Sixth Family Law Conference

Oregon Family Law: Change, Challenge, Opportunity

Firearms & Domestic Violence: State and Federal Laws

Presenters:

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Debra provides mentoring and technical assistance on family law and domestic violence to attorneys at the OLC and Legal Aid Services of Oregon (LASO). Before joining the SSU, Debra worked at the Pendleton LASO office and the Hillsboro OLC office and has been a legal aid lawyer since 2005. Throughout her legal career, Debra’s practice focused on providing legal services to rural victims/survivors of domestic violence, sexual assault, and stalking in protective order and family law cases. Debra’s move to the SSU has allowed her work on state-wide policy issues related to domestic and sexual abuse and stalking. Debra serves on the State Family Law Advisory Committee, co-chairing its Domestic Violence Subcommittee and is a member of the Oregon Judicial Department’s Law and Policy Work Group.

Erin S. Greenawald, Senior Assistant Attorney General, Oregon Department of Justice
Since March 2010, Erin has been DOJ’s Domestic Violence Resource Prosecutor (DVRP). As the state’s DVRP, Erin provides resources and training specific to domestic and sexual violence issues to law enforcement, prosecutors, advocates and community organizations. For several years, Erin has focused on providing training opportunities to improve trauma-informed investigation and prosecution techniques in Oregon. To further that goal, Erin attended the two-week Special Victims Capabilities Course in Ft. Leonard Wood, Missouri in 2015. In addition to creating, hosting, and facilitating trainings and conferences around the state, Erin continues to handle complex domestic and sexual violence cases while also working on legislative and policy matters related to those same issues. Before joining the Department of Justice, Erin worked as a Deputy District Attorney in Yamhill and Marion counties. Since 1999, she has prosecuted domestic violence and major person felonies, including child and adult sex abuse crimes and homicides. Erin serves and has served on a number of statewide domestic and sexual violence–related work groups, including the Governor’s Domestic Violence Prevention and Response Task Force, the Statewide Domestic Violence and Firearms Task Force (Chair), State Family Law Advisory Committee’s Domestic Violence Sub-Committee, the Oregon Sexual Assault Task Force (SATF), and Oregon’s Domestic Violence Fatality Review Team of which she is co-chair. Erin is also a prosecutor instructor with SATF’s Sexual Assault Training Institute.
Disarming Domestic Violence: Tools and Tips
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Disclaimer #2
- We use female pronouns when talking about victims.
- We use male pronouns when talking about perpetrators.
- We know that both men and women perpetrate violence.
- We know that interpersonal violence happens in all types of relationships.
Topics

- Link Between Domestic Violence and Firearms
- Overview of Relevant Federal and State Firearms Laws
- Misdemeanor Crimes of Domestic Violence
- Qualifying Protective/Court Orders
- Judicial Notifications
- Firearms Findings
- Database Entry Requirements
- Firearm Dispossession Protocols
- Resources

Link Between DV & Firearms

LOW INCIDENCE BUT HIGH LETALITY

Abuser’s access to firearms $\rightarrow$ 5x higher risk of death

DV assaults involving a gun $\rightarrow$ 12 x higher risk of death than those involving other weapon or bodily force

Abuser’s prior threat/assault with firearm $\rightarrow$ 20 x higher risk of death in intimate partner context

DV Firearm Deaths in Oregon

Between 2003 and 2012, 60% of all DV-related homicides in Oregon were caused by a firearm.

In 2015 SIXTY Oregonians were killed in DV incidents. 50% of the victims were murdered with a firearm.
Factors Correlated to DV Lethality
(OTHER THAN PRIOR PHYSICAL ABUSE FOUND IN 70% OF DV HOMICIDES)

Within Preceding 2 years
- High Control + Separation
- Access to firearms
- Unemployment
- Threats with weapon
- Any threat to kill
- Victim has non-joint child in home

At Time of Incident
- Access to firearms
- New relationship by victim
- Unemployment
- Threats with weapon
- Victim separating from Def.
- High Control + Separation

Protective Factors
- Never cohabitated
- Prior arrests for dv

Where an order of protection existed with a firearms possession ban, female intimate partner deaths were 13% lower (Vigdor & Mercy 2006)

Tools to Disarm Domestic Violence Offenders- State and Federal Laws
  - 18 USC §922(g)(8) (protective orders) in 1994 at same time as VAWA and
  - 18 USC §922(g)(9) (MCDVs) in 1996, known as Lautenberg Amendment.
- State Law:
  - SB 525 codified at ORS 166.250 and ORS 166.255
  - FAPA, Stalking Citation, Stalking Protective Order, EPPDAPA, SAPO, Release Agreements, Standard Conditions of Probation.
  - Criminal Background Checks to Prevent Firearms Purchases
  - Firearm Surrender Protocols
Federal Laws Prohibiting Gun Possession

- Convicted felons
- Unlawful users of controlled substances
- Fugitives from justice
- Persons who have renounced their U.S. citizenship
- Persons dishonorably discharged from the armed services
- Illegal aliens
- Persons adjudicated as mentally defective or committed to a mental institution
- Persons subject to a final protective order
- Persons convicted of misdemeanor domestic violence

Federal Laws: The Brady Act

- In 1993, Congress enacted the “Brady Handgun Violence Prevention Act (Brady Act)”.
- The Brady Act requires all federally licensed gun dealers to obtain a criminal background check of firearm purchasers before completing a sale.
- In Oregon, the background checks are completed by the OSP ID Services division.
Federal Laws: USC 922(g)(8): QPO


18 USC 922 (g)(8) made it a federal crime for a person who is subject to a “qualifying protection order” to possess a firearm or ammunition, to ship or receive a firearm or ammunition in interstate or foreign commerce.

