew the request**
14 **before the hearing occurred, or did not request a hearing during the time period in which**
15 **the opportunity was available;**

16 (B) Restrains the person from stalking, intimidating, molesting or menacing a family or house-
17 hold member of the person, a child of a family or household member of the person or a child of the
18 person; and

19 (C) Includes a finding that the person represents a credible threat to the physical safety of a
20 family or household member of the person, a child of a family or household member of the person

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 or a child of the person;

2 (b) The person has been convicted of a qualifying misdemeanor and, at the time of the offense,
3 the person was:

4 (A) A family or household member of the victim of the offense; or

5 (B) A parent or guardian of the victim of the offense; or

6 (c) The person has been convicted of stalking under ORS 163.732.

7 (2) The prohibition described in subsection (1)(a) of this section does not apply with respect to
8 the transportation, shipment, receipt, possession or importation of any firearm or ammunition im-
9 ported for, sold or shipped to or issued for the use of the United States Government or any federal
10 department or agency, or any state or department, agency or political subdivision of a state.

11 (3) As used in this section:

12 (a) "Convicted" means:

13 (A) The person was represented by counsel or knowingly and intelligently waived the right to
14 counsel;

15 (B) The case was tried to a jury, if the crime was one for which the person was entitled to a
16 jury trial, or the person knowingly and intelligently waived the person's right to a jury trial; and

17 (C) The conviction has not been set aside or expunged, and the person has not been pardoned.

18 (b) "Deadly weapon" has the meaning given that term in ORS 161.015.

19 (c) "Family or household member" has the meaning given that term in ORS 135.230.

20 (d) "Possess" has the meaning given that term in ORS 161.015.

21 (e) "Qualifying misdemeanor" means a misdemeanor that has, as an element of the offense, the
22 use or attempted use of physical force or the threatened use of a deadly weapon.

23 **SECTION 2. Section 3 of this 2019 Act is added to and made a part of ORS 166.250 to**
24 **166.270.**

25 **SECTION 3. (1) When a person is convicted of an offense described in ORS 166.255 (1)(b)**
26 **or (c), the court shall, at the time of conviction:**

27 **(a) Indicate in the judgment of conviction that the person is prohibited from possessing**
28 **firearms and ammunition under ORS 166.250 and 166.255;**

29 **(b) Inform the person, orally and in writing, that the person is prohibited from possessing**
30 **firearms and ammunition;**

31 **(c) Order in writing that the person transfer all firearms and ammunition in the person's**
32 **possession in accordance with subsection (2) of this section; and**

33 **(d) Order that the person file a declaration as described in subsection (4) of this section.**

34 **(2)(a) Within 24 hours of the court's order under subsection (1) of this section, the person**
35 **shall transfer all firearms and ammunition in the person's possession to a local law**
36 **enforcement agency, to a gun dealer as defined in ORS 166.412 or to a third party who does**
37 **not reside with the person, and shall obtain a proof of transfer under paragraph (b) of this**
38 **subsection. A transfer to a third party under this subsection must be in accordance with**
39 **ORS 166.435, except that the criminal background check exceptions in ORS 166.435 (4) do not**
40 **apply.**

41 **(b) A law enforcement agency, gun dealer or third party receiving a firearm or ammu-**
42 **nition pursuant to this subsection shall issue to the person a written proof of transfer. The**
43 **proof of transfer must include the person's name, the date of transfer and the serial number,**
44 **make and model of each transferred firearm. A proof of transfer issued by a third party**
45 **must also include the unique approval number from the Department of State Police from the**

1 **criminal background check conducted under ORS 166.435.**

2 **(c) A person transferring a firearm or ammunition to a third party under this subsection**
3 **shall additionally obtain from the third party a declaration under penalty of perjury con-**
4 **firming receipt of the firearm or ammunition and attesting that:**

5 **(A) The third party understands that the person is prohibited from possessing firearms**
6 **and ammunition; and**

