

April 25, 2011

To: Community Partners  
RE: Firearms Surrender Procedures

Greetings,

The statewide, multi-disciplinary Firearms and Domestic Violence Task Force has developed model surrender procedures for use with court orders that prohibit defendants or respondents from possessing firearms. In addition to the suggested procedures, the Task Force has also developed a model firearm surrender order and affidavit, and other relevant documents.

Included within these documents that you are receiving is an outline detailing the need for and application of the model surrender procedures. The outline provides step-by-step directions on how to implement the suggested procedures and utilize the surrender order, affidavit and other documentation that you are also being provided.

While the outline is clear and direct, the Task Force is aware that there may be questions about the implementation of the procedures, how or when to use a certain document, or how to most effectively modify the procedures for use in your respective jurisdiction.

To help facilitate the modification or implementation of the model surrender procedures, three individuals have volunteered to be points of contact for you: Judge Paula Brownhill (Clatsop County), Sgt. Tim Leader (Civil Unit Manager, Washington County Sheriff's Office), and Dan Norris (District Attorney, Malheur County).

Judge Brownhill, Mr. Norris, and Sgt. Leader have been instrumental in developing the model surrender procedures. Judge Brownhill and Mr. Norris are current members of the statewide Firearms and Domestic Violence Task Force. Sgt. Leader is a former member of a protocol development subcommittee (within the Task Force). All three are invaluable resources so please do not hesitate to contact any of them with questions.

#### Contact Information

Judge Paula Brownhill  
Email: [paula.j.brownhill@ojd.state.or.us](mailto:paula.j.brownhill@ojd.state.or.us)  
Phone: 503-325-8555

Tim Leader

Email: [Tim\\_Leader@co.washington.or.us](mailto:Tim_Leader@co.washington.or.us)

Phone: 503-846-2520

Dan Norris

Email: [dnorris@malheurco.org](mailto:dnorris@malheurco.org)

Phone: 541-473-5127

Additionally, the Task Force would appreciate receiving any information about your jurisdiction's current procedures and protocols regarding firearms surrender. Or if your jurisdiction implements the model surrender procedures we are providing you please advise us about that process, as well.

You may direct that information to Erin Greenawald (Sr. AAG/DOJ, Chair of the Firearms/DV Task Force) at [erin.greenawald@doj.state.or.us](mailto:erin.greenawald@doj.state.or.us)

Thank you,

A handwritten signature in black ink, appearing to read "Erin Greenawald". The signature is fluid and cursive, with the first name "Erin" being more prominent.

Erin Greenawald

**On Behalf of the Firearms and Domestic Violence Task Force**

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**Figure 1**

## **Model Domestic Violence Firearm Surrender Protocols**

The statewide Firearms and Domestic Violence Task Force has developed model surrender procedures for use with courts orders that prohibit defendants or respondents from possessing firearms. These are suggestions. Each county should bring judges, court staff, law enforcement, prosecutors, and others together to adapt procedures for local use.

### **Need For the Protocol**

No Oregon statute sets out how firearms should be removed from persons after a judge has ordered that the person is prohibited from possessing firearms. These procedures offer one approach.

### **Application of this Protocol – Nexus**

These procedures may be used in domestic violence cases or other cases in which: 1) a court order prohibits possession of firearms, and 2) a nexus exists between the incident and firearms. To target the most serious situations without unduly burdening law enforcement, a nexus exists when Defendant/Respondent used, attempted to use or threatened to use a firearm against Victim/Petitioner in the case before the court, or Defendant/Respondent has a history of firearm use against any Victim/Petitioner. Cases in which firearm prohibitions may be ordered include Family Abuse Prevention Act Orders (FAPA restraining orders), Stalking Orders, Elderly Persons and Persons with Disabilities Abuse Prevention Act Orders (EPPDAPA restraining orders), conditions in Conditional/Security Release Agreements, and sentence judgments in criminal cases (including conditions of probation).

