

PROTECTIVE ORDERS + FIREARM PROHIBITIONS

SFLAC Conference
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(Some materials + artwork from Sr.
Judge Maureen McKnight, used with
permission)

Overview of Today's Presentation

- History of Firearm/ Ammunition Prohibitions – Federal + State
- Qualifying Oregon Protection Orders
- Understanding Firearm/ Ammunition Prohibitions
 - Timelines
- Court Obligations re: Orders + Dispossession/ Surrender
- Dispossession Process + Requirements
 - Tracking Declarations submitted
- Applicability to Foreign orders (federal law)
- Firearm Prohibition on Certain Misdemeanor Offenses (SB 823)
- Bench Sheets (Protective Order + Criminal)

DOMESTIC VIOLENCE, WOMEN, AND GUNS IN THE US

5x

Abused women are 5 times more likely to be killed by their abuser if the abuser has access to a gun.

$\frac{1}{2}$

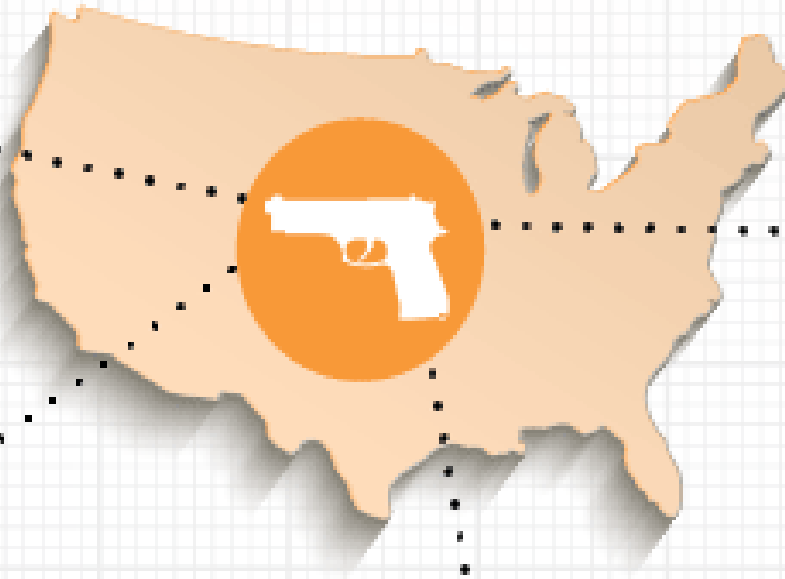
More than half of all murders of women are committed with a gun.

11x

Women in the US are 11 times more likely to be murdered with a gun than women in other countries.

12x

Domestic violence assaults involving a gun are 12 times more likely to result in a death than those involving other weapons or bodily force.



Quick Statutory History

- Federal Law
- Oregon- law background
 - 2015 SB 525 – created state statute to mirror federal
 - 2018 HB 4145 – expanded qualifying orders (and added stalking to convictions)
 - 2019 HB 2013 – requires notification + dispossession order
- Oregon's prohibition for possession for firearms/ ammunition is broader than the federal statute

Protection Orders

Oregon Criminal Liability ORS 166.255

- **Subject to Order**
 - Continued after hearing of which R had actual notice + opportunity to participate; or
 - Continued by operation of law when R did not request a hearing with time allowed, or
 - Continued (by order or operation of law) when R requested a hearing and withdrew request or did not appear

Federal Criminal Liability 18 US 922(g)(8)

- **Subject to order**
 - Issued after hearing of which R had actual notice and opportunity to participate

Protection Orders

Oregon Criminal Liability ORS 166.255

- **That Prohibits**
 - “menacing, molesting, intimidating” (FAPA, EPPWDAPA, SAPO, or SPO)
- **Against:**
 - “family or household member” (expanded to fix “boyfriend loophole in 2018)
 - Child of a family or household member
 - Child of the respondent

Federal Criminal Liability 18 US 922(g)(8)

- **That Prohibits**
 - “harassing, stalking, or threatening x...or engaging in conduct that would place x in reasonable fear of bodily injury”
- **Against**
 - “Intimate partner” (Spouse/former spouse; Person who cohabitates/ has cohabited)
 - Child of intimate partner
 - Parent of R’s child

Protection Orders

Oregon Criminal Liability ORS 166.255

- And contains a finding that the Respondent is a credible threat to the physical safety of Petitioner

Federal Criminal Liability 18 US 922(g)(8)

- And contains a finding that Respondent is a credible threat to the physical safety of petitioner or
- The order's terms explicitly prohibit actual/ attempted/ threatened use of physical force against an intimate partner or child that would reasonably be expected to cause bodily injury

Recent Expansions to State Law (Summarized)

1. Expanded liability for Unlawful Possession of Firearm (UPF) by covering many more Defendants subject to protection orders, especially FAPAs.
2. Statutory firearms surrender protocols imposed in *qualifying* Protection Orders and *qualifying* Misdemeanor Crimes of DV cases + Stalking Crimes.
3. Expanded judicial duties (oral & written) at:
 - a. All FAPA hearings and many other protection order hearings
 - b. Qualifying misdemeanor DV sentencings + Stalking sentencings



ORS 166.255

Firearm Prohibition: Court Orders

The person is the subject of a court order that:

- **Was issued or continued after a hearing** for which the person had actual notice and during the course of which the person had an opportunity to be heard; or
- **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 other and either
 - Requested a hearing but did not attend the hearing, or
 - Withdrew the request before the hearing occurred, or
 - Did not request a hearing during the time period in which the opportunity was available (IE, 30 days from service)

AND

- **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

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.

