

Model Domestic Violence Firearm Surrender Protocols

The statewide Firearms and Domestic Violence Task Force has developed model surrender procedures for use with courts orders that prohibit defendants or respondents from possessing firearms. These are suggestions. Each county should bring judges, court staff, law enforcement, prosecutors, and others together to adapt procedures for local use.

Need For the Protocol

No Oregon statute sets out how firearms should be removed from persons after a judge has ordered that the person is prohibited from possessing firearms. These procedures offer one approach.

Application of this Protocol – Nexus

These procedures may be used in domestic violence cases or other cases in which: 1) a court order prohibits possession of firearms, and 2) a nexus exists between the incident and firearms. To target the most serious situations without unduly burdening law enforcement, a nexus exists when Defendant/Respondent used, attempted to use or threatened to use a firearm against Victim/Petitioner in the case before the court, or Defendant/Respondent has a history of firearm use against any Victim/Petitioner. Cases in which firearm prohibitions may be ordered include Family Abuse Prevention Act Orders (FAPA restraining orders), Stalking Orders, Elderly Persons and Persons with Disabilities Abuse Prevention Act Orders (EPPDAPA restraining orders), conditions in Conditional/Security Release Agreements, and sentence judgments in criminal cases (including conditions of probation).

Affected Agencies

Persons and agencies involved in implementing these procedures:

- Judges will issue orders.
- Court staff will prepare orders, file orders and notify law enforcement.
- Law enforcement will serve orders, receive and store firearms, return firearms when appropriate, and run background checks on defendants/respondents when necessary.
- District attorneys will negotiate surrender of firearms in plea negotiations and/or recommend firearms surrender at release hearings and at sentencing and may initiate prosecution when Defendants/Respondents fail to comply with court orders.
- Victims' assistance staff and victim advocates will work with victims.
- Public defenders and defense counsel will advise their clients regarding surrender orders and procedures.
- Community Corrections staff will help implement the orders.

Methodology

These procedures rely on various forms to notify law enforcement of court ordered surrender, to give notice to Defendants/Respondents, to designate where and when Defendant/Respondents must surrender firearms, to explain how to return surrendered firearms, and to ensure court surrender orders are followed.

This procedure has two parts: one for courts and one for law enforcement.

Court Protocol

1. If a court order prohibits Defendant/Respondent from possessing firearms, a judge should determine whether to order surrender of firearms.
2. Surrender of firearms may be ordered when a nexus exists between the current incident and firearms: when the court finds that Defendant/Respondent used, attempted to use or threatened to use a firearm against Victim/Petitioner in the case before the court, or Defendant/Respondent has a history of firearm use against any Victim/Petitioner.* To order surrender, the judge should sign a Firearms Order of Surrender.
3. The judge or court staff will fill in a compliance hearing date and time on page one of the Firearms Order and give a copy to Defendant/Respondent in the courtroom if Defendant/Respondent is in court at the time the Order is signed. If Defendant/Respondent is not in court, the court shall order service of the Order on Defendant/Respondent and ensure that a copy of the Order is delivered to law enforcement for service. A compliance hearing is not necessary if, prior to the compliance hearing: 1) Defendant/Respondent signs and files with the Court a Firearms Affidavit of Non-Possession, or 2) Defendant/Respondent transfers all firearms to a third party and files an Affidavit of Third Party transfer with the Court. The Third Party also must sign and file an Affidavit of Third Party Transfer and follow procedures for the transfer, or 3) Defendant/Respondent files an Affidavit of Surrender with proof of surrender attached.
4. Jurisdictions should develop protocols to ensure compliance with surrender orders when Defendants/Respondents fail to appear for compliance hearings, including development of a charging policy for contempt of court or other sanctions.
5. Court will schedule a hearing on Defendant/Respondent's Motion for Return of Firearms. An Order to Return Firearms will issue only if Defendant/Respondent files, prior to or at a Return Hearing, a Background Check form that shows Defendant/Respondent is not disqualified from possessing firearms.

Law Enforcement Protocol

1. Law enforcement will establish procedures to receive and store firearms surrendered pursuant to Court orders.
2. If the Court has not set a compliance hearing, law enforcement will issue a date for Defendant/Respondent to appear, write it on page one of the Firearms Order, and serve it on Defendant/Respondent. Law enforcement should use the next general out-of-custody arraignment date or other date specified by the court and notify the court of the appearance date. If Defendant/Respondent is in custody, jail staff should fill in the hearing date on the Order, serve the Order on Defendant/Respondent, and notify the court of the hearing date.
3. Law enforcement will receive firearms as ordered and give receipts or copies of evidence reports to Defendants/Respondents.
4. Law enforcement will conduct a background check on Defendant/Respondent before the Court issues an Order for Return of Firearms (for example, upon Defendant/Respondent's request after expiration or termination of a protective order). Law enforcement should forward a completed Background Check form to the Court.
5. If Defendant/Respondent wishes to transfer firearms to a third party rather than surrender them to law enforcement, the third party must submit to an ID Services background check. Defendant/Respondent and the third party must sign the Affidavit of Third Party Transfer and include the ID Services background check number on the affidavit.
6. Law enforcement will return firearms when a court order authorizes return, the Defendant/Respondent or third party may legally possess firearms, and the firearms are not needed for evidence. Law enforcement will conduct background checks on Defendants/Respondents before return of firearms. A third party must submit to an ID Services background check and provide the ID Services background check number as proof that he/she may legally possess firearms.

NOTE:

*Sheriffs and judges in each county should consider expanding the scope of the nexus if there is a finding of enhanced danger to Petitioner/Victim by Defendant/Respondent.