### **Affected Agencies**

Persons and agencies involved in implementing these procedures:

- Judges will issue orders.
- Court staff will prepare orders, file orders and notify law enforcement.
- Law enforcement will serve orders, receive and store firearms, return firearms when appropriate, and run background checks on defendants/respondents when necessary.
- District attorneys will negotiate surrender of firearms in plea negotiations and/or recommend firearms surrender at release hearings and at sentencing and may initiate prosecution when Defendants/Respondents fail to comply with court orders.
- Victims' assistance staff and victim advocates will work with victims.
- Public defenders and defense counsel will advise their clients regarding surrender orders and procedures.
- Community Corrections staff will help implement the orders.

## **Methodology**

These procedures rely on various forms to notify law enforcement of court ordered surrender, to give notice to Defendants/Respondents, to designate where and when Defendant/Respondents must surrender firearms, to explain how to return surrendered firearms, and to ensure court surrender orders are followed.

This procedure has two parts: one for courts and one for law enforcement.

## **Court Protocol**

1. If a court order prohibits Defendant/Respondent from possessing firearms, a judge should determine whether to order surrender of firearms.
2. Surrender of firearms may be ordered when a nexus exists between the current incident and firearms: when the court finds that Defendant/Respondent used, attempted to use or threatened to use a firearm against Victim/Petitioner in the case before the court, or Defendant/Respondent has a history of firearm use against any Victim/Petitioner.\* To order surrender, the judge should sign a Firearms Order of Surrender.
3. The judge or court staff will fill in a compliance hearing date and time on page one of the Firearms Order and give a copy to Defendant/Respondent in the courtroom if Defendant/Respondent is in court at the time the Order is signed. If Defendant/Respondent is not in court, the court shall order service of the Order on Defendant/Respondent and ensure that a copy of the Order is delivered to law enforcement for service. A compliance hearing is not necessary if, prior to the compliance hearing: 1) Defendant/Respondent signs and files with the Court a Firearms Affidavit of Non-Possession, or 2) Defendant/Respondent transfers all firearms to a third party and files an Affidavit of Third Party transfer with the Court. The Third Party also must sign and file an Affidavit of Third Party Transfer and follow procedures for the transfer, or 3) Defendant/Respondent files an Affidavit of Surrender with proof of surrender attached.
4. Jurisdictions should develop protocols to ensure compliance with surrender orders when Defendants/Respondents fail to appear for compliance hearings, including development of a charging policy for contempt of court or other sanctions.

## **Law Enforcement Protocol**

1. Law enforcement will establish procedures to receive and store firearms surrendered pursuant to Court orders.
2. If the Court has not set a compliance hearing, law enforcement will issue a date for Defendant/Respondent to appear, write it on page one of the Firearms Order, and serve it on Defendant/Respondent. Law enforcement should use the next general out-of-custody arraignment date or other date specified by the court and notify the court of the appearance date. If Defendant/Respondent is in custody, jail staff should fill in the hearing date on the Order, serve the Order on Defendant/Respondent, and notify the court of the hearing date.
3. Law enforcement will receive firearms as ordered and give receipts or copies of evidence reports to Defendants/Respondents.
4. Upon receipt of a Firearms Order of Return, law enforcement will conduct a background check on Defendant/Respondent prior to returning the firearms. Law enforcement should provide results of the background check to the court (see Background Check form).
5. If Defendant/Respondent wishes to transfer firearms to a third party rather than surrender them to law enforcement, the third party must submit to an ID Services background check. Defendant/Respondent and the third party must sign the Affidavit of Third Party Transfer and include the ID Services background check number on the affidavit.
6. Law enforcement will return firearms when a court order authorizes return, the Defendant/Respondent or third party may legally possess firearms, and the firearms are not needed for evidence. Law enforcement will conduct background checks on Defendants/Respondents before return of firearms. A third party must submit to an ID Services background check and provide the ID Services background check number as proof that he/she may legally possess firearms.

