

**FEDERAL AND STATE FIREARM PROHIBITIONS
OREGON BENCHSHEET**

Qualifying “Misdemeanor Crime of Domestic Violence” (MCDV)

In General: Persons who have been convicted in any court of a qualifying misdemeanor crime of domestic violence generally are prohibited under state and federal law from purchasing or possessing any firearm or ammunition. This is a lifetime prohibition.

NO Official Use Exemption: Federal, state, and local governmental employees are subject to this prohibition in both their personal and official capacities.

Required Elements: If the conviction meets all of the following requirements, it will generally be considered a “qualifying MCDV” and will subject an offending defendant to state and federal prosecution for firearm possession.

Violation: Violation of this prohibition is a state and federal offense punishable by a fine and/or imprisonment. 18 USC 924(a)(2); ORS 166.250(5)

REQUIREMENTS:

FEDERAL (18 USC 922(g)(9))	STATE (ORS 166.250-166.255)
<p>A QUALIFYING OFFENSE:</p> <ul style="list-style-type: none"> ◆ Is a misdemeanor under federal, state, or local law; <u>and</u> <ul style="list-style-type: none"> ◆ Has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon; <p>RELATIONSHIP REQUIREMENT:</p> <ul style="list-style-type: none"> ◆ At the time the crime was committed, the defendant was one of the following: <ul style="list-style-type: none"> ◆ A current or former spouse, parent, or guardian of the victim; ◆ A person with whom the victim shared a child in common; ◆ A person who was cohabiting with or had cohabited with the victim as a spouse, parent or guardian; or ◆ A person who was or had been similarly situated to a spouse, parent, or guardian of the victim. 	<p>A QUALIFYING OFFENSE:</p> <ul style="list-style-type: none"> ◆ Is a misdemeanor; and <ul style="list-style-type: none"> ◆ Has, as an element of the offense, the use or attempted use of physical force or the threatened use of a deadly weapon; <p>RELATIONSHIP REQUIREMENT:</p> <ul style="list-style-type: none"> ◆ At the time of the offense, the person (defendant) was one of the following: <ul style="list-style-type: none"> ◆ A current or former spouse of the victim; ◆ A person with whom the victim shares a child in common; ◆ The parent or guardian of the victim; ◆ A person who cohabited with or has cohabited with the victim as a spouse, parent, or guardian; or ◆ A person similarly situated to a spouse, parent, or guardian of the victim.

CONVICTED:

- ◆ For purposes of the firearms prohibition, a person has NOT been convicted of a misdemeanor crime of domestic violence:
 - ◆ **UNLESS** the person was represented by counsel or knowingly and intelligently waived the right to counsel;
 - ◆ **UNLESS**, if the crime was one for which the person was entitled to a jury trial, the case was tried to a jury or the person knowingly and intelligently waived the right to jury trial; or
 - ◆ **IF** the conviction was set aside or expunged, the person was pardoned, or the person’s civil rights were restored (Currently, no Oregon misdemeanor provides for the loss of civil rights.)

OREGON MCDVs:

- ◆ The FBI has designated six Oregon misdemeanors that may meet the “qualifying offense” requirements¹:
 - ◆ ORS 163.160 – Assault in the Fourth Degree
 - ◆ ORS 163.187 – Strangulation
 - ◆ ORS 163.435 – Contributing to the Sexual Delinquency of a Minor
 - ◆ ORS 163.445 – Sexual Misconduct
 - ◆ ORS 166.025 – Disorderly Conduct
 - ◆ ORS 166.190 – Pointing Firearm at Another

CONVICTED:

- ◆ For purposes of the firearms prohibition, a person has NOT been convicted of a misdemeanor crime of domestic violence:
 - ◆ **UNLESS** the person was represented by counsel or knowingly and intelligently waived the right to counsel;
 - ◆ **UNLESS**, if the crime was one for which the person was entitled to a jury trial, the case was tried to a jury, or the person knowingly and intelligently waived the person’s right to a jury trial; and
 - ◆ If the conviction was set aside or expunged, and the person has been pardoned.

OREGON MCDVS:

- ◆ ORS 166.255 does not designate which Oregon misdemeanors may qualify as an MCDV. Crimes which could qualify, depending upon the language in the charging document, include, but are not limited to:
 - ◆ ORS 163.160 – Assault in the Fourth Degree
 - ◆ ORS 163.187 – Strangulation
 - ◆ ORS 163.190 – Menacing
 - ◆ ORS 166.065 - Harassment

¹ The United States Supreme Court case, *Voisine ET AL., vs. United States (slip opinion, 2016)* determined that misdemeanor domestic violence convictions for reckless conduct (as opposed to intentional or knowing) can also trigger the federal firearm prohibition.