

FEDERAL AND STATE FIREARM PROHIBITIONS – PROTECTION ORDER
OREGON BENCH SHEET
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OVERVIEW

Applicable to Respondents Subject to Protection Order: Persons who are subject to qualifying protective orders are prohibited under *state and federal law* from purchasing or possessing any firearm or ammunition. ORS 166.255, 18 USC 924(a)(2)

Qualifying Order: (ORS 166.255) An order that restrains a person from stalking, intimidating, molesting or menacing a child, family or household member of the respondent and includes a finding that the person represents a credible threat to the physical safety of family or household member of the person, a child of the family or household member of the person, or a child of the person; and that was issued or continued after a hearing for which the person had:

- Actual notice during which the respondent had an opportunity to be heard *or*
- Received notice of the opportunity to request a hearing and *either*
 - Requested a hearing but did not attend *or*
 - Withdrew the request before the hearing occurred *or*
 - Did not request a hearing during the period in which the opportunity to do so was available.

Duration of Prohibition: This prohibition is in effect while the person is subject to the order.

Official Use Exemption: Transporting, shipping, receiving, possessing, or importing any firearm or ammunition imported for, sold or shipped to or issued for the use of the United States Government or any federal department or agency, or any state or department, agency or political subdivision of a state. ORS 166.255(2)

Violation: Violation of this prohibition is a state and federal offense punishable by a fine and/or imprisonment. 18 USC 924(a)(2); ORS 166.255, ORS 166.250(5)

Court Obligations When Granting a Qualifying Protective Order: ORS 166.256

- When a respondent becomes subject to a qualifying order, the court shall:
 - Indicate in the order that the respondent is prohibited from possessing firearms or ammunition while the order is in effect; and
 - Ensure that the respondent is subject to an additional order that requires that the respondent transfer all firearms or ammunition in the respondent's possession within 24 hours of the court's order in accordance with ORS 166.256(2) and file a declaration with the court and district attorney within two judicial days of the court's order
- If the respondent becomes subject to the firearm prohibition order while the respondent is present in court, the court shall:
 - Inform the respondent orally and in writing that the respondent is prohibited from possessing firearms or ammunition;
 - Order in writing that the respondent transfer all firearms or ammunition in the respondent's possession within 24 hours of the court's order in accordance with ORS 166.256(2); and
 - Order that the respondent file a declaration with the court and district attorney within two judicial days of the court's order

FIREARM/ AMMUNITION PROHIBITIONS
WHEN SUBJECT TO QUALIFYING PROTECTIVE ORDER

Person Subject to Qualifying Protective Order (State and Federal)	
FEDERAL 18 USC §922(g)(8)	STATE ORS 166.255
“Qualifying Protective Order”	
<p>Qualifying Protective Order</p> <p>A person is the subject of a court order that:</p> <ul style="list-style-type: none"> - Was issued after a hearing for which the person had actual notice and opportunity to be heard; <p>AND</p> <ul style="list-style-type: none"> - The order restrains the person from stalking, intimidating, molesting, or menacing a person or a family or household member of the person or a child of the person; <p>AND</p> <ul style="list-style-type: none"> - Includes a finding that the person is a credible threat to the physical safety of a family or household member of the person, a child of a family or household member of the person or a child of the person. 	<p>Qualifying Protective Order</p> <p>A person is the subject of a court order that:</p> <ul style="list-style-type: none"> - Was issued or continued after a hearing for which the person had actual notice and during the course of which that person had an opportunity to be heard; <p>OR</p> <ul style="list-style-type: none"> - Was issued, continued, or remains in effect, by order or operation of law, after the person received notice of the opportunity to request a hearing in which to be heard on the order and either requested a hearing but did not attend the hearing or withdrew the request before the hearing; <p>OR</p> <ul style="list-style-type: none"> - Was issued, continued, or remains in effect, by order or operation of law, after the person received notice of the opportunity to request a hearing in which to be heard on the order and did not request a hearing during the time period in which the opportunity was available; <p>AND</p> <ul style="list-style-type: none"> - The order restrains the person from stalking, intimidating, molesting, or menacing a family or household member of the person, a child of a family or household member of the person or a child of the person;

	<p>AND</p> <ul style="list-style-type: none"> - Includes a finding that the person represents a credible threat to the physical safety of a family or household member of the person, a child of a family or household member of the person or a child of the person.
<p>Specific Kinds of “Qualifying Orders” Under Federal Law</p> <p>Federal law does not specifically enumerate certain kinds of orders as “qualifying orders,” but rather only that the requirements listed above are met.</p>	<p>Specific Kinds of “Qualifying Orders” Under Oregon Law</p> <p>ORS 166.255 does not specifically designate which types of court orders trigger a firearm prohibition.</p> <p>Orders issued under Oregon law that <i>always</i> qualify based on findings inherent in the order:</p> <ul style="list-style-type: none"> - Family Abuse Prevention Act Restraining Orders issued under ORS 107.005 et seq. - Extreme Risk Protection Order issued under ORS 166.527 <p>Orders issued under Oregon law which <i>MAY</i> qualify include, <i>but are not limited to</i>:</p> <ul style="list-style-type: none"> - Stalking Protective Orders issued under ORS 30.866 or ORS 163.738 - Elderly Persons or Persons with a Disability Protective Order issued under ORS 124.010
<p>Official Use Exception Under Federal Law 18 USC §925(a)(1)</p> <p>There is an “official use exception” under federal law. The prohibition against possession of firearms or ammunition does not apply to transporting, shipping, receiving, possessing, or importing any firearm or ammunition imported for, sold or shipped to or issued for the use of the United States Government or any federal department or agency, or any state or department, agency or political subdivision of a state.</p>	<p>Official Use Exception Under State Law ORS 166.255(2); ORS 166.260</p> <p>There is an “official use exception” under Oregon law that states that the firearm or ammunition prohibition does not apply with respect to transporting, shipping, receiving, possessing, or importing any firearm or ammunition imported for, sold or shipped to or issued for the use of the United States Government or any federal department or agency, or any state or department, agency or political subdivision of a state.</p>