7 **(B) The third party is subject to criminal penalties if the third party allows the person**
8 **access to the firearm or ammunition during the prohibition.**

9 **(3)(a) A law enforcement agency may accept a firearm or ammunition transferred under**
10 **this section.**

11 **(b) A gun dealer may purchase or may accept for storage a firearm or ammunition**
12 **transferred under this section.**

13 **(4)(a) Within two judicial days of the court's order under subsection (1) of this section,**
14 **the person shall file with the court a declaration under penalty of perjury attesting that:**

15 **(A) All firearms and ammunition in the person's possession have been transferred under**
16 **subsection (2) of this section to:**

17 **(i) A law enforcement agency;**

18 **(ii) A gun dealer; or**

19 **(iii) A third party;**

20 **(B) The person was not in possession of any firearms at the time of the court's order**
21 **and continues to not possess any firearms; or**

22 **(C) The person is asserting the person's constitutional right against self-incrimination.**

23 **(b) The person shall file with the declaration a copy of the proof of transfer, if applicable,**
24 **and a copy of the third party declaration, if applicable.**

25 **(5) The person shall concurrently file with the district attorney copies of the declaration,**
26 **proof of transfer and third party declaration filed with the court under subsection (4) of this**
27 **section.**

28 **(6) A person in possession of a firearm or ammunition in violation of ORS 166.255 (1)(b)**
29 **or (c) may not be prosecuted under ORS 166.250 if:**

30 **(a) The person is in possession of a court order described in subsection (1) of this section**
31 **issued within the previous 24 hours;**

32 **(b) The firearm is unloaded; and**

33 **(c) The person is transporting the firearm or ammunition to a law enforcement agency,**
34 **gun dealer or third party for transfer in accordance with subsection (2) of this section.**

35 **(7) If the person does not file the declaration required under subsection (4) of this sec-**
36 **tion, the district attorney may commence contempt proceedings under ORS 33.015 to 33.155.**

37 **SECTION 4. (1)(a) When a respondent becomes subject to an order described in ORS**
38 **166.255 (1)(a) prohibiting the respondent from possessing firearms or ammunition, the court**
39 **shall:**

40 **(A) Indicate in the order that the respondent is prohibited from possessing firearms and**
41 **ammunition under ORS 166.250 and 166.255 while the order is in effect.**

42 **(B) Ensure that the respondent is subject to an additional order:**

43 **(i) Requiring the respondent to transfer all firearms and ammunition in the respondent's**
44 **possession in accordance with subsection (2) of this section; and**

45 **(ii) Requiring the respondent to file a declaration as described in subsection (4) of this**

1 section.

2 (b) If the respondent becomes subject to the order while the respondent is present in
3 court, the court shall:

4 (A) Inform the respondent, orally and in writing, that the respondent is prohibited from
5 possessing firearms and ammunition;

6 (B) Order in writing that the respondent transfer all firearms and ammunition in the
7 respondent's possession in accordance with subsection (2) of this section; and

8 (C) Order that the respondent file a declaration as described in subsection (4) of this
9 section.

10 (2)(a) Within 24 hours of becoming subject to the court order under subsection (1)(a)(B)
11 of this section or receiving the court order under subsection (1)(b)(B) of this section, the
12 respondent shall transfer all firearms and ammunition in the respondent's possession to a
13 local law enforcement agency, to a gun dealer as defined in ORS 166.412 or to a third party
14 who does not reside with the respondent, and shall obtain a proof of transfer under para-
15 graph (b) of this subsection. A transfer to a third party under this subsection must be in
16 accordance with ORS 166.435, except that the criminal background check exceptions in ORS
17 166.435 (4) do not apply.

18 (b) A law enforcement agency, gun dealer or third party receiving a firearm or ammu-
19 nition pursuant to this subsection shall issue to the respondent a written proof of transfer.
20 The proof of transfer must include the respondent's name, the date of transfer and the serial
21 number, make and model of each transferred firearm. A proof of transfer issued by a third
22 party must also include the unique approval number from the Department of State Police
23 from the criminal background check conducted under ORS 166.435.