QPO: Necessary Components

1. Hearing: The order was issued after a hearing and the respondent:
   - Received actual notice of the hearing and
   - Had an opportunity to participate or did participate in the hearing.
2. Intimate Partner Relationship
3. Restrains Future Conduct

Protective Orders... Just FAPA?

So long as 4 qualifying elements exist:
- FAPA Restraining Orders;
- EPPDAPA Restraining Orders;
- Stalking Protective Orders;
- Sexual Assault Protective Order;
- ORS 107.095 (in family law cases) no contact orders; and
- No contact provisions in release agreements, probation orders, etc.
Protective Order: Hearing

Protective Order must:
• Be issued after a hearing of which the individual received actual notice and at which the individual had an opportunity to participate. 18 USC §922(g)(8)(A).

Is an ex parte FAPA order, a qualifying protective order under federal law? No.

Does Failing to Attend Noticed Hearing Still= Opportunity?

• U.S. v. Miles, 2006 U.S. Dist. Lexis 27123 (W.D La. 2006) Didn’t matter that Def. was never served with order issued there or otherwise didn’t receive a copy of order resulting from that hrg.

Was There a “Hearing?”

• In-court stipulation to Order is enough
  • US v. Banks, 339 F.3d 67 (5th Cir. 2003); U.S. v. Lippman 369 F.3d 1039 (8th Cir. 2004)
  • Contrast: Stipulation about an order done out of court where no hearing was scheduled or occurred=not enough. U.S. v. Spruill, 292 F.3d 207 (5th Cir. 2002). Especially when DA provides the stipulation and Respondent has no attorney.
  • In-court request for set-over is enough
  • U.S. v. Calor, 340 F.3d 428 (6th Cir. 2003).
QPO: Intimate Partner Relationship
Definition at 18 USC §921(a)(32)

- The person protected by the order must be:
  - A spouse or former spouse of the respondent;
  - The parent of respondent's child;
  - A person who does or did cohabit (live in a sexually intimate relationship) with respondent;
  - Respondent's child; OR
  - A child of an intimate partner of Respondent (spouse/former spouse, cohabitant/former cohabitant, or parent of respondent's child).

Not All FAPA Relationships Qualify

- Federal law doesn't protect all relationships protected under Oregon's FAPA.

  RELATIONSHIPS COVERED BY FAPA BUT NOT FEDERAL LAW:
  - Sexually intimate partners within the last 2 years (no cohabitation); and
  - Adults related by blood, marriage, or adoption.

QPO: Must Restrain Future Conduct
18 USC §922(g)(8)(B)

- The protective order must restrain the individual from:
  - Harassing, stalking, or threatening the individual's intimate partner, or the intimate partner's child
    OR
  - Engaging in other conduct that would place the intimate partner in reasonable fear of bodily injury to the intimate partner or child.
QPO: Credible Threat Finding or Physical Force Prohibition Required

• Must include a finding that: the individual represents a credible threat to the physical safety of the intimate partner or child of intimate partner or child of individual
• By its terms explicitly prohibits the attempted/threatened/use of physical force reasonably expected to cause bodily injury against intimate partner or child
• 18 USC §922 (g)(8)(C)

Federal Laws:
USC 922(g)(9): QCDV

In 1996, Congress amended the Gun Control Act again in the “Lautenberg Amendment”.

18 USC 922 (g)(9) made it a federal crime for a person convicted of a “qualifying misdemeanor crime of domestic violence” to possess a firearm or ammunition.

QCDV: Necessary Components

• Qualifying relationship between the parties
  • Current or former spouse, parent, or guardian of the victim
  • A person with whom the victim shares a child in common
  • A person who was cohabiting or had cohabited with the victim as a spouse, parent, or guardian;
  • A person similarly situated to a spouse, parent, or guardian of the victim
  • No dating partners
• Statutory elements of the crime are met
  • Has as an element:
    • The use or attempted use of physical force or
    • The threatened use of a deadly weapon.
• Procedural requirements
  • Represented by counsel or knowingly waived right to counsel
  • Jury trial or knowingly waived
  • Doesn’t apply if conviction expunged; person pardoned or rights restored
ORS 24.190: Full Faith and Credit
• Full Faith and Credit compels Oregon to recognize qualifying ROs issued by another tribal or state court and enforce them as their own
• Other states and tribal jurisdictions may routinely prohibit firearm possession as a term of their protection orders. Violation of a foreign protection order is subject to mandatory arrest in Oregon.

ORS 107.718 (1)(h): Order Firearm Dispossession
• In FAPA order, the court has discretion to include firearm/amunition prohibition as a term of RO if necessary to protect the safety of the children or Petitioner. (Model Protocol provides guidance)
Prohibition vs. Surrender

- Firearms prohibitions, box #10 on FAPA order
- “Respondent shall not purchase or possess any firearms or ammunition”
- “Other Orders Regarding Firearms” under box #10 = opportunity to set out surrender requirements:
  - On case-by-case basis or
  - Pursuant to local firearms surrender protocols.

More to come on this!