What are the **qualifying protection orders** that expose a restraining order Respondent to Oregon/state criminal liability for UPF?

Depends on several factors



6 Types of Civil Protection Orders in Oregon

- FAPA – Family Abuse Prevention Act (1977)
- SPO – Stalking Protective Order (1993)
- EPPDAPA – Elderly Persons and Persons With Disabilities Abuse Prevention Act (1995)
- SAPO – Sexual Abuse Protective Order (2014)
- EPO – Emergency Protection Order (2015)
- ERPO – Extreme Risk Protection Order (2018)

**This list excludes no-contact conditions that are part of a pre-trial order or condition of probation in a criminal case*

+ **CERTAIN CONDUCT PROHIBITED**

Restrains from *stalking*, (SPO), *intimidating*,
molesting, or *menacing* (FAPA, EPPWDAPA, SAPO)

+ **FINDING** -- includes "credible threat" re
physical safety finding (FAPA, SPO*)

+ **COVERED RELATIONSHIP –**

Protects "family or household member" or that
Member's child, or the Respondent's child
(FAPAs, some SPO, some EPPWDAPA, some SAPO.

+ **IN EFFECT AFTER NOTICED HEARING OR
HEARING DEADLINE LAPSES**



FAPA
&
some
SPO



Family Abuse Prevention Act Restraining Order (FAPA);

ORS 107.700- 107.735.

Who is eligible?

- The parties must be “family or household members”:
 - Spouses
 - Former Spouses
 - Adult persons related by blood or marriage
 - Persons who are cohabiting or who have cohabited with each other
 - Persons who have been involved in a sexually intimate relationship with each other within two years immediately preceding filing
 - Unmarried parents of a child
- Minor may file against a spouse, former spouse or person with whom the petitioner has been in a sexually intimate relationship (107.726)
- **Not** available against minor respondent.



What is abuse under FAPA?

There must have been at least one incident of abuse within the prior 180 days.* Abuse is defined as:

- Attempting to cause or intentionally, knowingly or recklessly causing bodily injury.
- Intentionally, knowingly or recklessly placing another in fear of imminent bodily injury.
- Causing another to engage in involuntary sexual relations by force or threat of force.

*180 days is tolled if Respondent lives 100+ miles away or is incarcerated.

At *issuance* of the FAPA Order, Petitioner must show **Imminent Danger & Credible Threat**



- There must be an **imminent danger of further abuse** to the petitioner, and the **respondent must be a credible threat** to the physical safety of the petitioner (or petitioner's child).
- Note ORS 107.718(5): "Imminent danger ... includes, but is not limited to situations in which the respondent has recently threatened petitioner with additional bodily harm. "

2019's HB 3117: Amended the standard at the *contested* hearing

Under prior law, the same standard applied for issuing an *ex parte* emergency protective order under ORS 107.718 and continuing the order after a hearing under ORS 107.716. Both standards required the petitioner to show "imminent danger of further abuse."

- 1) The abuse has occurred within 180 days;
- 2) **The petitioner is in imminent danger of further abuse;** and
- 3) The respondent represents a credible threat to the physical safety of the petitioner or the petitioner's child.

At the *contested hearing*, Petitioner must show
'reasonable fear for physical safety'
& Credible Threat



- The petitioner **reasonably fears for their physical safety**, and the **respondent must be a credible threat** to the physical safety of the petitioner (or petitioner's child).

FAPA Summary:

1. Qualifying relationship required: “family or household member”
 - Limited availability to minor petitioners. NOT available against minor respondent.
 2. At least one incident of abuse w/in last 180 days*
 - Physically harmed or attempted to harm petitioner; Placed petitioner in fear of “imminent bodily injury” Sexual relations by force or threat of force;
 3. Must be imminent danger of further abuse (AT ISSUANCE) and reasonable fear for physical safety (AT CONTESTED HEARING) and respondent must be a credible threat of further abuse
- Relief available may include
 - No contact provisions
 - Temporary custody
 - Ouster
 - Police standby for return of possessions
 - Emergency monetary assistance
 - Gun dispossession
 - Other relief “the court deems necessary”
 - **Mandatory Arrest for violation (though violation is not a crime)**
 - **Expires at 1 year; Renewable before expiration**



Two Ways to Prohibit Firearms in FAPAs

Immediate Prohibition – based on facts of a particular case

- Must be ordered by the Judge in the FAPA
- Violation = VRO/ Contempt of Court

Statutory Prohibition – based on timeline following service
regardless of whether there was an immediate prohibition

- Happens as a function of the law
- Violation = Unlawful Possession of Firearm/ Class A Misdo

18. Immediate Firearms Prohibition

18. _____

Respondent is immediately prohibited from **purchasing or possessing any firearms or ammunition** (*Event: FQOR*)

19. Firearms Surrender (*applies to all granted orders*)

Respondent is ordered to surrender all firearms and ammunition according to the attached **Firearms Surrender and Return Terms**, which are incorporated and made part of this **Order**

19A. Respondent is ordered to file a **Declaration of Firearms Surrender** with any required attachments according to the **Firearms Surrender and Return Terms**

FIREARMS NOTIFICATION

If Section 18 is initialed by the judge, you are immediately prohibited from purchasing or possessing any FIREARM, including a rifle, pistol, or revolver, and AMMUNITION (ORS 107.718(1)(h)).