24 (c) A respondent transferring a firearm or ammunition to a third party under this sub-
25 section shall additionally obtain from the third party a declaration under penalty of perjury
26 confirming receipt of the firearm or ammunition and attesting that:

27 (A) The third party understands that the respondent is prohibited from possessing
28 firearms and ammunition; and

29 (B) The third party is subject to criminal penalties if the third party allows the re-
30 spondent access to the firearm or ammunition during the prohibition.

31 (3)(a) A law enforcement agency may accept a firearm or ammunition transferred under
32 this section.

33 (b) A gun dealer may purchase or may accept for storage a firearm or ammunition
34 transferred under this section.

35 (4)(a) Within two judicial days of becoming subject to the court order under subsection
36 (1)(a)(B) of this section or receiving the court order under subsection (1)(b)(B) of this sec-
37 tion, the respondent shall file with the court a declaration under penalty of perjury attesting
38 that:

39 (A) All firearms and ammunition in the respondent's possession have been transferred
40 under subsection (2) of this section to:

41 (i) A law enforcement agency;

42 (ii) A gun dealer; or

43 (iii) A third party;

44 (B) The respondent was not in possession of any firearms at the time of the court's order
45 and continues to not possess any firearms; or

1 (C) The respondent is asserting the respondent's constitutional right against self-
2 incrimination.

3 (b) The respondent shall file with the declaration a copy of the proof of transfer, if ap-
4 plicable, and a copy of the third party declaration, if applicable.

5 (5) The respondent shall concurrently file with the district attorney copies of the decla-
6 ration, proof of transfer and third party declaration filed with the court under subsection (4)
7 of this section.

8 (6) A respondent in possession of a firearm or ammunition in violation of ORS 166.255
9 (1)(a) may not be prosecuted under ORS 166.250 if:

10 (a) The respondent is in possession of a court order described in subsection (1)(a)(B) or
11 (1)(b)(B) of this section that went into effect or was issued within the previous 24 hours;

12 (b) The firearm is unloaded; and

13 (c) The respondent is transporting the firearm or ammunition to a law enforcement
14 agency, gun dealer or third party for transfer in accordance with subsection (2) of this sec-
15 tion.

16 (7) Upon the expiration or termination of the order described in ORS 166.255 (1)(a), at the
17 request of the respondent:

18 (a) A law enforcement agency shall return any stored firearms and ammunition to the
19 respondent in accordance with section 5 of this 2019 Act.

20 (b) A gun dealer shall return any stored firearms and ammunition to the respondent af-
21 ter performing a criminal background check as defined in ORS 166.432 to confirm that the
22 respondent is not prohibited from possessing a firearm or ammunition under state or federal
23 law.

24 (c) A third party shall return any stored firearms and ammunition to the respondent only
25 after requesting a criminal background check in accordance with ORS 166.435, except that
26 the criminal background check exceptions in ORS 166.435 (4) do not apply.

27 (8) If the respondent does not file a declaration described in subsection (4) of this section,
28 the district attorney may commence contempt proceedings under ORS 33.015 to 33.155.

29 **SECTION 5.** (1) Upon receiving a request to return a firearm or ammunition relinquished
30 to a law enforcement agency pursuant to section 4 of this 2019 Act, the law enforcement
31 agency shall:

32 (a) Notify the Department of Justice of the return request for the purposes of notifying
33 the petitioner of the order; and

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

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

36 (a) Confirm that the person to whom the law enforcement agency will return the firearm
37 or ammunition is the lawful owner of the firearm or ammunition, or a person with a
38 possessory right to the firearm or ammunition; and

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

41 **SECTION 6.** Sections 2, 3, 4 and 5 of this 2019 Act become operative on January 1, 2020.

42 **SECTION 7.** This 2019 Act being necessary for the immediate preservation of the public
43 peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect
44 on its passage.