### **NOTE:**

\*Sheriffs and judges in each county should consider expanding the scope of the nexus if there is a finding of enhanced danger to Petitioner/Victim by Defendant/Respondent.

Figure 2

## **INSTRUCTIONS TO SURRENDER FIREARMS**

The Court has ordered you to surrender (turn in) all of your firearms to law enforcement. You have 3 choices: sign and file a Firearms Affidavit of Non-Possession, or sign and file a Firearms Affidavit for Third Party Transfer, or surrender all firearms and file proof with the court.

### **READ AND FOLLOW THESE INSTRUCTIONS!!!**

1. **If you do not own or possess firearms**, sign the Affidavit of Non-Possession in front of a notary or court clerk and file it with the Court before the time of the compliance hearing.
2. **If you own or possess firearms and you want to transfer them to a third party** rather than surrender them to law enforcement, you and the third party must sign the Affidavit of Third Party Transfer before a notary or court clerk. Make sure the third party completes an ID Services background check and includes the background check number on the affidavit. File the signed affidavit with the Court before the time of the compliance hearing.
3. **If you own or possess firearms and you have not done a third party transfer**, **immediately** telephone the following law enforcement office:

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**You must call within 24 hours of service of the Order of Surrender or within 24 hours after you are released from jail if you were served while in custody, whichever is later.**

4. Ask for the evidence technician or property manager. Inform the evidence technician or property manager that the court ordered you to turn in your firearms. Arrange a time to do this.  
**Do not bring your firearms to the law enforcement agency unless you have made prior arrangements with the evidence technician or property manager or other law enforcement official.**
5. If the evidence technician or property manager is not available, leave a detailed message and include your name, your telephone numbers, and the court case number. You will be contacted to make an appointment. If you have not received a call back within two days, you must call again to arrange to turn in your firearms.  
**You must bring a copy of the court Order to the law enforcement agency along with your firearms.**

6. When you arrive at the law enforcement agency, keep your unloaded firearms locked inside your vehicle, in the trunk if possible. Upon contact with the evidence technician, property manager or another law enforcement officer, give him or her a copy of the Order and inform them the firearms are in your vehicle. The officer, evidence technician, or property manager will tell you what to do next.  
**Do not bring loaded firearms to the law enforcement agency.**
7. You must get a receipt or copy of the evidence report from law enforcement to prove to the court that you turned in your firearms pursuant to the **Firearms Order**.
8. You **MUST APPEAR** for the Court's compliance hearing (date and time is on the first page of the Court's surrender order) OR **file with the Court** your sworn Firearms Affidavit with proof of surrender OR **file with the Court** your sworn Firearms Affidavit of Non-Possession or **file with the Court** the Affidavit of Third Party Transfer. **You could be held in contempt of court** and an arrest warrant could be issued if you do not appear as ordered and you have not filed your affidavit before the hearing date..



Figure 3

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
COUNTY OF \_\_\_\_\_

	)	
	)	
Plaintiff/Petitioner,	)	Case No.
	)	
vs.	)	<b>FIREARMS ORDER</b>
	)	__ <b>Surrender</b>
	)	__ <b>Forfeiture</b>
	)	__ <b>Disposal</b>
Defendant/Respondent.	)	__ <b>Transfer to Third Party</b>
	)	__ <b>Return</b>

☐ It is **ORDERED** that Defendant/Respondent **shall appear before this court for compliance hearing on:**

\_\_\_\_\_  
(hearing date and time to be filled in at time of service) to verify compliance with the Order of Surrender.

☐ **Surrender of Firearms and Concealed Handgun License:**

Defendant/Respondent shall surrender all firearms in his/her custody, control, and possession, including but not limited to the firearms listed below, to law enforcement

(See attached instructions for further information). Defendant/Respondent shall file proof of surrender within 24 hours after service of the Order of Surrender or 24 hours after release from custody if Defendant/Respondent is incarcerated when the Order is served. If Defendant/Respondent's firearms are in the custody of law enforcement, that agency shall retain said firearms until further order of the court.