Whether or not Section 18 is initialed, you will be prohibited from purchasing or possessing any firearms or ammunition under ORS 166.255 if:

- You request a hearing to contest this **Order** and the **Order** is not dismissed
 - You request a hearing to contest this **Order** but then withdraw your request
 - You request a hearing to contest this **Order** but do not attend the hearing
- or
- 30 days pass after you were served with this **Order** and you do not request a hearing to contest this **Order**

Talk to a lawyer if you have questions about this



Newer legislation does NOT affect Judge's existing authority to order IMMEDIATE dispossession/surrender of firearms.

20. Other Orders

20. _____

NOTE: respondent will still be in contempt (though not a crime) if respondent possesses prior to the contested hearing or 30 days post service (at which point it would become a crime), whichever is first.

EPPDAPA Summary

1. Petitioner must be elderly or disabled (no qualifying relationship required)
 2. At least one incident of abuse w/in last 180 days*
 - Abuse is defined by statute and very different from FAPA's definition
 3. Must be immediate and present danger of further abuse.
- Relief available may include
 - No contact provisions
 - Ouster
 - Gun dispossession
 - Not available: custody and parenting time, emergency monetary relief
 - Expires at 1 year; Renewable before expiration for "good cause shown"
 - **Mandatory Arrest for violation** (though violation is not a crime)



SUMMARY

SAPO Summary

Eligibility: Parties cannot be “family or household members” as defined in FAPA (*exception for minor Petitioner*); Respondent cannot be subject to another protection order.

- 1. At least one incident of “sexual abuse”** (Sexual contact with a person who does not consent or is incapable of consenting)
 - 2. Petitioner must reasonably fear for his/her physical safety with respect to the respondent.**
- Relief available may include
 - No contact provisions
 - Stay away from residence and other areas
 - Gun dispossession (in *very* limited circumstances)
 - Other relief “the court deems necessary”
 - Not available: custody provisions, civil standby, or ouster
 - **Permanent** or expires at **5 years** (or **after 18th birthday** for minor);
 - **Renewable** before expiration
 - **Mandatory Arrest for violation** (though violation is not a crime)



SUMMARY

SPO Summary



A person may petition the circuit court for a stalking protective order, or for damages or both, if:

1. The person *intentionally, knowingly or recklessly*, engages in REPEATED and UNWANTED CONTACT with the victim, or a member of that person's immediate family or household thereby ALARMING or COERCING the victim
 2. It is OBJECTIVELY REASONABLE for a person in the victim's situation to have been alarmed or coerced by the contact; and
 3. The repeated and unwanted contact causes the victim REASONABLE APPREHENSION regarding their PERSONAL SAFETY or the safety of the victim's immediate family or household member
- SPO is unlimited duration
 - Violation is a mandatory arrest; first violation is a misdemeanor; second violation is a felony.

Authority to Order *Immediate* Prohibition

- Does the law specific to the orders allow the Judge to order “no firearms” at the issuance or the order?

| | |
|----------|--|
| FAPA | Yes – “any other relief necessary” |
| EPPWDAPA | Yes – “any other relief necessary” |
| Stalking | Probably – no “any other relief” language but has a different section requiring firearms language meeting <i>federal</i> disability (after notice & hearing) |
| SAPO | Yes – “any other relief necessary” |
| EPO | No |
| ERPO | Yes – has explicit language re firearms ban |

When the law requires a firearms ban regardless of whether Judge orders one:

This ban is imposed on “Qualifying orders”:



PROHIBIT CERTAIN CONDUCT

+ CONTAIN FINDING re CREDIBLE THREAT to PHYSICAL SAFETY

+ PROTECT A VICTIM IN A COVERED RELATIONSHIP –

+ IN EFFECT AFTER NOTICED HEARING OR HEARING DEADLINE LAPSES
(not an ex parte order)

Can Judge **ADD** the “credible threat” finding
to *OTHER* protection orders that have a
qualifying relationship + prohibited conduct?

YES.

- Will be OPTION on (EPPDAPA/SAPO/SPO) restraining orders
- No interlineation needed

BUT:

- Must also have “no gun/ammo” in order & “transfer + declare” terms **in writing. Already in Forms!**

9. (FOR COURT USE ONLY) FIREARMS PROHIBITION AND DISPOSSESSION

Judge's Initials

(Not required unless firearms terms are being ordered.)

