



Oregon

Theodore R. Kulongoski, Governor

Department of State Police

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September 7, 2006

Kevin Starrett
Oregon Firearms Federation
PO Box 556
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Mr. Starrett,

This letter is in response to your email request dated August 19, 2006 for further information following our meeting on August 15, 2006 regarding firearm issues.

1. *Since the OSP are the POC in Oregon, who makes the final determination about a transfer to a potential buyer?*

OSP call-takers make the decisions based on Oregon and Federal firearms law.

2. *If the final determination is made by staff at OSP, are they required to inform the dealer, (as NICS apparently must do) that a transfer MAY take place without an approval after a specified time? (I know of very few dealers who are aware that this is the case.)*

No. The NICS notification procedure at time of delay is based on NICS policy and not part of federal firearms law or regulation. Oregon law states: "ORS 166.412 - 3(b) If the department is unable to determine if the purchaser is qualified or disqualified from completing the transfer within 30 minutes, the department shall notify the dealer and provide the dealer with an estimate of the time when the department will provide the requested information. (c) **If the department fails to provide a unique approval number to a gun dealer or to notify the gun dealer that the purchaser is disqualified under paragraph (a) of this subsection** (emphasis added) before the close of the gun dealer's next business day following the request by the dealer for a criminal history record check, **the dealer may deliver the handgun to the purchaser**" (emphasis added).

3. *If OSP makes the decision, exactly what background and training does the decision maker have? Are they trained in law? Are they given a specific set of criteria?*

Call takers receive standard in-house training for approximately 6 months. Training is based on Oregon and Federal laws regarding firearm purchases and possession.

The criterion used is outlined in both Oregon and Federal laws pertaining to firearms purchases.

4. *What specifically disqualifies a person because of issues dealing with "domestic violence?" For example, as we discussed, one of our members had a conviction for harassment but was assured by the US DOJ he still qualified. He was however denied when he attempted to make a purchase.*

We are unable to respond to your example without more specific information; however the attached criteria is used in making qualification determinations for "domestic violence" related charges under Oregon law and the Lautenberg Amendment 921(a)(33) and 922(g)(9) and 922(d)(9) of the Gun Control Act of 1968. This criterion must be applied to the records in every that are state reviewed during the background check process.

5. *NICS lays out specific procedures for appeals, if they are the POC. What exactly is the appeals process if a purchaser is denied by OSP?*

When a Federally Licensed firearms dealer registers with OSP, they are provided a copy of the State Of Oregon Firearms Instant Check System Instruction Guide for Firearm Dealers. This includes a notice in Appendix D entitled Oregon State Police – Denied Firearm Sale. Specifically on page 4 under "Denied" it says "The purchaser has a right to challenge this decision and may call on our regular business line to speak with the person processing challenge calls, regarding this matter." They can challenge the denial. If the denial is based on another state's information, the purchaser is informed they must resolve the matter with that particular state of record.

Please find attached a copy of OAR 257-010-0035 which outlines the process for challenges to Oregon criminal history record information. ORS 181.555 outlines the requirement for providing access to this information. We consider an "appeal" a challenge to the record information we have access to for conducting background checks. We work with the purchaser based on the information received at the time of purchase and additional information, if any, provided at the time of challenge.

6. *If OSP denies a purchase, is the denied party informed that they may not own other firearms?*

We do not inform parties that they may not own other firearms and we do not give legal advice. Our role is to perform background checks for each sale called in to the FICS unit. However, if the purchaser contacts OSP and directly asks a question regarding owning other firearms, the call taker will answer their specific question when possible.

There are a number of state and federal purchase laws and possession laws. The prohibition for purchase does not necessarily affect the ability to possess firearms. In order to inform a denied party they may not own other firearms, a significant amount

of additional research could be needed to apply all applicable state and federal laws. Our role is to perform the initial background check at time of sale and not to advise regarding possession.

7. *I understood from our conversation that OSP does not enforce Federal law, in this case the prohibition on possession for persons with misdemeanor DV convictions.*

OSP is not a Federal law enforcement agency; however we do cooperate with our federal law enforcement partners. Because the OSP FICS unit is the federal NICS POC, it must follow both Oregon and Federal laws. As stated above, FICS performs a background check at time of purchase and makes a determination of eligibility to purchase at that time.

According to Title 28, CFR Chapter 1, Part 25: "A POC means a state or local law enforcement agency serving as an intermediary between an FFL and the federal data bases checked by the NICS. A POC will receive NICS background check requests from FFLs, check state or local record systems, perform NICS inquiries, determine whether matching records provide information demonstrating that an individual is disqualified from possessing a firearm under state or federal law, and responds to FFLs with the results of a NICS background check. A POC will be an agency with express or implied authority to perform POC duties pursuant to state statute, regulation, or executive order."

I hope this information is helpful. Please contact Major Spirup at 503-378-4102 if you have further questions.

Sincerely,



Ronald Ruecker, Superintendent

C: Representative Kim Thatcher

Attachments

THE GUN CONTROL ACT OF 1968
TITLE 18, UNITED STATE CODE, CHAPTER 44

Chapter 44 – Firearms

§ 921 Definitions.