If Defendant/Respondent possesses a concealed handgun license, Defendant/Respondent shall surrender it to the same law enforcement office.

Description of Firearms (if known):

Firearm Make	Model	Caliber	Further Description

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(Attach Additional Sheet if necessary)

Defendant/Respondent's Address:

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Date of Birth: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

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- ☐ **Forfeiture of Firearms:** The Court finds: the firearms listed above were used or displayed by Defendant/Respondent in the commission of a crime; or the firearms were in the possession or control of Defendant/Respondent at a time when he/she was prohibited from possessing firearms; or Defendant/Respondent agrees to forfeit \_\_\_\_\_ the \_\_\_\_\_ firearms; \_\_\_\_\_ or:

\_\_\_\_\_ therefore,

The Court **ORDERS** forfeiture of the firearms listed above.

- ☐ **Disposal of Firearms:** The Court **ORDERS** the following law enforcement office: \_\_\_\_\_ to dispose of the firearms listed above.

- ☐ **Third Party Transfer:** Defendant/Respondent shall transfer all firearms in his/her possession or control to an eligible third party. The third party shall swear that he/she is appropriate for transfer by signing a Firearms Affidavit and completing an ID Services background check. The third party shall write the ID Services background check number on the Firearms Affidavit and file the Affidavit with the Court. Defendant/Respondent shall ensure that the third party complies with this Order.

- ☐ **Return of Firearms:** The Court authorizes return of the firearms listed above. The following law enforcement office: \_\_\_\_\_ shall return the firearms to Defendant/Respondent only if Defendant/Respondent may legally possess firearms, which will be determined by a background check with law enforcement. If Defendant/Respondent does not request return of the firearms within 60 days, the law enforcement agency may dispose of the firearms as unclaimed property.

- ☐ **Other Orders:**

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DATED: \_\_\_\_\_

\_\_\_\_\_  
CIRCUIT COURT JUDGE

**I HAVE READ THIS ORDER AND RECEIVED WRITTEN INSTRUCTIONS.**

**I understand that if I violate this Order by failing to surrender all of my firearms and my concealed handgun license within the time allowed, I can be arrested and prosecuted.**

**I understand that, while this order is in effect, I am prohibited from possessing firearms.**

**I am aware that I must appear in court on the date and time listed on the first page of this Order. I am aware that if I fail to appear at this hearing and I have not filed proof of surrender or an affidavit that says I don't own or possess firearms or an affidavit of third-party transfer, I can be arrested and prosecuted.**

Dated: \_\_\_\_\_  
Defendant/Respondent's Signature

Dated: \_\_\_\_\_  
Attorney for Defendant/Respondent

Figure 4

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF \_\_\_\_\_

	)	Case No.
	)	
Plaintiff/Petitioner,	)	<b>FIREARMS AFFIDAVIT</b>
	)	
v.	)	<input type="checkbox"/> <b>Affidavit of Surrender</b>
	)	<input type="checkbox"/> <b>Affidavit of Non-Possession</b>
	)	<input type="checkbox"/> <b>Affidavit of Third Party</b>
	)	<b>Transfer</b>
Defendant/Respondent.	)	

**☐ Defendant/Respondent's Affidavit of Surrender**

I am aware of the Court's order to surrender firearms, and I have complied with the order by contacting the law enforcement agency designated by the Court and arranging to surrender my firearms. I understand that if I failed to surrender each and every one of my firearms in the time allowed, I may be arrested and prosecuted. I understand that if I am in possession of a concealed handgun license or other license to carry firearms, I must surrender that license along with my firearms, and failure to do so may constitute contempt of court. ☐ A law enforcement receipt or evidence report is attached that shows my firearms have been surrendered. ☐ A law enforcement receipt is attached that shows my concealed handgun license has been surrendered.

