

Outline for Firearms Background Checks in Oregon – What Can I Expect?

Knowing what to expect and how that information will apply to your specific situation can be very useful when going through a background check for a firearms purchase. A firearms background check involves accessing criminal records from all 50 states and the federal government. There is no limitation on how old an event is when conducting a background check, and if the event could be a disqualifier it will need to be looked into. It is important to note that records reported by criminal justice agencies often do not have specific details about a crime as it pertains to firearms laws, and because both federal and state disqualifications can include crimes that may not be obvious within the categories listed below, it is a good practice to become aware of the details that could prevent an immediate approved background check response.

THINGS TO KNOW OR CONSIDER BEFORE PURCHASING A FIREARM

- Private party selling/transferring a firearm at a gun show? A background check is required. ORS 166.438, 166.441 and 166.412
- Private party selling/transferring a firearm and NOT at a gun show? Effective August 9, 2015 private-party to private-party background checks are required under the Oregon Firearms Safety Act (SB 941). Exemptions to this requirement and other details can be located on the Oregon Firearms Safety Act Highlights document on the OSP webpage at: <http://www.oregon.gov/osp/Pages/index.aspx>
- Federally Licensed Gun Dealers selling/transferring to a non-dealer? You are required to do a background check. ORS 166.412 and 18 U.S.C. § 922(d)
- Identification required: ORS 166.436 and 166.412
 - The identification presented by the recipient must meet the requirements of ORS 166.412 (4)(a) Identification required of the purchaser shall include one piece of current identification bearing a photograph and the date of birth of the purchaser that:
 - ✓ Is issued under the authority of the United States Government, a state, a political subdivision of a state, a foreign government, a political subdivision of a foreign government, an international governmental organization or an international quasi-governmental organization; and
 - ✓ Is intended to be used for identification of an individual or is commonly accepted for the purpose of identification of an individual.
 - ✓ If the identification presented by the purchaser does not include the current address of the purchaser, the purchaser shall present a second piece of current identification that contains the current address of the purchaser. The Superintendent of State Police may specify by rule the type of identification that may be presented under this paragraph.
 - ✓ OSP may require that the dealer verify the identification of the purchaser if that identity is in question by sending the thumbprints of the purchaser to the department.
- Age requirement:
 - Federal - must be 18 years old to purchase long gun, 21 years old to purchase hand gun 18 U.S.C. § 922 (b)(1)
 - Oregon - must be 18 years old to purchase a firearm ORS 166.470; however federal law requires the stricter law supersedes for purpose of a handgun purchase

- Handgun: purchaser must be a resident of Oregon. 18 U.S.C. § 922 (b)(3)
- Long gun: purchaser must follow their state of residence laws regarding eligibility outside of their state. ORS 166.490/ 18 U.S.C. § 922 (b)(3)
- For private-party transfers, the purchaser must be present at the time the check is requested. ORS 166.436
- The fee for a firearms background check is \$10. ORS 166.414
 - Payment for private party background checks are currently only accepted by credit/debit card. Information for payment will be taken over the phone.
 - FFL's can pay by credit/debit card or request a monthly billing.

THE ACTUAL BACKGROUND CHECK PROCESS STARTS HERE

The person selling/transferring a firearm must provide the following information to initiate the background check: ORS 166.412, 166.436, 18 U.S.C. § 922 (t)(1)(c) and 27 CFR 178.124 (c)

- The name, address and telephone number of the transferor;
- The address of the place where the transfer is occurring;
- The make, model, caliber and manufacturer's number of the firearm being transferred;
 - This information is necessary to conduct the required stolen gun check
- The name, date of birth, race, sex and address of the recipient;
- The Social Security number of the recipient if the recipient voluntarily provides that number;
- The type, issuer and identification number of a current piece of identification bearing a recent photograph of the recipient presented by the recipient.

The FICS unit will determine from criminal records and other information available to it whether the purchaser/transferor is disqualified under state and federal law from completing the transfer or is otherwise prohibited by state or federal law from possessing a firearm. ORS 166.412, ORS 137.540 (1)(m), ORS 166.470 and 18 U.S.C. § 922(g)&(n)

FEDERAL AND STATE PROHIBITORS/DISQUALIFIERS
--

FEDERAL CATEGORIES OF PERSON PROHIBITED FROM RECEIVING A FIREARM

The federal disqualification criteria are as follows:

- **CONVICTION.** A person who has been convicted in any court of a crime where the crime has a maximum imprisonment term exceeding 1 year (even if you did not receive actual imprisonment exceeding 1 year.) 18 U.S.C. § 922 (g)(1)
- **WARRANT.** A person with a felony warrant or is a fugitive from justice, having any out-of-state misdemeanor warrant for your arrest. 18 U.S.C. § 922 (g)(2)
- **FELONY PRE-TRIAL RELEASE.** A person who is under indictment or information for a crime punishable by imprisonment for a term exceeding one year. 18 U.S.C. § 922 (n)
- **MISDEMEANOR CRIME OF DOMESTIC VIOLENCE.** A person convicted in any court of a misdemeanor crime which includes the use or attempted use of physical force or threatened use of a deadly weapon and the defendant was the spouse, former spouse, parent, guardian of the victim, by a person with whom the victim shares a child in

common, by a person who is cohabiting with or has cohabited in the past with the victim as a spouse, parent, guardian or similar situation to a spouse, parent or guardian of the victim. 18 U.S.C. § 922 (g)(9)