(32) The term "**intimate partner**" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

(33) (A) Except as provided in subparagraph (C), the term "**misdemeanor crime of domestic violence**" means an offense that—

(i) is a misdemeanor under Federal or State law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or 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 with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

(B) (i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless—

(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(II) in the case of a prosecution for an offense described in this

paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either **(aa)** the case was tried by a jury, or

(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

§ 922 Unlawful acts.

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

(9) has been convicted in any court of a misdemeanor crime of domestic violence.

(g) It shall be unlawful for any person—

(9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in

interstate or foreign commerce, or possess
in or affecting commerce, any firearm
or ammunition; or to receive any
firearm or ammunition which has been
shipped or transported in interstate or
foreign commerce.
chapter.

257-010-0035

Access by Individuals for Purpose of Review and/or Challenge

- (1) All individuals desiring to review information concerning them maintained in the OSP Criminal Offender Information System or Firearm Instant Check System, or who believes that the information as maintained is inaccurate, incomplete, or maintained in violation of any state or federal statute or act, shall be entitled to review such information and obtain a copy thereof for the purpose of review, challenge or correction.
- (2) Verification of such individual's identity may only be effected through submission, in writing, of name, date of birth, and a set of rolled ink fingerprints to the Oregon State Police, Identification Services Section, 3772 Portland Road N.E., Salem, OR 97303. The request for review may be made at the Oregon State Police, Identification Services Section, 3772 Portland Road N.E., Salem, OR 97303, or through mail or postal service. The OSP may prescribe reasonable hours and places of inspection. If the request is made by mail or postal service, after positive identification by the OSP of the fingerprints submitted, copy of the record, along with the fingerprints submitted for that purpose, will be returned to the individual making the request to the address provided in the request.
- (3) All data included in the Criminal Offender Information System is obtained from contributing Criminal Justice and Designated Agencies. All data included in the Firearm Instant Check System is obtained from contributing Oregon Gun Dealers as defined in 18 U.S.C. §921. If after review of the information concerning them as maintained in such record, the individual believes that it is incomplete or incorrect in any respect and wishes changes, corrections, or updating of the alleged deficiency, they must make application directly to the contributor of the questioned information, requesting the appropriate agency or Gun Dealer to correct it in accordance with its respective administrative rules and procedures. Upon receipt of an official communication directly from the agency or Gun Dealer which contributed the original information, the OSP will make any changes necessary in accordance with the information supplied by the agency or Gun Dealer.
- (4) Any individual whose record is not removed, modified, or corrected as they may request, following refusal by the agency originally contributing such information, may proceed under the provisions of Rules 30.00 to 30.80 of the Attorney General's Model Rules of Practice and Procedures under the Administrative Procedure Act, relating to contested cases and judicial review. After conclusion of such procedure or review, any information found to be inaccurate, incomplete, or improperly maintained, shall be removed from the individual's record and the originating agency so notified with copy of the record as corrected being furnished to the challenging individual.
- (5) Any Criminal Justice or Designated Agency receiving a record after such notice of contested case has been filed and prior to final determination, shall be notified by the OSP that the record is being challenged.
- (6) All individuals desiring to obtain a police clearance or documentation of no record maintained in the OSP Criminal Offender Information System for purposes other than review, challenge or correction specified in (1) will be charged a fee of \$33 for each request. Verification of the requesting individual's identity shall only be effected through submission and positive identification of the person's fingerprints.

(7) All individuals desiring to obtain a set of their inked fingerprints for purposes other than review, challenge or correction specified in section (1) of this rule will be charged a fee of \$20 for each fingerprint card provided, except as provided in ORS 181.556(1) & (2).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 166.291, 166.412, 181.537, 181.555, 181.560(4), 183.310 - 183.550, 192.440 & 194.164

Stats. Implemented: ORS 166.291, 166.412 & 181.880

Hist.: DSP 2, f. 6-14-74, ef. 7-11-74; DSP 4, f. 4-22-76, ef. 4-30-76; OSP 1-1990, f. & cert. ef. 6-4-90; OSP 1-1991, f. 5-17-91, cert. ef. 7-1-91; OSP 1-1992, f. 3-17-92, cert. ef. 3-18-92; OSP 4-1993, f. & cert. ef. 12-20-93; OSP 4-1994, f. & cert. ef. 8-2-94; OSP 3-1996, f. 5-24-96, cert. ef. 7-1-96; OSP 1-2002, f. & cert. ef. 3-8-02; OSP 1-2005(Temp), f. & cert. ef. 3-1-05 thru 8-27-05; OSP 3-2005, f. & cert. ef. 9-12-05

MCDV

Title 18, U.S.C., §921 (a)(33) provides that a “misdemeanor crime of domestic violence” means an offense that:

"(i) is a misdemeanor under Federal or State law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent or guardian, or by a person similarly situated to a spouse, parent or the guardian of the victim."

Elements needed to be a MCDV:

1. Misdemeanor crime
2. Use or attempted use of physical force **or** threatened use of deadly weapon
3. Relationship is:
 - a. Spouse
 - b. Former spouse
 - c. Parent of Child (not vice versa)
 - d. Guardian of the victim
 - e. Person shares a child in common with the victim
 - f. Person cohabits with or cohabited in past with the victim as:
 1. spouse
 2. parent
 3. guardian
 4. similar situation to the three above