9A. The court orders Respondent is PROHIBITED from possessing firearms or ammunition

9B. Respondent is ordered to SURRENDER all firearms and ammunition in their possession according to the attached *Firearms Surrender Terms* because both of the following are found:

Petitioner and Respondent have a QUALIFYING RELATIONSHIP *(current or former spouses/Registered Domestic Partners, current/former cohabitants, current/former sexually intimate relationship, adults related by blood or marriage, unmarried parents of a minor child)*

Respondent presents a CREDIBLE THREAT to Petitioner's physical safety

FIREARMS NOTIFICATION

If Section 9 is initialed by the judge ordering that you are prohibited from possessing firearms or ammunition, you are immediately prohibited from purchasing or possessing any FIREARM, including a rifle, pistol, or revolver, and AMMUNITION (ORS 107.718(1)(h)).

If Section 9 is initialed ordering you to surrender firearms and ammunition, you will be prohibited from purchasing or possessing any firearms or ammunition under ORS 166.255 if:

- You request a hearing to contest this *Order* and the *Order* is not dismissed
- You request a hearing to contest this *Order* but then withdraw your request
- You request a hearing to contest this *Order* but do not attend the hearing

or

- 30 days pass after you were served with or became aware of this *Order* and you do not request a hearing to contest this *Order*

Talk to a lawyer if you have questions about this

“Qualifying Orders”

SUMMARY

PROHIBITS CERTAIN CONDUCT

Order restrains from *stalking*, (SPO), *intimidating*, *molesting*, or *menacing* (FAPA, EPPWDAPA, SAPO)

+ CONTAINS FINDING RESPONDENT IS A CREDIBLE THREAT

to physical safety (FAPA (always); Optional in EPPWDAPA, SPO, SAPO)

+ PROTECTS VICTIM IN COVERED RELATIONSHIP –

Protects “family or household member” or that Member’s child, or the Respondent’s child (all FAPAs, some SPOs, some EPPWDAPA, some SAPOs).

SPOs not have
timeframe for hearing

30 days (*or hearing
or w/draw date)

+ IN EFFECT AFTER NOTICED HEARING OR HEARING DEADLINE LAPSES*

EPO Summary

SUMMARY

An officer, with the survivor's consent or permission may apply to a circuit court for the order when the peace officer has probable cause to believe:

1. The peace officer has responded to an incident of domestic disturbance and the circumstances for mandatory arrest as described in ORS 133.055 (2)(a) exist; **or**
 2. The person is in immediate danger of abuse by a family or household member; **and**
 3. An emergency protective order is necessary to prevent the person from suffering the occurrence or recurrence of abuse.
- The court "may enter and emergency protective order if the court finds there is probable cause that" 1. or 2., *and* 3.
 - The order shall "restrain respondent from contacting the person protected by the order and from intimidating, molesting, interfering with or menacing the person or attempting to intimidate, molest, interfere with or menace the protected person."

The EPO expires seven days from the date the court signs it.

Restraint on contact is the **ONLY** relief available

Firearm prohibition is NOT available

ERPO Summary

SUMMARY

Eligibility: Law Enforcement Officer or “Family or Household Members”

~not synonymous with FAPA “FHH” definition!

Petitioner must show: Respondent presents a risk in the near future, including an imminent risk, of suicide or causing physical injury to another person. (Judge MUST consider certain factors)

Sole Relief Available: Dispossession of deadly weapons (includes firearms) & surrender of concealed handgun license

- **Process similar to FAPA;** service & hearing w/in 30 days; additionally- both parties may request one termination during the year (each year)
- **Expires at 1 year;** Renewal is *not ex parte*; filed 90 days before expiration; 14-day notice of hearing; original petitioner or *any* FHH member can renew
- **Violation is a Misdemeanor**

Getting Firearms after ERPO: Different Protocol!!



- Requires surrender of firearms to LEA, gun dealer, or party within 24 hours of issuance
- Immediate surrender of Concealed Handgun License to LEA
- Officer serving ERPO **must**:
 - Ask Respondent to surrender to the officer all deadly weapons in R's custody/ control/ possession and any concealed handgun license
 - If R indicates intention to surrender to gun dealer/ 3rd party, LEA shall request that R identify the dealer/ 3rd party
 - Take possession of all deadly weapons appearing to be in R's custody/ control/ possession that are surrendered by R or in plain sight
- Officer serving ERPO **may**:
 - Conduct any search permitted by law for deadly weapons in R's custody/ control/ possession

Comparison Chart

available @

www.oregonlawhelp.org

Comparison Chart of Protective Orders in Oregon

Current as of September 2021

| | FAPA | EPPDAPA | SAPO | SPO | ERPO | EPO |
|---|--|--|---|--|--|---|
| | Family Abuse Prevention Act Restraining Order, ORS §107.700 – 735 | Elderly Persons and Persons with Disabilities Abuse Prevention Act Restraining Order, ORS §124.005 – 040 | Sexual Abuse Protective Order, ORS §163.760 – 777 | Stalking Protective Order, ORS §163.730 – 755 (criminal and civil citation route) & ORS §30.866 (civil petition route) | Extreme Risk Protection Order, ORS §166.525 – 543 | Emergency Protective Order, ORS §133.035 |
| ELIGIBILITY | | | | | | |
| Relationship between petitioner and respondent | Respondent must be petitioner's "family or household member," which is defined as: <ul style="list-style-type: none"> Spouse / former spouse Adults related by | Petitioner and respondent do not have to have a particular relationship. However, the respondent cannot be the person's guardian | Adult petitioners -- respondent <i>cannot</i> be a household or family member as defined by FAPA statute. (ORS 163.763(a); ORS 163.760(1); ORS | Petitioner and respondent do not have to have a particular relationship (See ORS 30.866 generally) | Petitioner must be either: <ul style="list-style-type: none"> Law enforcement officer (OSP, Sheriff, city police, tribal police; not campus security). or | Respondent must be "family or household member" as defined in FAPA. (see first column) (ORS 133.035(1)(a)(B), ORS 107.705(4)) |

