

Senate Bill 823

Sponsored by COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

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 **as introduced**.

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 166.257; and repealing ORS
3 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 in ORS 166.255 (1)(b),**
6 **the district attorney shall allege in the charging instrument one of the following relation-**
7 **ships existing between the defendant and the person alleged to be the victim of the offense,**
8 **at the time of the offense:**

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

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

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

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

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

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

15 **SECTION 2. (1)(a) When a defendant is charged with an offense described in ORS 166.255**
16 **(1)(b), the district attorney shall, unless waived by the defendant or for good cause shown,**
17 **at arraignment or no later than 45 days prior to trial or entry of a guilty or no contest plea,**
18 **serve on the defendant and file with the court a notice stating that, due to the nature of the**
19 **relationship between the defendant and the alleged victim, the defendant will be prohibited**
20 **from possessing firearms and ammunition if convicted of the offense. The notice must spec-**
21 **ify a type of relationship listed in section 1 of this 2021 Act.**

22 (b) **When a defendant is charged with stalking under ORS 163.732, the district attorney**
23 **shall, unless waived by the defendant or for good cause shown, at arraignment or no later**
24 **than 45 days prior to trial or entry of a guilty or no contest plea, serve on the defendant and**
25 **file with the court a notice stating that, due to the nature of the offense, the defendant will**
26 **be prohibited from possessing firearms and ammunition if convicted of the offense.**

27 (2) **The Department of Justice, in consultation with the State Court Administrator, shall**

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 develop a form to be used to provide a notice described in subsection (1) of this section. The
2 form must:

3 (a) Allow the district attorney, if applicable, to specify the relationship between the de-
4 fendant and the alleged victim, and whether the relationship between the defendant and the
5 alleged victim would cause the defendant to be prohibited from possessing firearms and am-
6 munition under Oregon law or under both Oregon and federal law; and

7 (b) Advise the defendant that the failure to allege any specified relationship between the
8 defendant and the victim, or the absence of a court determination or order under section 3
9 of this 2021 Act, does not affect the lawfulness of the defendant's possession of firearms or
10 ammunition under ORS 166.250 or 166.255, other Oregon law or federal law.

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

15 (a) At any time prior to entry of a plea of guilty or no contest, the defendant may stip-
16 ulate, orally on the record or in writing, to the nature of the relationship. Upon the stipu-
17 lation, the court shall find that the relationship has been established and shall proceed under
18 subsection (2) of this section.

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

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

30 (2) If the nature of the relationship between the defendant and the victim has been es-
31 tablished under subsection (1) of this section, upon conviction of the offense described in
32 ORS 166.255 (1)(b), the court shall:

33 (a) Make a written determination concerning the nature of the relationship;

34 (b) Enter an order prohibiting the defendant from possessing firearms and ammunition;
35 and

36 (c) Inform the defendant that the Department of State Police and the sheriff will be no-
37 tified concerning the order for purposes of entry into state and federal databases.

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

39 (a) Enter an order prohibiting the defendant from possessing firearms and ammunition;
40 and

41 (b) Inform the defendant that the Department of State Police and the sheriff will be no-
42 tified concerning the order for purposes of entry into state and federal databases.

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

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

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

3 (B) The sheriff shall enter the information into any appropriate state or national data-
 4 bases.

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

11 (6) The absence of a court determination or order under this section does not affect the
 12 lawfulness of the defendant's possession of firearms or ammunition under ORS 166.250 or
 13 166.255, other Oregon law or federal law.

14 **SECTION 4.** The Department of State Police, when entering information received under
 15 section 3 of this 2021 Act into a state or national database, shall ensure, and shall develop
 16 a process if necessary to ensure, that the information specifies whether the defendant is
 17 prohibited from possessing firearms and ammunition under Oregon law or under both Oregon
 18 and federal law.

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

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

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

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

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

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

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

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

32 **SECTION 7.** In addition to and not in lieu of any other appropriation, there is appropri-
 33 ated to the Department of State Police, for the biennium beginning July 1, 2021, out of the
 34 General Fund, the amount of \$115,000, to fund the Law Enforcement Data System for the
 35 purposes of implementing sections 1 to 4 of this 2021 Act.