<p>Duration of Prohibition 18 USC §922(g)(8)</p> <p>The prohibition to possess firearms or ammunitions applies while the protective order is in effect.</p> <p>Upon expiration or termination of an order, the prohibition on firearms/ammunition is no longer in effect.</p>	<p>Duration of Prohibition ORS 166.255(1)(a); 166.256 (1)(a)(A), (7)</p> <p>The prohibition to possess firearms or ammunitions applies while the protective order is in effect.</p> <p>Upon expiration or termination of an order, the prohibition on firearms/ammunition is no longer in effect.</p>
<p>Court Obligation Re: Notice of Firearm and Ammunition Prohibition and Court-Ordered Dispossession Order</p>	
<p>Court Obligation: Notice of Prohibition and Order to Dispossess</p> <p>No specific obligations are outlined under federal law regarding notice or dispossession order.</p>	<p>Court Obligation: Notice of Prohibition and Order to Dispossess ORS 166.256(1)(a), ORS 166.255</p> <p>When a respondent becomes subject to a qualifying order, the court shall:</p> <ul style="list-style-type: none"> - Indicate in the order that the respondent is prohibited from possessing firearms or ammunition while the order is in effect; and - Ensure that the respondent is subject to an additional order that requires that the respondent transfer all firearms or ammunition in the respondent’s possession within 24 hours of the court’s order in accordance with ORS 166.256(2) and file a declaration with the court and district attorney within two judicial days of the court’s order. <p>If the respondent becomes subject to the firearm prohibition order while the respondent is present in court, the court shall:</p> <ul style="list-style-type: none"> - Inform the respondent orally and in writing that the respondent is prohibited from possessing firearms or ammunition; - Order in writing that the respondent transfer all firearms or ammunition in the respondent’s possession within 24 hours of the court’s order in accordance with ORS 166.256(2); and

	<ul style="list-style-type: none"> - Order that the respondent file a declaration with the court and district attorney within two judicial days of the court's order
<p>Court Obligation: Written Order of Dispossession</p> <p>There are no specific obligations outlined under federal law</p>	<p>Court Obligation: Written Order of Dispossession ORS 166.256</p> <p>The court must order in writing that respondent transfer all firearms and ammunition in the person's possession and order that the respondent file a declaration as described below.</p> <p>Within 24 hours of being prohibited from possessing firearms and ammunition, respondent must:</p> <ul style="list-style-type: none"> - Surrender all firearms or ammunition in defendant's possession to a local law enforcement agency, a gun dealer; or a third party who does not reside with the respondent; <i>and</i> - Obtain a proof of transfer of the firearms or ammunition.
	<p>Court Obligation: Order to File Declaration ORS 155.256(4)</p> <p>Within two judicial (business) days of being prohibited from possessing firearms and ammunition, the respondent must file with the court and the district attorney's office a declaration (under penalty of perjury) that:</p> <ul style="list-style-type: none"> - All firearms or ammunition in the respondent's possession have been transferred to a law enforcement agency, gun dealer, or eligible third party; - The respondent has no firearms or ammunition; or <p>The respondent is asserting the constitutional right against self-incrimination.</p>

<p>Possession “Grace Period”</p> <p>There is no “grace period” under federal law. The prohibition attaches as soon as the requirements of a qualifying protective order are met.</p>	<p>Possession “Grace Period” ORS 166.256(6)</p> <p>A person who is subject to the firearm or ammunition prohibition and is in possession of a firearm or ammunition in violation of ORS 166.255(1)(b) or (c) may not be prosecuted under ORS 166.250 if:</p> <ul style="list-style-type: none"> - The respondent is in possession of the court order prohibiting possession of firearms/ammunition that went into effect or was issued within the previous 24 hours; - The firearm is unloaded; and - The respondent is transporting the firearm or ammunition to a law enforcement agency, gun dealer or third party for transfer.
<p>Failure to File Declaration</p> <p>Because there is no federal obligation to file a declaration, there is no penalty imposed under federal law for failure to do so.</p>	<p>Failure to File Declaration ORS 166.256(8)</p> <p>If the respondent does not file a declaration described above, the district attorney may commence contempt proceedings under ORS 33.015 to 33.155.</p>