State Laws

- ORS 107.720: Entry of FAPA into LEDS (Law Enforcement Data System)/NCIC (National Crime Information Center)
  - Requires entry of FAPA orders into LEDS and NCIC. Requires procedures to ensure than an officer at the scene may be informed of the order and its terms: (Task Force developed model protocols for this, too!)

State Laws

- ORS 133.535: Seizure of evidence
  - A firearm which is evidence of a crime (violation of ORS 166.255 (SB 525), for instance), may be seized.
State Laws

• ORS 135.250: F/A Restriction in Release Agreement

• ORS 135.250(2)(d) provides that ORS 107.720 applies to release agreements in “DV” cases. (Entry into LEDS/NCIC)

• “DV” is defined at ORS 135.230(3)

• Per ORS 132.586, “Constituting Domestic Violence” may be added to a charge if meets definition of DV.

State Laws

• ORS 135.250(c): “If the defendant was provided notice and an opportunity to be heard, the court shall also include in the agreement, when appropriate, terms and findings sufficient under (g)(8) to affect the defendant’s ability to possess firearms and ammunition or engage in activities involving firearms.”

• IF the judge orders dispossession/surrender as a condition of release, a violation of that condition may result in an arrest warrant.

State Laws

• ORS 137.540: Standard Conditions of Probation

• ORS 137.540(1)(L): The probationer shall not possess weapons, firearms, or dangerous animals.
State Laws

- ORS 166.250: Unlawful Possession of Firearms
  
  - ORS 166.250(B)(i): The Defendant while a minor was found to be within the jurisdiction of the juvenile court for having committed an act which, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470; and
  
  - (ii) Was discharged from the jurisdiction of the juvenile court within four years prior to being charged under this section.

State Laws

- ORS 166.470(1)(g): Definition of “misdemeanor of violence”
  
  - A misdemeanor described in ORS 163.160 (Assault IV), 163.187 (Strangulation), 163.190 (Menacing), 163.195 (REAP), or 166.155(1)(b) (Intimidation in the Second Degree—subjecting another person to offensive physical contact because of person's perception of the other's race, color, religion, sexual orientation, disability or national origin).

State Laws

- ORS 166.255: Possession of firearms or ammunition by certain persons prohibited
  
  - We’ll come back to this one!
**State Laws**

- ORS 166.291 -293: Issuance and denial or revocation of concealed handgun license
  - ORS 166.291: Prohibitions on issuance of a CHL
    - (e) is on pre-trial release
    - (g) has been convicted of a misdemeanor within the four years prior to the application
    - (k) has been within the last four years prior to the application, adjudicated as a juvenile of a misdemeanor involving violence
    - (m) Subject to a Stalking citation or FAPA and/or Stalking Order

- ORS 166.293: Denial or revocation of license
  - Per ORS 166.293(3)(a): “Any act or condition that would prevent the issuance of a concealed handgun license is cause for revoking a concealed handgun license.”
  - A sheriff may revoke a concealed handgun license
  - A peace officer or corrections officer may seize a concealed handgun license and return it to the issuing sheriff if the license is held by a person who has been arrested or cited for a crime that can or would otherwise disqualify that person from being issued a CHL.

- ORS 166.470: Limitations and Conditions for Sale or Transfer of Firearm
  - (1) A person may not intentionally sell, deliver or otherwise transfer any firearm when the transferor knows or reasonably should know that the recipient:
    - (g) has been convicted of a misdemeanor involving violence within the previous four years.
  - Case Example: OSP Trooper in Washington / Tillamook Counties
**State Laws**

- **ORS 166.435**: Transfer of weapons by unlicensed persons (SB 941)
- **SB 941**, passed in 2015, instituted new mandates regarding background checks in the transfer of firearms by individuals who are not gun dealers or at trade shows.
- However, the bill (now statute) includes a number of exceptions: if the transferor/transferee are in any one of a number of familial relationships (see subsection (4)(c)), a background check does not need to be completed.
- The familial relationships that are exempted include: transferor’s spouse or domestic partner; transferor’s child or stepchild; transferor’s parent or stepparent.

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**State Laws**

- **SB 525**: Possession of firearm or ammunition by certain persons prohibited
- Until the passage of SB 525 in 2015, there was no specific Oregon law which prohibited the possession of a firearm by qualifying protection order respondents or those convicted of qualifying domestic violence misdemeanors.
- **SB 525**, now codified in **ORS 166.255**, was meant to mirror federal law (18 USC 922 (g)(8) & (9)).

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**State Laws: QCO**

- **ORS 166.255(1)(a)**: The person is subject of a court order
- **REQUIREMENTS**:
  - Was continued after a hearing of which the person had notice and opportunity to be heard;
  - Restrains the person (respondent-perpetrator) from stalking, intimidating, molesting or menacing an intimate partner, a child of an intimate partner or a child of the person.
  - Includes a finding that the person (respondent-perpetrator) is a credible threat to the physical safety of an intimate partner, a child of an intimate partner or child of the person.
State Laws: QCO

- ORS 166.255(3)(d): Definition of intimate partner states that the respondent is:
  - Spouse, former spouse,
  - Cohabitant or former cohabitant in relationship akin to a spouse
  - A parent of the respondent’s child

State Laws: QCO

- ORS 166.255(1)(a): Qualifying court order
  - The ban last only for the duration of the order
  - (2) There is an official use exemption (as in the federal law)
  - Federal, state and local governmental employees when acting in their official capacities are exempt from the prohibition against possession under 18 USC §922(g)(8) and ORS 166.255(2), BUT they remain subject to it in their personal capacities.