**☐ Defendant/Respondent's Affidavit of Non-Possession**

I understand the Court has ordered me to surrender all firearms that I own or have in my custody, control or possession. I have not surrendered any firearms pursuant to that order because I do not own any firearms nor do I have any firearms in my custody, control or possession. ☐ I do not have a concealed handgun license.

**☐ Defendant/Respondent's Affidavit of Third Party Transfer**

I have transferred my firearms to the third party named below, and I swear that the third party completed a background check with ID Services and may legally possess firearms. See the Third Party's Affidavit below.

\_\_\_\_\_  
Signature of Defendant/Respondent

\_\_\_\_\_  
Address

\_\_\_\_\_  
\_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_.

\_\_\_\_\_  
Notary Public/Court Clerk/Judge

☐ **Third party's Affidavit of Third Party Transfer**

I am aware of the Court's order for Defendant/Respondent to surrender all firearms. I agree to receive by sale or transfer from Defendant/Respondent the following firearms (set forth make, model, caliber and serial numbers and attach extra sheets as needed):

Firearm Make	Model	Caliber	Serial Number

I do not reside with Defendant/Respondent in the same residence. I agree not to return, loan or otherwise transfer firearms to Defendant/Respondent under any circumstances without a court order authorizing such transfer. I understand that violation of this agreement may result in criminal charges being filed against me, including federal charges if I transfer a firearm to a person who is subject to federal firearm prohibitions. I swear that I am not prohibited from owning or possessing firearms under state or federal laws, and I have submitted to an ID Services background check to verify that I am not prohibited from owning or possessing firearms. ☐ The ID Services Background Check Number is written below.

\_\_\_\_\_  
\_\_\_\_\_  
Signature of Third Person

\_\_\_\_\_  
Printed Name of Third Person

\_\_\_\_\_  
\_\_\_\_\_  
Address

\_\_\_\_\_  
ID Services Background Check  
Number

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

\_\_\_\_\_  
Notary Public/Court Clerk/Judge

Figure 5

**\*\*\*\*\*FIREARMS SEIZED\*\*\*\*\***

**To:** ☐ District Attorney    ☐ City Attorney

Date: \_\_\_\_\_

\_\_\_\_\_ Police/Sheriff 's Office seized a firearm(s) during the arrest of defendant. This agency is requesting that the firearm be ordered "forfeited for destruction" by the court at sentencing. If the firearm belongs to someone other than defendant, we request an order returning it to the rightful owner as required by ORS 166.279.

**Court Case #** \_\_\_\_\_ **Officer** \_\_\_\_\_

**Defendant** \_\_\_\_\_ **DOB** \_\_\_\_\_

**Make** \_\_\_\_\_ **Model** \_\_\_\_\_ **Caliber** \_\_\_\_\_

**Handgun** \_\_\_\_\_ **Shotgun** \_\_\_\_\_ **Rifle** \_\_\_\_\_ **Serial #** \_\_\_\_\_

**Comments:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Figure 6

**LAW ENFORCEMENT BACKGROUND CHECK**

**Police/Sheriff Agency:** \_\_\_\_\_

**Court Case Number:** \_\_\_\_\_

**Defendant/Respondent:** \_\_\_\_\_

**Date of Birth:** \_\_\_\_\_

Pursuant to an Order of Return of Firearms, a background check has been performed by law enforcement to determine Defendant/Respondent's eligibility to receive firearms.

This document is verification that the above law enforcement agency performed a background check and that Defendant/Respondent is eligible to receive his or her firearms. **Defendant/Respondent must file this document with the court with any request for return of firearms.**

**A Background Check was completed and Defendant/Respondent:**

☐ ***IS NOT* disqualified from owning or possessing firearms.**

☐ ***IS* disqualified from owning or possessing firearms.**

Signed: \_\_\_\_\_

Printed Name of Law Enforcement Officer: \_\_\_\_\_

Dated: \_\_\_\_\_