

FEDERAL AND STATE FIREARM PROHIBITIONS – MISDEMEANOR CONVICTIONS
OREGON BENCH SHEET
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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 exists, federal, state, and local governmental employees are subject to this prohibition in both their personal and official capacities as to qualifying convictions.

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

Upon conviction for stalking or a qualifying DV misdemeanor, the court shall:

- Indicate in the judgment that the defendant is prohibited from possessing firearms or ammunition
- Inform the defendant, orally and in writing that the defendant is prohibited from possessing firearms or ammunition
- Order in writing that the defendant transfer all firearms or ammunition in the defendant’s possession within 24 hours of the court’s order in accordance with ORS 166.259(4) and file a declaration with the court and district attorney within two judicial days of the court’s order

FIREARM/ AMMUNITION PROHIBITIONS
UPON CERTAIN MISDEMEANOR CONVICTIONS

Conviction for Stalking (State only)	
FEDERAL	STATE ORS 166.250-166.255
n/a	Applies to misdemeanor stalking conviction under ORS 163.732 Relationship requirement: none
Conviction for “Qualifying Misdemeanor Crime of Domestic Violence” (State and Federal)	
FEDERAL 18 USC 922(g)(9)	STATE ORS 166.250-166.255
Qualifying Conviction <ul style="list-style-type: none"> - Is a misdemeanor under federal, state, or local law; <i>and</i> - Has, as an element of the offense, the use or attempted use of physical force, or the threatened use of a deadly weapon; <i>and</i> - Meets the relationship requirement between the parties. 	Qualifying Conviction <ul style="list-style-type: none"> - Is a misdemeanor; <i>and</i> - Has, as an element of the offense, the use or attempted use of physical force or the threatened use of a deadly weapon; <i>and</i> - Meets the relationship requirement between the parties.
Relationship Requirement At the time the crime was committed, the defendant was one of the following: <ul style="list-style-type: none"> - A current or former spouse, parent, or guardian of the victim; - A person with whom the victim shared a child in common; - A person who was cohabiting with or had cohabited with the victim as a spouse, parent or guardian; or - A person who was or had been similarly situated to a spouse, parent, or guardian of the victim. 	Relationship Requirement At the time of the offense, the defendant was a family or household member of the victim, per ORS 135.230, or was a parent or guardian of the victim, meaning the defendant had one of the following relationships with the victim: <ul style="list-style-type: none"> - A current or former spouse; - Unmarried parents of a minor child; - Adults related by blood or marriage - People who are or have been in a sexually intimate relationship; - Persons who are or have cohabitated with each other; - Persons who have had a sexually intimate relationship; - A parent or guardian of the victim of the offense. <p><i>Note: The relationship for a “qualifying misdemeanor of domestic violence under ORS 166.255 is broader than a misdemeanor “constituting domestic violence” under ORS 132.586.</i></p>

<p>“Convicted” For purposes of the firearms prohibition, convicted means:</p> <ul style="list-style-type: none"> - The person was represented by counsel or knowingly and intelligently waived the right to counsel; - The case was tried to a jury, if the crime was one to which the person was entitled to a jury, or the person knowingly and intelligently waived the right to jury trial; and - The conviction has not been set aside or expunged, the person was not pardoned, or the person’s civil rights were restored. <i>(No Oregon misdemeanor currently provides for the loss of civil rights.)</i> 	<p>“Convicted” For purposes of the firearms prohibition, convicted means:</p> <ul style="list-style-type: none"> - The person was represented by counsel or knowingly and intelligently waived the right to counsel; - The case was tried to a jury, if the crime was one to which the person was entitled to a jury, or the person knowingly and intelligently waived the right to jury trial; and - The conviction has not been set aside or expunged and the person has not been pardoned.
<p>“Qualifying Crimes” under Oregon Law that trigger the federal firearm prohibition</p> <p>The FBI has designated six Oregon misdemeanors that may meet the “qualifying offense” requirements¹:</p> <ul style="list-style-type: none"> - 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 	<p>“Qualifying Crimes” under Oregon law that trigger the state firearm prohibition</p> <p>ORS 166.255 does not specifically designate which Oregon misdemeanors may qualify.</p> <p>Crimes between any of the above-listed relationships that could qualify, depending upon the language in the charging document, include, <i>but are not limited to</i>:</p> <ul style="list-style-type: none"> - ORS 163.160 – Assault in the Fourth Degree OR an Attempt - ORS 163.187 – Strangulation OR an Attempt - ORS 163.190 – Menacing - ORS 166.065 – Harassment
<p>Official Use Exception Under Federal Law</p> <p>There is no “official use exception” under federal law. Where a firearm prohibition exists, federal, state, and local governmental employees are subject to this prohibition in both their personal and official capacities as to qualifying convictions.</p>	<p>Official Use Exception Under State Law</p> <p>There is no “official use exception” under state law. Where a firearm prohibition exists, federal, state, and local governmental employees are subject to this prohibition in both their personal and official capacities as to qualifying convictions.</p>