State Laws: MCDV

- ORS 166.255(1)(b): Person has been convicted of a qualifying misdemeanor and, at the time of the offense, the person was a family member of the victim of the offense.
- EASY STUFF FIRST: ORS 166.255(3)(c)
- Family member means:
  - Victim was spouse of former spouse
  - Person with victim shares a child in common.
  - Victim’s parent or guardian
  - Person cohabiting with victim or who has cohabited with victim as spouse, parent or guardian or a person similarly situated to a spouse, parent or guardian
State Laws: MCDV

- ORS 166.255(3)(f): Qualifying misdemeanor defined
- Has as an element use or attempted use of physical force or threatened use of a deadly weapon.
- Deadly weapon means any instrument, article, or substance specifically designed for and presently capable of causing death or serious physical injury. ORS 161.015

State Laws: MCDV

- ORS 166.255 doesn’t specify which crimes qualify, so….which crimes qualify?

- Under 18 USC 922 (g)(9), the FBI designated six Oregon crimes which qualified:
  - 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

State Laws: MCDV

- Despite the FBI designation, and recent US Supreme Court cases like U.S. v. Castleman, the US Attorney’s Office has historically only considered two of those crimes to be qualifying misdemeanors: Assault and Strangulation (or attempts thereof).
- There have been on-going discussions about whether the federal analysis and conclusion should or must be adopted in state level investigations and prosecutions of ORS 166.255.
- I’ve learned more about the categorical and modified categorical approach than I ever wanted. I will not torture you with the details. You are welcome!
**State Laws: MCDV**

- **ORS 166.255(1)(b): Qualifying Misdemeanor Crimes**

**BOTTOM LINE:** Until we expand or modify the language of our state statute, the best practice seems to be to stick to the crimes that the FBI has determined qualify.

- **ALSO:** There is no “official use exemption” under 18 USC 922 (g)(9) or ORS 166.255(1)(b).

- **Another question:** Does the Defendant have to know that s/he was convicted of a qualifying misdemeanor conviction and/or of the consequences of the conviction?
  - The short answer is No.

**Judicial Notifications**

- **VAWA notice requirements:**
  - The Violence Against Women Reauthorization Act of 2005 (VAWA), requires as a condition of eligibility for VAWA grants that the state certify that its judicial and administrative policies and practices include notification to domestic violence offenders of the requirements of the Brady firearm laws and any applicable related federal, state, or local firearms laws. Failure to notify in at least 90% of Oregon’s domestic violence cases will cause Oregon to lose VAWA STOP grant funds.
  - Notice can be given orally or in writing.
  - OJD model FAPA, Stalking Protective Orders, SAPO, and EPPDAPA Notice to Respondent/Request for Hearing forms include the notice.
Judicial Notifications

- ORS 135.385 Notice
- ORS 135.385(2)(f) requires judges to inform a defendant 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 a 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.

- Many OJD forms already include this language, including the Firearms Notification form, as well as the OJD arraignment video, the Uniform Plea Petition, and the Uniform Criminal Judgment. Some local courts have amended their plea petitions to provide this notice.

Brady Findings

- "Brady" findings are judicial findings to indicate that the terms of a protective order or a misdemeanor conviction may disqualify a respondent or defendant from possessing or other use of firearms and ammunition under federal law; document is labeled “Federal Firearms Findings (Brady)” and often is called a “Brady certificate.”

"Brady" Findings Are Important

- Vital step in preventing firearms sales to those who cannot possess firearms under federal/state law.
- Provides initial determination that a protective order is qualifying for federal/state law purposes
- Drives home a clear message to defendants and respondents that possession of firearms and ammo is crime under federal and state law.
- Important for prosecutors in criminal misdemeanor cases and lawyers in protective orders cases to urge completion by judges.
- Failure to complete findings does not mean that laws do not apply.
Brady Findings: Certificates

• ODJ is working on the final draft of Brady Finding document for ORS 166.255(1)(b) (qualifying misdemeanor) cases.

• Handout: Draft template of Findings document
Database Entry Requirements

• ORS 107.720(1)(a) requires the sheriff to enter FAPA orders into Law Enforcement Data System (LEDS) and National Crime Information Center (NCIC) once service is complete.

• ORS 135.250(2)(d) provides that ORS 107.720 applies to no contact orders (NCO) in release agreements executed by defendants charged with domestic violence offenses.

• Court staff should forward orders containing federal and state firearms findings to the Sheriff’s Office for entry into LEDS and national databases.

Database Entry Requirements

• OJD tracks the issuance of judicial orders and notices related to firearms. Odyssey data entry codes have been assigned and should be entered by court staff when applicable.

  Codes are:
  • Firearms Notification: NOGR (Notice of Gun Restrictions)
  • Federal Firearms Findings (Brady): ORBY (Order re Brady)
  • Order Restricting Firearms under State law: FQOR (Firearms Restrictions Order)

  • POSSIBLE that ORBY should be used an indicator for both federal and state firearms findings.

  • CHECK WITH YOUR COURT ADMINISTRATOR

Database Entry Requirements

• OJD’s Odyssey Business Processes on Flagging Domestic Violence in Criminal Cases and Criminal Charges “Constituting Domestic Violence” provide guidance on when to use and how to add the flag and charge modifier for domestic violence in criminal cases.

