

Firearms Restrictions in Domestic Violence

This website provides general legal information in summary form. The information is not a complete explanation of the law in this area and it is not intended to substitute for legal advice. The law in this area may change and the changes may not be noted here. Contact a lawyer for legal advice.

For more detailed information see:

[Firearms Prohibitions in Domestic Violence Cases: A Guide for Oregon Courts](#)
[Misdemeanor Crimes of Domestic Violence - Oregon Benchsheet](#)
[Qualifying Order of Protection/Restraint - Oregon Benchsheet](#)

Federal Law

Amendments made to the federal Gun Control Act of 1968 prohibit firearm possession by certain domestic violence perpetrators.

Protective Orders (Restraining Orders)

It is a federal crime for persons subject to qualifying protective orders to possess firearms or ammunition. In addition to Family Abuse Prevention Act (FAPA) Restraining Orders, firearms restrictions may apply to orders issued pursuant to the Elderly Persons and Persons with Disabilities Abuse Prevention Act (EPPDAPA), civil Stalking cases, Sexual Abuse Protective Order (SAPO) cases protecting minors, and pretrial release conditions and probation conditions in criminal cases. The federal prohibition lasts for the life of the protective order.

Law enforcement officers and military personnel are partially exempted from the restrictions in that they are permitted to use a service weapon in connection with that governmental service. This exemption is often referred to as the "official use exception."

It is a federal crime to sell or otherwise dispose of a firearm or ammunition to a person if the transferor knows or has reasonable cause to believe that such person is subject to a qualifying protective order.

Misdemeanor Crimes of Domestic Violence

It is a crime for persons who have been convicted of qualifying misdemeanor crimes of domestic violence (MCDV) to purchase, receive, ship, transport, or possess firearms and ammunition. This prohibition is a lifetime ban.

There is no official use exception for MCDV convictions. Thus, a member of the armed forces or a law enforcement officer who has a qualifying misdemeanor conviction is not able to possess a firearm or ammunition, even while on duty.

Oregon Law

Oregon law prohibits firearm possession by certain domestic violence perpetrators.

Protective Orders (Restraining Orders)

Oregon statutes provide for the court to provide “other relief” that the court considers necessary to provide for the safety and welfare of the petitioner and the children in the custody of the petitioner in cases brought under the Family Abuse Prevention Act (FAPA), Elderly Persons and Persons with Disabilities Abuse Prevention Act (EPPDAPA), and in Sexual Abuse Protective Orders (SAPO). The court may include a “no firearms” provisions as part of these Orders.

Additionally, Oregon law makes it is unlawful for a person to knowingly possess firearms or ammunition if the person is subject to a court Order issued or continued after a hearing for which the person had actual notice and an opportunity to be heard if the Order:

- Restrains the person from stalking, intimidating, molesting, or menacing an intimate partner, a child of an intimate partner, or a child of the person, and
- Includes a finding that the person represents a credible threat to the physical safety of an intimate partner, a child of an intimate partner, or a child of the person.

Misdemeanor Crimes of Domestic Violence

Oregon law makes it is unlawful for a person to knowingly possess a firearm or ammunition if the person: was convicted o f a qualifying misdemeanor and, at the time of the offense, the person was a family member of the victim of the offense. A qualifying misdemeanor is a misdemeanor that has, as an element of the offense, the use or attempted use of physical force or the threatened use of a deadly weapon.

A person prohibited from possessing a firearm under this measure may be charged with unlawful possession of a firearm, a Class A misdemeanor.

A person prohibited from possessing or purchasing a firearm under this measure may file a petition with a circuit court for relief from the prohibition.

Judicial Notification

VAWA Notice

The Violence Against Women Reauthorization Act of 2005 (VAWA) requires that states certify that their judicial administrative policies and practices include notification to domestic violence offenders of the requirements of the federal firearm laws and any applicable related federal, state or local firearms laws.

Oregon Law Notice

Oregon law requires judges to inform defendants at a plea of guilty or no contest that, if the defendant enters a plea of guilty or no contest to an offense involving domestic violence, federal law may prohibit the defendant from possessing, receiving, shipping or transporting any firearm or ammunition and the conviction may negatively affect the defendant’s ability to serve in the Armed Forces of the United States or to be employed in law enforcement.

Sale or Transfer of Firearms

Federal Brady Act

In 1993, Congress enacted the Brady Handgun Violence Prevention Act (Brady Act). It requires all federally licensed gun dealers to obtain a criminal background check of firearm purchasers before completing a sale. In most cases, the check is made through the National Instant Criminal Background Check System or "NICS," which is made up of several computer databases managed by the FBI. One of the databases is the National Crime Information Center Protection Order File, which contains information about state protection orders and state criminal history records.

Oregon Law

Oregon law requires a private party transferor of a firearm to appear before a licensed gun dealer with a private party transferee and request the dealer to perform a criminal background check on the transferee. Violation is a Class A misdemeanor for the first offense; it is a Class B felony for subsequent convictions. A transferor may ship or deliver the firearm to a licensed dealer located near or designated by the transferee, if the transferor and transferee live more than 40 miles from each other. Exceptions to the background check requirement for private party transfers include transfers between family members; transfers by or to a law enforcement officer or service member while that person is acting within the scope of official duties; transfers as part of a firearm turn-in or buyback event in which a law enforcement agency receives or purchases firearms from members of the public; or, transfers occurring because of the death of a firearm owner where the transfer is conducted or facilitated by a personal representative or a trustee and the transferee is related to the deceased firearm owner. The court is authorized to prohibit persons ordered to participate in assisted outpatient treatment from purchasing or possessing firearms during the period of treatment if the court makes a certain finding; violation of the order is considered unlawful possession of a firearm, a Class A misdemeanor.

Background Checks

During a background check, the FBI will search to determine whether the sale of the firearm would violate any state or federal laws. In Oregon, background checks are conducted by the Oregon State Police ID Services. If no state or federal prohibitions are found, the sale will be allowed.

Release Agreements & "No Contact" Orders in Criminal Cases

Oregon laws require pretrial release provisions to include an order that the defendant be prohibited from contacting or attempting to contact the victim, either directly or through a third party, while the defendant is in custody. The county sheriff is required to enter "No Contact" orders in release agreements executed by defendants charged with an offense that constitutes domestic violence into LEDS and NCIC.

The release agreement may not be terminated at the request of a victim without a hearing.

In cases where the defendant is granted pretrial release which includes a No Contact Order, and defendant and victim are intimate partners, or the victim is a child of defendant or defendant's intimate partner, language may be included in the release agreement that would result in the agreement being a qualifying protective order that subjects the defendant to federal and state firearms prohibitions.

Full Faith and Credit

VAWA 1994 includes full faith and credit provisions that require enforcement of restraining orders across jurisdictional lines. These full faith and credit provisions require states to enforce restraining orders issued in other jurisdictions as if they had been issued by the enforcing state as long as certain requirements are met. Full faith and credit provisions apply to firearm restrictions in restraining orders and require that such restrictions be enforced even if the enforcing jurisdiction does not authorize judges to restrict firearm possession. Oregon laws contain similar requirements.

Forms

[FAPA Order After Hearing \(PDF\)](#)

[EPPDAPA Order After Hearing \(PDF\)](#)

[Stalking Protective Order \(PDF\)](#)