¹ The U.S. Attorney in Oregon, however, has prosecuted firearms violation after an Oregon MCDV conviction only if the defendant was convicted of Assault in the Fourth Degree, Strangulation, or attempts of those two crimes.

**Court Obligation Re: Notice of Firearm/Ammunition Prohibition and
Court Ordered Dispossession Order**

<p>Court Obligation: Notice of Prohibition</p> <p>No specific obligations are outlined under federal law.</p>	<p>Court Obligation: Notice of Prohibition ORS 166.259(1)(a)</p> <p>Where a person is convicted of stalking or a qualifying misdemeanor of domestic violence, the court SHALL:</p> <ul style="list-style-type: none"> - Indicate in the judgment of conviction that the person is prohibited from possessing firearms or ammunition; - Order in writing that the person transfer all firearms or ammunition; - Order that the person file a declaration.
<p>Court Obligation: Order of Dispossession</p> <p>No specific obligations are outlined under federal law.</p>	<p>Court Obligation: Order of Dispossession ORS 166.259(2)</p> <p>The court must order in writing that defendant transfer all firearms and/or ammunition in the person’s possession and order that the defendant file a declaration as described below.</p> <p>Within 24 hours of being prohibited from possessing firearms and ammunition, defendant must:</p> <ul style="list-style-type: none"> - Surrender all firearms or ammunition in defendant’s possession to a local law enforcement agency, a gun dealer; or a third party who does not reside with the defendant; <i>and</i> - Obtain a proof of transfer of the firearms or ammunition.
<p>Court Obligation: Order of File Declaration</p> <p>No specific obligations are outlined under federal law</p>	<p>Court Obligation: Order to File Declaration ORS 166.259(4)</p> <p>Within two judicial (business) days of being prohibited from possessing firearms and ammunition, the defendant must file with the court and the district attorney’s office a declaration (under penalty of perjury) that:</p>

	<ul style="list-style-type: none"> - All firearms or ammunition in the defendant's possession have been transferred to a law enforcement agency, gun dealer, or eligible third party; or - The defendant has no firearms or ammunition; or - The defendant is asserting the constitutional right against self-incrimination.
<p>Possession "Grace Period"</p> <p>There is no "grace period" under federal law. The prohibition attaches immediately following conviction.</p>	<p>Possession "Grace Period" ORS 166.259(6)</p> <p>A person who is subject to the firearm or ammunition prohibition and is in possession of a firearm or ammunition in violation of ORS 166.255(1)(b) or (c) may not be prosecuted under ORS 166.250 if:</p> <ul style="list-style-type: none"> - The defendant is in possession of the court order prohibiting possession of firearms or ammunition that went into effect or was issued within the previous 24 hours; - The firearm is unloaded; <i>and</i> - The defendant is transporting the firearm or ammunition to a law enforcement agency, gun dealer or third party for transfer.
<p>Failure to File Declaration</p> <p>Because there is no federal obligation to file a declaration, there is no penalty imposed under federal law for failure to do so.</p>	<p>Failure to File Declaration ORS 166.259</p> <p>If the defendant does not file a declaration described above, the district attorney may commence contempt proceedings under ORS 33.015 to 33.155.</p>