• In addition, the Odyssey Business Processes on Brady Indicators provide direction as to the steps necessary to capture the appropriate firearms data entry codes.
Firearm Dispossession Protocols

- **MODEL FIREARM DISPOSSESSION PROTOCOL:** Developed by the Oregon Firearms and Domestic Violence Task Force
- **What:** Protocol and court orders to prohibit Defendants from possessing firearms
  - No need to reinvent the wheel. The hard work has been done for you!
- **Why:** No Oregon statute sets out how firearms should be removed from a person after a judge orders dispossession

**How:** To be used in DV cases or other cases in which:
- Court orders dispossession, and
- A nexus exists between the incident and firearms to be surrendered

- **Nexus exists when:**
  - Defendant/Respondent used, attempted to use or threatened to use a firearm against Victim/Petitioner in the current case; or
  - D/R has a history of firearm use against the V/P
  - Cases where it may be ordered: FAPA, Stalking orders, EPPDAPA, Release Agreements, Judgments
Common Protocol Components

- Respondent typically must:
  - Declare he has no firearms
  - Transfer firearms to a third party who is not barred from possessing (passes criminal background check) OR
  - Surrender to law enforcement
  - Some protocols rely only on filing of affidavit or declaration of respondent while others schedule a “compliance” hearing that can be cancelled if affidavit or declaration filed.
  - Return of firearms by third party or law enforcement only after a background check confirms respondent is eligible to possess.
  - Commitment of law enforcement and DAs to enforce and prosecute violations of surrender terms.

Firearm Dispossession Protocols

- Clatsop
- Clackamas
- Marion
- Multnomah
- Washington

Resources

Information on Firearms Restrictions in Domestic Violence Cases

- [http://courts.oregon.gov/OJD/DSCA/FCPD/Pages/FIP/Firearms-Restrictions.aspx](http://courts.oregon.gov/OJD/DSCA/FCPD/Pages/FIP/Firearms-Restrictions.aspx)

Contains links to the following:

- Summary of Firearms Information
- 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
Thank You For Your Attention.

Let us know if you have questions!

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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 or 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 of 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)
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This Guide was originally developed in 2011 by Judge Paula Brownhill, Clatsop County Circuit Court, and Rebecca Orf, Senior Judge and VAWA Project Staff Counsel for the Oregon Judicial Department, with contributions from Judge Maureen McKnight, Multnomah County Circuit Court, Robin Selig, Oregon Law Center, and Brenda Wilson with the Oregon Judicial Department. It was updated 2016 by Robin Selig, Oregon Law Center and the State Family Law Advisory Committee’s Domestic Violence Subcommittee/Firearms Work Group.
1. Federal Firearms Laws


**Protective 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 Protective Order cases, Sexual Abuse Protective Orders (SAPO) and pretrial release conditions and probation conditions in criminal cases.

To qualify under 18 USC §922(g)(8), a protective order must:

1) Have been issued after a hearing of which respondent/defendant received actual notice and at which respondent/defendant had an opportunity to participate;

2) Restrain respondent/defendant from harassing, stalking, or threatening an intimate partner of respondent/defendant or a child of the intimate partner or respondent/defendant or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or the partner’s child; and

3) Include a finding that respondent/defendant represents a credible threat to the physical safety of the intimate partner or child by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

Federal law defines “intimate partner” for purposes of §922(g)(8) as a spouse or former spouse of respondent/defendant, a person who is a parent of the child of respondent/defendant, or a person who cohabits or has cohabited with respondent/defendant. 18 USC §921(a)(32).

The federal prohibition lasts for the life of the protective order. 18 USC §922(g)(8).

Law enforcement officers and military personnel are partially exempted from the restriction in 18 USC §922(g)(8) in that they are permitted to use a service weapon in connection with that governmental service. 18 USC §925(a)(1). This exemption is often referred to as the “official use exception.”

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1 Although the term “cohabit,” within the meaning of “intimate partner,” is not defined, the word is sufficiently precise in ordinary and common meaning. U.S. v. Chapman, WL 2403791 (W. Va. 2010). “Cohabit” implies a sexual relationship. See Webster’s II New College Dictionary 218 (2001).
Under 18 USC §922(d)(8), 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
18 USC §922(g)(9) makes it a crime for persons who have been convicted of qualifying misdemeanor crimes of domestic violence to purchase, receive, ship, transport, or possess firearms and ammunition. This prohibition is a lifetime ban. A qualifying “misdemeanor crime of domestic violence” (MCDV) is defined by 18 USC §921(a)(33) as an offense that is a misdemeanor under state, federal or tribal law and:

1) Has, as an element, the use or attempted use of physical force or the threatened use of a deadly weapon;
2) Is committed by a current or former spouse of the victim; parent or guardian of the victim; a parent of the victim’s child; a person who is cohabiting 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;
3) Defendant was represented by counsel or knowingly and intelligently waived counsel; and
4) If defendant was entitled to a jury trial, the case was tried to a jury or defendant knowingly and intelligently waived the right to jury trial.

Note that the prohibition of 18 USC §922(g)(9) is specifically excluded from the official use exception. 18 USC §925(a)(1). Thus, a member of the armed forces or a law enforcement officer who has a qualifying misdemeanor conviction is unable to possess a firearm or ammunition, even while on duty.

Under 18 USC §922(d)(9), it is a violation of federal law to sell or otherwise dispose of any firearm or ammunition to any person if the transferor knows or has reasonable cause to believe that such person has been convicted in any court of a misdemeanor crime of domestic violence.