<https://oregonlawhelp.org/files/CCDACC15-944D-570E-7F1F-7BBF3DECo018/attachments/4855CDD7-6613-4624-B79C-B4B73784AE04/protection-order-comparison-chart.pdf>

FIREARM/ AMMUNITION PROHIBITIONS AS APPLIED TO QUALIFYING PROTECTION ORDERS

Court Obligations + Orders +
Dispossession Orders + Surrender

ORS 166.256 – Relinquishment of Firearms; Subject to Certain Orders

When a respondent becomes subject to a qualifying order the court SHALL:

- Indicate in the order that the respondent is **prohibited** from possessing firearms/ammunition
- Ensure that the respondent is subject to an additional order that:
 - Requires respondent **transfer all firearms/ ammunition** w/in 24 hours
 - Requires respondent to file a **declaration w/in 2 judicial days**

If respondent is present in the courtroom, the court SHALL:

- Inform the respondent **orally and in writing** of the prohibition
- **Order in writing** that the respondent **transfer** all firearms/ ammunition w/in 24 hours
- **Order** that respondent file a **declaration** w/in 2 judicial days

Surrender Protocols

Respondents and Defendants Must:

1. Transfer guns w/in 24 hours &
2. File declaration re details of transfer,
w/Court & DA w/in 2 judicial days

TRANSFER & DECLARE

Order to Transfer Firearms/ Ammunition

- Within 24 hours of the court's order
 - transfer all firearms/ ammunition to local LE agency, gun dealer, or third party that does not reside with the person
 - Obtain proof of transfer (transfer to 3rd party doesn't allow for background check exceptions in 166.435)
 - If third party, requires a declaration from third party



Transfer to occur w/in 24 hours of ban becoming effective:

- to LEA
- gun dealer, or
- 3rd party (who does not live with Respondent)
in front of dealer + background check



- ↓
- Even if transfer is to ex/spouse, domestic partner, step/parent, step/child, sibling, grandparent, grandchild, aunt/uncle, 1st cousin, niece/nephew. ORS 166.435.

Transfer Must Include:

1. **Proof of transfer** must be issued by LEA, gun dealer, or third person including:
 - Name
 - Date of transfer
 - Serial #/make/model of each transferred firearm
2. **If the transferee is a 3rd party,**
 - **OSP's background check approval #**
 - **Sworn declaration acknowledging** ban on Def/Resp and own criminal liability if allow access

Proof of Firearms Transfer



- Filled out by person receiving the firearms
- If third party, needs an OSP background check number
- Law Enforcement or Gun Dealer
 - Often have their own receipts or forms
- Attach the receipt or proof of transfer to the Firearms Surrender Declaration

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

PROOF OF FIREARMS TRANSFER

*Complete this form if you have received firearms and ammunition from the respondent/defendant named below**

Name of person surrendering firearms: _____

Case #: _____

Date of transfer: _____

RECIPIENT'S INFORMATION:

I, (full name) _____ received firearms and/or ammunition from the Respondent/Defendant named above

- I am a: third party who does not live with Respondent/Defendant*
 *OSP background check number: _____ (required for third parties)
 licensed gun dealer
 law enforcement agency representative (agency name): _____

- Ammunition was surrendered to me
 The following firearms were surrendered to me:

| Serial Number | Make and Model (or description, if make/model unavailable) |
|---------------|--|
| | |
| | |
| | |
| | |

Declaration to be filed w/court, & copy to DA, w/in 2 court days of ban becoming effective

I had **no firearms** in my possession at the time of the court's order. I do not currently possess any firearms.

All firearms and ammunition in my possession have been **transferred** to:

a **law enforcement agency** (name): _____

a **gun dealer** (name): _____

a **third party who does not live with me** (name): _____

A proof of transfer or **receipt is attached** (required)

I am asserting my constitutional right against self-incrimination. **decline to make** any statement about firearms.

I HAVE FILED COPIES OF THIS **DECLARATION** (AND THE **DECLARATION** FROM THIRD PARTY RECIPIENTS, IF ANY) WITH THE DISTRICT ATTORNEY (required)

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

Petitioner/Plaintiff

v. _____

Case No: _____

**RESPONDENT'S/DEFENDANT'S
DECLARATION OF
FIREARMS SURRENDER**

Name (printed)

Signature of Respondent/Defendant

Address

City, State, ZIP

Phone

DA may file contempt for failure to file declaration

Third party recipient's declaration of firearms receipt



- Filled out by the Third Party receiving the firearms
- Third Party's Name
- Initials
- OSP background check number
- Signature and contact information

- Must also complete the Proof of Transfer Form, and then both are attached to the Respondent's Firearms Surrender Declaration

NOTICE TO RECIPIENT

You are subject to criminal and/or civil penalties if:

- You allow Respondent/Defendant access to firearms or ammunition during the time they are prohibited from possession
- You are subject to any court order prohibiting you from possessing firearms or ammunition

Declaration

I, (full name) _____ received firearms and/or ammunition surrendered by Respondent/Defendant

By my initials here → _____ I swear to the court that all the following statements are true

- I am aware that Respondent/Defendant is subject to a court order to surrender all firearms and ammunition and prohibited from possessing firearms or ammunition
- I am not a law enforcement officer or gun dealer or not acting in my official capacity as a law enforcement officer or gun dealer
- I do not live with Respondent/Defendant
- I completed a Proof of Transfer listing the firearms and/or ammunition Respondent/Defendant surrendered to me
- I passed a background check by a law enforcement agency or gun dealer (required)

The OSP background check number is: _____

I hereby declare that the above statements are true to the best of my knowledge and belief. I understand they are made for use as evidence in court and I am subject to penalty for perjury.

Date

Signature of Recipient

Name (printed)

Address City, State, ZIP Phone

How does the Sheriff & DA know when...

Service + 30 Days + No Hearing Request (or withdrawn/no-show)?

ANSWER:

1. Local Collaboration w/LE, Courts, and DA.
2. Excellent Family Court Facilitators, Court Clerks and others!



Court report available --

- lists **non-compliant Respondents** required to file the Declaration but who have not

Can be localized for specific county/counties
-- contact local TCA re emailed receipt

Report:
Firearm Surrender and
Restriction Order

CASE - Firearm Surrender and Restriction Order

| Reporting Period Start Dt | Reporting Period End Dt | Court | Case Type | Case Nbr | Case Name | Respondent | Order | Order Date | Date Order Entered |
|---------------------------|-------------------------|------------|-------------------------|------------|------------|------------|--------------------------------------|------------|--------------------|
| 8/1/2021 | 8/7/2021 | Washington | Protective Order - FAPA | [REDACTED] | [REDACTED] | [REDACTED] | Firearms Restrictions Ordered | 3/25/2021 | 8/5/2021 |
| 8/1/2021 | 8/7/2021 | Washington | Protective Order - FAPA | [REDACTED] | [REDACTED] | [REDACTED] | Order - Abuse Prevention Restraining | 4/20/2021 | 4/20/2021 |
| 8/1/2021 | 8/7/2021 | Washington | Protective Order - FAPA | [REDACTED] | [REDACTED] | [REDACTED] | Order - Abuse Prevention Restraining | 6/18/2021 | 6/18/2021 |
| 8/1/2021 | 8/7/2021 | Washington | Protective Order - FAPA | [REDACTED] | [REDACTED] | [REDACTED] | Order - Abuse Prevention Restraining | 6/30/2021 | 7/1/2021 |
| 8/1/2021 | 8/7/2021 | Washington | Protective Order - FAPA | [REDACTED] | [REDACTED] | [REDACTED] | Order - Abuse Prevention Restraining | 7/2/2021 | 7/6/2021 |
| 8/1/2021 | 8/7/2021 | Washington | Protective Order - FAPA | [REDACTED] | [REDACTED] | [REDACTED] | Order - Abuse Prevention Restraining | 7/2/2021 | 7/2/2021 |
| 8/1/2021 | 8/7/2021 | Washington | Protective Order - FAPA | [REDACTED] | [REDACTED] | [REDACTED] | Order - Abuse Prevention Restraining | 7/2/2021 | 7/2/2021 |
| 8/1/2021 | 8/7/2021 | Washington | Protective Order - FAPA | [REDACTED] | [REDACTED] | [REDACTED] | Order - Abuse Prevention Restraining | 7/2/2021 | 7/6/2021 |
| 8/1/2021 | 8/7/2021 | Washington | Protective Order - FAPA | [REDACTED] | [REDACTED] | [REDACTED] | Order - Abuse Prevention Restraining | 7/7/2021 | 7/7/2021 |

Applicability to Foreign Orders

ORS 24.190(2)

- Enforceable as an Oregon order, and continues to be enforceable as an Oregon order without further action
- Firearm Prohibitions:
 - Does it include “credible threat” for the purposes of Federal law (only)?



Penalty for violation of *law*-imposed firearms ban is **criminal liability** (not contempt of court):

- **Class A misdemeanor**

Some Respondents could have both contempt & criminal liability for violating firearms ban:

A – because *a Judge ordered* the ban +

B – because the *law imposed* a ban anyway +/-or

C – because they failed to file the declaration.