- **RESTRAINING/STALKING/PROTECTION ORDER.** The subject of a protective order issued after a hearing in which the respondent had notice that restrains them from harassing, stalking, or threatening an intimate partner or child of such partner. This does not include ex parte orders. 18 U.S.C. § 922 (g)(8)(A-C)
- **MENTAL HEALTH ADJUDICATION.** A person adjudicated mental defective or committed to a mental institution. 18 U.S.C. § 922 (g)(4)
- **CONTROLLED SUBSTANCE.** An unlawful user and/or an addict of any controlled substance (drug); 18 U.S.C. § 922 (g)(3)
 - For example, a person convicted for the use or possession of a controlled substance within the past year; or a person with multiple arrests for the use or possession of a controlled substance within the past five years with the most recent arrest occurring within the past year; or a person found through a drug test to use a controlled substance unlawfully, provided the test was administered within the past year
- **DISHONORABLE DISCHARGE.** A person dishonorably discharged from the United States Armed Forces. 18 U.S.C. § 922 (g)(6)
- **RENOUNCED US CITIZENSHIP.** A person who has renounced his/her United States citizenship. 18 U.S.C. § 922 (g)(7)
- **ILLEGAL ALIEN.** A person who, being an alien, is illegally or unlawfully in the United States. 18 U.S.C. § 922 (g)(5)
 - A person who, being an alien except as provided in subsection 18 U.S.C. § 922 (y) (2), has been admitted to the United States under a non-immigrant visa.

OREGON SPECIFIC DISQUALIFIERS (In addition to the above federal disqualifiers)

- **CONVICTION** of a violent misdemeanor within the previous 4 years (see ORS 166.470(1)(g) below)
- **PROBATION** with conditions limiting possession of a firearm (see ORS 137.540(1)(m) below)

166.470 Limitations and conditions for sales of firearms. (1) Unless relief has been granted under ORS 166.274, 18 U.S.C. § 925(c) or the expunction laws of this state or an equivalent law of another jurisdiction, a person may not intentionally sell, deliver or otherwise transfer any firearm when the transferor knows or reasonably should know that the recipient:

- (a) Is under 18 years of age;
 - (b) Has been convicted of a felony;
 - (c) Has any outstanding felony warrants for arrest;
 - (d) Is free on any form of pretrial release for a felony;
 - (e) Was committed to the Oregon Health Authority under ORS 426.130;
 - (f) After January 1, 1990, was found to be mentally ill and subject to an order under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness;
 - (g) Has been convicted of a misdemeanor involving violence or found guilty except for insanity under ORS 161.295 of a misdemeanor involving violence within the previous four years. As used in this paragraph, "misdemeanor involving violence" means a misdemeanor described in ORS 163.160, 163.187, 163.190, 163.195 or 166.155 (1)(b); or
 - (h) Has been found guilty except for insanity under ORS 161.295 of a felony.
- (2) A person may not sell, deliver or otherwise transfer any firearm that the person knows or reasonably should know is stolen.

(3) Subsection (1)(a) of this section does not prohibit:

- (a) The parent or guardian, or another person with the consent of the parent or guardian, of a minor from transferring to the minor a firearm, other than a handgun; or

(b) The temporary transfer of any firearm to a minor for hunting, target practice or any other lawful purpose.

(4) Violation of this section is a Class A misdemeanor.

137.540 Conditions of probation; evaluation and treatment; fees; effect of failure to abide by conditions; modification. (1) The court may sentence the defendant to probation subject to the following general conditions unless specifically deleted by the court. The probationer shall:

(m) Not possess weapons, firearms or dangerous animals.

POSSIBLE BACKGROUND CHECK RESULTS

Unless a background check is cancelled by the requestor or stopped due to required information not being provided (such as identification does meet the requirements) one of the following 3 determinations will be provided within 30 minutes or less to the transferor by OSP at the time the background check is initiated:

1. **APPROVED**: If approved, OSP will provide the seller with a unique approval number indicating that the purchaser is qualified to complete the transfer. ORS 166.412 (approx. 94% of backgrounds are approved within minutes of initiation)
 - Private Party only: The unique approval number is a permit valid for 24 hours for the requested transfer. If the firearm is not transferred from the seller to the purchaser within 24 hours after receipt of the unique approval number, a new request must be made by the seller. ORS 166.436
2. **DENIED**: If the purchaser is disqualified the seller will be notified that the purchaser is denied. No further information is provided to the seller. ORS 166.412 (approx. 1% of backgrounds are denied within minutes of initiation)
3. **PEND/DELAY**: If the department is unable to determine whether the purchaser is qualified or disqualified from completing the transfer within 30 minutes of receiving the request, the department shall notify the seller and provide an estimate of the time when the department will provide the requested information. ORS 166.412 (approx. 5% are placed in pend/delay status at the time the check is initiated due to missing information about a potential disqualification)

OSP provides each dealer with information regarding how the purchaser may contact OSP for further information about a denied or delayed result.

While the decision to transfer a firearm after the statutorily allowable period is solely up to the transferor (should OSP fail to provide a unique approval number or notify the transferor that the purchaser is disqualified), OSP will continue work to complete the requested background check until resolved or cancelled by the transferor.

For further information or questions about Oregon's program, please call the CJIS Division at 503-373-1808 or contact the Firearms Unit by email at osp.firearms@state.or.us

Updated September 16, 2015