The FBI has designated six Oregon misdemeanors that may meet MCDV requirements if a qualifying relationship exists and the charge includes, as an element, the use or attempted use of physical force or threatened use of a deadly weapon:

- ORS 163.160 -- Assault in the Fourth Degree
- ORS 163.187 -- Strangulation
- ORS 163.435 -- Contributing to the Sexual Delinquency of a Minor
- ORS 166.025 -- Disorderly Conduct

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2 Exclusions: convictions that have been expunged, set aside, or where defendant was pardoned or had civil rights restored, unless preserved by a state or federal judge.
3 The 8th Circuit Court of Appeals interpreted the phrase “similarly situated” to the spouse of the victim to apply where there is an intimate personal relationship and no cohabitation. US v. Cuervo, 354 F3d 969 (8th Cir 2004).
ORS 166.190 -- Pointing Firearm at Another
ORS 163.445 -- Sexual Misconduct

The U. S. Attorney in Oregon, however, will prosecute a firearms violation after an Oregon MCDV conviction only if the defendant was convicted of Assault in the Fourth Degree or Strangulation, and the victim and defendant had the required relationship.4

2. STATE FIREARMS LAWS

SB 525, passed in 2015, created two state crimes that make it unlawful under state law for certain perpetrators of domestic violence to possess firearms and ammunition. These crimes mirror the federal prohibitions at 18 USC §922(g)(8) and 18 USC §922(g)(9), discussed above. Consequently, individuals who are prohibited from possessing firearms and ammunition under federal law are also prohibited from possessing under state law. Thus, state and local law enforcement officers and District Attorney’s offices can take action against domestic violence perpetrators who possess unlawfully even when the federal government does not enforce and/or prosecute. The substance of SB 525 was codified at ORS 166.250 and ORS 166.255.

ORS 166.255 contains two scenarios that make possession of a firearms or ammunition unlawful. They are described below.

SUBJECT TO A COURT ORDER: ORS 166.255(1)(a) makes possession by a person subject to a court order unlawful when the order:

1. Was issued or continued after a hearing for which the person had actual notice and an opportunity to be heard;
2. 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
3. Includes a finding that the person is a credible threat to the physical safety of an intimate partner, a child of an intimate partner, or a child of the person.

The term “intimate partner” is defined at ORS 166.255(3)(d) and means a person, a person’s spouse, a person’s former spouse, a parent of the person’s child, or another person who has cohabited or is cohabiting with the person in a relationship akin to a spouse.

Under ORS 166.255(1)(a), possession is unlawful only for so long as a person is subject to a court order, i.e., the duration of the order. Also, the prohibition does not apply to possession of a firearm or ammunition imported for, sold or shipped to, or issued for the use of federal or state

4 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. Formerly, the US DOJ for the District of Oregon would only accept Assault convictions if they were charged and proven “intentionally or knowingly.”
government entities. In other words, Oregon’s law includes the ‘official use exemption’ that applies to 18 USC §922(g)(8) cases.

CONVICTED OF A QUALIFYING MISDEMEANOR: ORS 166.255(1)(b) makes possession unlawful if a person has been convicted of a qualifying misdemeanor and at the time the person was a family member of the victim of the offense.

1. “Convicted” is defined at ORS 166.255(3)(a) and means:
   a. The person was represented by counsel or knowingly and intelligently waived the right to counsel;
   b. The case was tried to a jury, if the person was entitled to a jury trial, or the person knowingly and intelligently waived the right to a jury trial; and
   c. The conviction has not been set aside or expunged, and the person has not been pardoned.

2. “Family member” is defined at ORS 166.255(3)(c) means with respect to the victim:
   a. The victim’s spouse,
   b. The victim’s former spouse,
   c. A person with whom the victim shares a child in common,
   d. The victim’s parent or guardian, and
   e. A person cohabiting with or who 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.

3. “Qualifying misdemeanor,” defined at ORS 166.253(f), is one that has, as an element of the offense, the use or attempted use of physical force or the threatened use of a deadly weapon.5

The terms “deadly weapon” (ORS 166.255(3)(b) and “possess” (ORS 166.255(3)(c) have the meaning given those terms in ORS 161.015. “Deadly weapon” means any instrument, article or substance specifically designed for and presently capable of causing death or serious physical injury. ORS 161.015(2). “Possess” means to have physical possession or otherwise to exercise dominion or control over property. ORS 161.015(9)

ORS 166.255(1)(b) does not include an official use exemption and is a lifetime prohibition. ORS 166.250(1)(c)(G) states that a person commits the crime of unlawful possession of a firearm if

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5 SB 525 went into effect in January 2016. In light of the few months that have passed, it is as yet unknown what crimes state prosecutors will consider “qualifying misdemeanors”
the person knowingly possesses a firearm and the possession of the firearm by the person is prohibited under ORS 166.255.  

3. BRADY ACT

In 1993, Congress enacted the Brady Handgun Violence Prevention Act (Brady Act). Public Law 103-159 (1993). It requires all federally licensed gun dealers to obtain a criminal background check of firearm purchasers before completing a sale. 18 USC §922(t)(1), et seq. 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. During a background check, the FBI will search databases to determine whether the sale of the firearm would violate state or federal laws. The FBI search is limited to three business days. In Oregon, the background checks are conducted by Oregon State Police Identification Services. If no state or federal prohibitions are found within three business days, the sale will be allowed to take place. 