Plus, (remember) may also be federal criminal liability for firearms when under a protection order

Charging for Possession when Prohibited

- ORS 166.255 → prohibits the possession of firearms *and ammunition* by prohibited persons
- Violation is charged under ORS 166.250 (Class A Misdemeanor)
 - → Possesses a *firearm* AND is prohibited under ORS 166.255
- **THERE'S A GAP!!**
 - Ammunition not included in language of charging statute



“Exception” to Possession After Conviction/ Subject to RO

- A person **cannot be prosecuted** under ORS 166.250 if:
 - Person is in possession of a court order for dispossession issued within the previous 24 hours;
 - The firearm is unloaded; and
 - The person is transporting the firearm or ammunition to a LE agency, gun dealer or third part for transfer in accordance with the dispossession
- **NOTE: This exception doesn't exist under federal law**
 - Possession after conviction or when subject to RO
 - → in violation of USC 18 Section 922



Official Use Exception

- **Federal:** 18 USC 925(a)(1) 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.
- **State:** ORS 166.260

Note to Law Enforcement: Return of Firearms to Respondent (ORS 166.256)

If firearm is with:

- **LEA**

- Notify DOJ so DOJ notifies petitioner
- Hold request for 72 hours
- Confirm that returnee is lawful owner/possessor
- Perform background check

*January 1, 2022: LEA is responsible for notifying petitioner (SB 823)

- **Dealer**

- Perform background check

- **3rd party**

- Request background check, even family members

APPLICATION TO CERTAIN MISDEMEANORS

Stalking + Qualifying DV Misdo

ORS 166.255

Firearm Prohibition: Misdemeanor Convictions

- The person has been convicted of a qualifying misdemeanor

AND

- At the time of the offense the person was a family or household member or parent or guardian of the victim of the offense

OR

- The person has been convicted of stalking under ORS 163.732.

State Law: “Qualifying DV Misdemeanor”

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

*SB 823 – Firearm Prohibition Notification (Jan 1, 2022)



- When charging a D with a qualifying DV misdemeanor or stalking, the DA SHALL allege in the charging instrument one or more of the following relationships existing between the defendant and the person alleged to be the victim
 - Current/former spouse
 - *Parent/guardian*
 - Shares a minor child
 - Cohabiting with/has cohabited
 - Adults related by blood or marriage
 - Involved in a sexually intimate relationship

Firearm Prohibition Notification

Additional Notice Filing for "Qualifying DV Misdemeanor"

- DA shall file with the court a notice stating that "due to the nature of the relationship...the D will be prohibited from possessing firearms/ ammunition if convicted of this offense"
- At arraignment or no later than 45 days prior to trial or entry of a guilty or no contest plea
 - Unless waived by D or for good cause shown
- Notice must include *specific* enumerated relationship

Firearm Prohibition Notification

Additional Notice Filing for Stalking

- DA shall file with the court a notice stating that “the D will be prohibited from possessing firearms/ammunition if convicted of this offense
- No later than 60 days after arraignment, no later than 14 days prior to trial or entry of a guilty or no contest plea, whichever occurs first
 - Unless waived by D or for good cause shown
- (no relationship requirement)

Establishment of Relationship for Firearm (SB 823)

- D may stipulate to the nature of the relationship, court shall making the finding that the relationship has been established
- DA has the burden of proving the relationship beyond a reasonable doubt, and fact finder shall return a special verdict of “yes” or no” on whether the relationship has been proved

Court Obligations

- For Qualifying Misdemeanor, if relationship is established, the court shall:
 - Make a written determination concerning the nature of the relationship
 - Enter an order in the judgment of conviction per ORS 166.259 (prohibition/dispossession order)
 - Inform the D that the State Police and Sheriff will be notified re: entry into state/federal databases
- If convicted of stalking, the court shall:
 - Enter an order in the judgment of conviction per PRS 166.259 (prohibition/dispossession order)
 - Inform the D that the State Police and Sheriff will be notified re: entry into state/federal databases
- When sent to OSP/SO → they shall enter into state/national databases (LEDS/NCIC)

Prohibition Applies Regardless of Court Determination

"The absence of a court determination or order under this section does not affect the lawfulness of the defendant's possession of firearms or ammunition under Oregon or Federal law."

- NOTE: SB 823 was intended as a step towards a process of doing a better job of identifying and *getting prohibitions entered into* LEDS/NCIC

Another CAVEAT- Firearm Dispossession Order Still Required (Regardless of Notice Filing!)

- Nothing in SB823 removes the statutory language that already exists that says that if it's a QM/Stalking, then court shall order the prohibition/dispossession under ORS 166.259 and 166.256.
 - ORS 166.259 (convictions) and ORS 166.256 (court orders)
- If a “qualifying protective order” or a “qualifying misdemeanor” or stalking
 - the court **SHALL** order dispossession of firearms
- Effectively just means that if notice is not filed by DA then the court is not required to send to OSP/SO and OSP/SO are not required to enter it.

2021 Legislation eff. 7/1/22:

DOJ required to develop and administer program for **info cards for persons protected by civil protection orders**

Montana sample

RESPONDENT
Theodore Williamson
DOB: 07/12/196
Sex: Male
Race: White
Height: 6' 1"
Weight: 182
Eyes: Blue
Hair: Brown
Scars/Marks/Tattoos:
None

Protection Order

This card certifies that the person named back of this card has a Protection Order with the State of Montana against the individual listed above. Violation of the Protection Order, even if invited, is a misdemeanor under §§ 45-5-220 and/or 45-5-626, MCA. Pursuant to Title 18 USC §2265 (a), Protection Orders issued by outside jurisdictions shall be given full faith and credit.