Oregon law that requires court staff to deliver protective orders to county sheriffs for entry into the Law Enforcement Data System (LEDS) and the federal National Crime Information Center (NCIC) facilitates the effectiveness of criminal background checks required by the Brady Act. See e.g., ORS 107.720(1)(a) (FAPA); ORS 124.030(1) (EPPDAPA); ORS 163.741(2) (Stalking); and ORS 163.733(1) (SAPO).

The NICS Improvement Amendments Act of 2007

The NICS Improvement Amendments Act of 2007, Public Law 110-180 (2008), requires states to provide complete information to NICS on persons prohibited from receiving, possessing, or purchasing firearms. States must comply to avoid a match requirement on certain federal grants.

SB 525 Implications

Because Oregon’s new laws mirror the federal domestic violence firearms crimes, any case that imposes federal liability will also impose state liability. For this reason, the firearms certificates for protective order and misdemeanor criminal cases have been revised slightly to reflect their applicability to both federal and state law. Judges, however, will need to complete only one firearms certificate in each case. Local civil deputies will enter the data into LEDS to flag that the respondent/defendant is prohibited from possessing or purchasing under both federal and

6 ORS 166.274 provides the authority and sets out a process by which individuals who are barred from possessing firearms under ORS 166.250 or ORS 166.270 or barred from purchasing firearms under ORS 166.470 may file a petition for relief from the court in circuit court.

7 “Brady findings” are judicial findings to indicate that the terms of a protective order or a misdemeanor conviction may disqualify a respondent or defendant from possessing or other use of firearms and ammunition under federal law; document is labeled “Federal Firearms Findings (Brady)” and often is called a “Brady certificate.”

8 SB 941 passed in 2015 and codified at ORS 166.435 requires criminal background checks for some transfers of firearms by private parties.
state law. So doing will provide state law enforcement officers with information that will enable them to enforce state law and will facilitate criminal background checks required for firearms purchases.

4. FIREARMS NOTIFICATION

Violence Against Women Act (VAWA) Notice
The Violence Against Women Reauthorization Act of 2005 (VAWA), 42 USC § 3796gg-4(e), requires as a condition of eligibility for VAWA grants that the state certify that its judicial and administrative policies and practices include notification to domestic violence offenders of the requirements of the Brady firearm laws and any applicable related federal, state, or local firearms laws. Failure to notify in at least 90% of Oregon’s domestic violence cases will cause Oregon to lose VAWA STOP grant funds.

Courts must enter the notice in Odyssey using code NOGR. This will allow Oregon to certify compliance with the VAWA judicial notice requirement. Use of the Firearms Notification form may help ensure that the NOGR code is entered in appropriate cases. Notice may be given orally or in writing. According to the FBI, best practice is to give the notice early in criminal cases, preferably at arraignment, although notice may be given at several stages of the criminal proceedings. In protection order proceedings, notice may be written in the order, written on other documents served on respondents, and/or given orally during 21-day, 5-day, and modification hearings. The OJD’s model FAPA, Stalking Protective Orders, SAPO, and EPPDAPA Notice to Respondent/Request for Hearing forms include the notice.

ORS 135.385 Notice
ORS 135.385(2)(f) requires judges to inform a defendant 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 a 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.

5. FULL FAITH AND CREDIT

VAWA includes full faith and credit provisions that require enforcement of protection orders across jurisdictional lines. Codified at 18 USC §2265-2266, these provisions require states to recognize and enforce valid protection orders issued in any jurisdiction in the United States. Full faith and credit provisions apply to explicit firearm restrictions in protection orders and require
that such restrictions be enforced even if the enforcing jurisdiction does not authorize judges to restrict firearm possession.

A protection order is entitled to full faith and credit if the order was issued by a state, tribal, or territorial court, and the court had jurisdiction over the parties and subject matter under the laws of the state, tribe, or territory, and the person who is restrained was given reasonable notice and an opportunity to be heard. In the case of *ex parte* orders, notice and opportunity to be heard must be provided within the time required by the issuing court’s laws, and in any event within a reasonable time after the order is issued. These orders must be enforced even if the order is not registered in the enforcing state and even if a hearing was not held after the *ex parte* order was issued.

The issuing jurisdiction determines whom the order protects, the terms and conditions of the order, and how long the order remains in effect. The enforcing jurisdiction determines how the order is enforced, the arrest authority of the responding law enforcement agency, detention and notification procedures, and penalties for violations.

OJD’s model FAPA, EPPDAPA, SAPO, and Stalking Protective Order forms include Full Faith and Credit language.

**6. NO CONTACT ORDER ENTRY**

ORS 107.720(1)(a) requires the sheriff to enter FAPA orders into Law Enforcement Data System (LEDS) and National Crime Information Center (NCIC) once service is complete. ORS 135.250(2)(d) provides that ORS 107.720 applies to no contact orders (NCO) in release agreements executed by defendants charged with domestic violence offenses.
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:**

<table>
<thead>
<tr>
<th>FEDERAL (18 USC 922(g)(9))</th>
<th>STATE (ORS 166.250-166.255)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A QUALIFYING OFFENSE:</strong></td>
<td><strong>A QUALIFYING OFFENSE:</strong></td>
</tr>
<tr>
<td>◆ Is a misdemeanor under federal, state, or local law; and</td>
<td>◆ Is a misdemeanor; and</td>
</tr>
<tr>
<td>◆ Has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon;</td>
<td>◆ Has, as an element of the offense, the use or attempted use of physical force or the threatened use of a deadly weapon;</td>
</tr>
<tr>
<td><strong>RELATIONSHIP REQUIREMENT:</strong></td>
<td><strong>RELATIONSHIP REQUIREMENT:</strong></td>
</tr>
<tr>
<td>◆ At the time the crime was committed, the defendant was one of the following:</td>
<td>◆ At the time of the offense, the person (defendant) was one of the following:</td>
</tr>
<tr>
<td>◆ A current or former spouse, parent, or guardian of the victim;</td>
<td>◆ A current or former spouse of the victim;</td>
</tr>
<tr>
<td>◆ A person with whom the victim shared a child in common;</td>
<td>◆ A person with whom the victim shares a child in common;</td>
</tr>
<tr>
<td>◆ A person who was cohabiting with or had cohabited with the victim as a spouse, parent or guardian; or</td>
<td>◆ The parent or guardian of the victim;</td>
</tr>
<tr>
<td>◆ A person who was or had been similarly situated to a spouse, parent, or guardian of the victim.</td>
<td>◆ A person cohabited with or has cohabited with the victim as a spouse, parent, or guardian; or</td>
</tr>
<tr>
<td></td>
<td>◆ A person similarly situated to a spouse, parent, or guardian of the victim.</td>
</tr>
</tbody>
</table>
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” requirements:

- 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

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

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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.
FEDERAL AND STATE FIREARMS PROHIBITIONS
OREGON BENCHSHEET
Qualifying Orders of Protection/Restraint

In General: Persons subject to a qualifying protection order (examples could include: FAPA, EPPDAPA, stalking, pre-trial or probation no-contact orders, juvenile) are generally prohibited from purchasing or possessing any firearms or ammunition under federal and state law.

Duration: The ban lasts for the duration of the protective order.

Official Use Exception: Federal, state, and local governmental employees in their official capacities are exempt from this prohibition, but remain subject to it in their personal capacities. 18 USC 925(a)(1); ORS 166.255(2)

Required Elements: If the order of protection or restraint includes one element (indicated by the “”) from each of the four sections listed below, it will generally be considered to be a “qualifying order” which could subject an offending respondent to federal and/or state prosecution for firearm purchase or possession.

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

A QUALIFYING PROTECTION OR RESTRAINING ORDER INCLUDES AT LEAST ONE ELEMENT FROM EACH OF THE FOLLOWING:

<table>
<thead>
<tr>
<th>FEDERAL (18 USC 922(g)(8))</th>
<th>STATE (ORS 166.250, 166.255)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>I. HEARING</strong></td>
<td><strong>I. HEARING</strong></td>
</tr>
<tr>
<td>Respondent received actual notice of the hearing, and either:</td>
<td>Respondent received actual notice of the hearing, and either:</td>
</tr>
<tr>
<td>◆ participated in the hearing, or</td>
<td>◆ participated in the hearing, or</td>
</tr>
<tr>
<td>◆ had an opportunity to participate in the hearing.</td>
<td>◆ had an opportunity to participate in the hearing.</td>
</tr>
<tr>
<td><strong>II. RELATIONSHIP</strong></td>
<td><strong>II. RELATIONSHIP</strong></td>
</tr>
<tr>
<td>The person protected by the order is:</td>
<td>The person protected by the order is:</td>
</tr>
<tr>
<td>◆ A spouse or former spouse of the respondent;</td>
<td>◆ A spouse or former spouse of the respondent;</td>
</tr>
<tr>
<td>◆ The parent of a child of respondent;</td>
<td>◆ The parent of a child of respondent;</td>
</tr>
<tr>
<td>◆ A person who does or did cohabit (live in a sexually intimate relationship) with respondent;</td>
<td>◆ A person who does or did cohabit with respondent in a relationship akin to a spouse;</td>
</tr>
<tr>
<td>◆ Respondent’s child; or</td>
<td>◆ Respondent’s child; or</td>
</tr>
</tbody>
</table>

1 Note: references to “respondent” encompass defendants in pre-trial or probation no-contact orders; references to “petitioner” encompass victims in pre-trial or probation no-contact order.
<table>
<thead>
<tr>
<th>A child of an intimate partner of respondent (Intimate partner is the spouse/former spouse, cohabitant/former cohabitant, or parent of respondent’s child.)</th>
</tr>
</thead>
</table>

### III. RESTRAINTS FUTURE CONDUCT
- The order restrains respondent from harassing, stalking, or threatening the intimate partner, child of the respondent, or child of the respondent’s intimate partner; or
  - The order restrains respondent from engaging in other conduct that would place the intimate partner in reasonable fear of bodily injury to the intimate partner.

### IV. CREDIBLE THREAT OR PHYSICAL FORCE
- The order includes a finding that respondent is a credible threat to the physical safety of the intimate partner or child of the intimate partner or of the respondent; or
  - The order, by its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonable be expected to cause bodily injury.

<table>
<thead>
<tr>
<th>A child of an intimate partner of respondent. (Intimate partner is the spouse/former spouse, cohabitant/former cohabitant, or a parent of respondent’s child.)</th>
</tr>
</thead>
</table>

### III. RESTRAINTS FUTURE CONDUCT
- The order restrains respondent from stalking, intimidating, molesting, or menacing an intimate partner, a child of an intimate partner, or a child of the respondent;

### IV. CREDIBLE THREAT
- The order 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 respondent.