- Wallet-sized with info about the specific order (parties, court case #, county/jurisdiction)

Rule-making involves consultation with OSP, OSCA, tribes, & victim service organizations

HOPE CARD INFORMATION

FEDERAL AND STATE FIREARM PROHIBITIONS – MISDEMEANOR CONVICTIONS
OREGON BENCH SHEET
Updated 9/20/2021

OVERVIEW

Applicable Misdemeanor Convictions:

Qualifying DV Misdemeanor: 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. ORS 166.255; 18 USC 922(g)(9)

Stalking: Persons who have been convicted in an Oregon court of stalking under ORS 163.732 are prohibited under *state law* from purchasing or possessing any firearm or ammunition. *There is no relationship requirement.* ORS 166.255

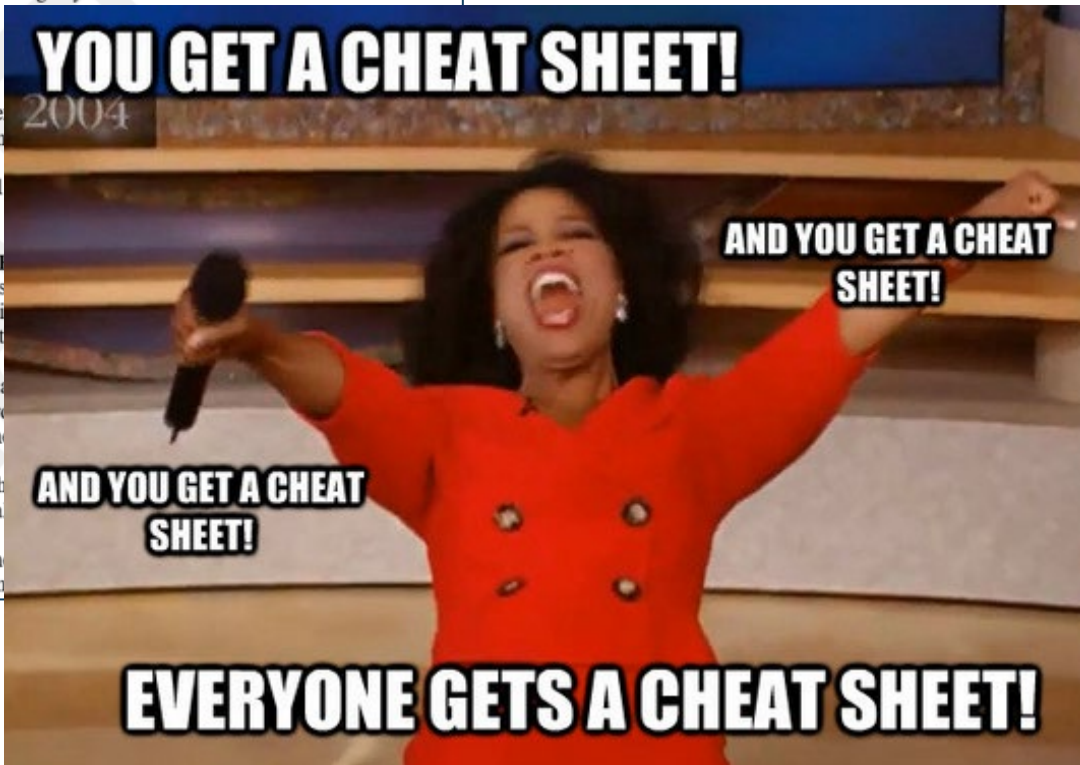
Duration of Prohibition: This is a lifetime prohibition.

NO Official Use Exemption: Where a firearm prohibition applies to employees are subject to this prohibition in both their personal and official capacities.

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 upon Conviction: ORS 166.259 and SB 823 (2021)

- Upon conviction for stalking or a qualifying DV misdemeanor:
 - o Indicate in the judgment that the defendant is prohibited from purchasing or possessing firearms or ammunition
 - o Inform the defendant, orally and in writing that the defendant is prohibited from purchasing or possessing firearms or ammunition
 - o Order in writing that the defendant transfer possession of any firearms or ammunition within 24 hours of the court’s order and file a declaration with the court and district attorney
- **Effective Jan 1, 2022 SB 823 (2021)/ORS 166.259:** Where a person is convicted of a crime involving the possession of firearms or ammunition upon conviction for “qualifying misdemeanor crime of domestic violence” the court shall:
 - o Make a written determination concerning the defendant’s admission/stipulation/proof beyond a reasonable doubt that the defendant is prohibited from purchasing or possessing firearms or ammunition



Firearms Bench Sheets – Updated Sept 2021

FEDERAL AND STATE FIREARM PROHIBITIONS – PROTECTION ORDER
OREGON BENCH SHEET
Updated 9/20/2021

Respondents Subject to Protection Order: Persons who are subject to qualifying protective orders (“respondents”) are prohibited under *state and federal law* from purchasing or possessing any firearm or ammunition. ORS 166.255.

Protection Order: An order that restrains a person from stalking, intimidating, molesting or menacing a child, household member of the respondent (ORS 166.255(1)(a)(B)); and includes a finding that the person poses a credible threat to the physical safety of family or household member of the person, a child of the household member of the person, or a child of the person; and that was issued or continued after a hearing in which the person had notice during which the respondent had an opportunity to be heard OR was not notified of the opportunity to request a hearing and EITHER did not request a hearing but did not attend OR did not request a hearing before the hearing occurred or did not request a hearing during the period in which the opportunity to do so was available (1)(a)(A)

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)

QUESTIONS?

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