

OREGON LAW CENTER

2011 SESSION: DOMESTIC AND SEXUAL VIOLENCE BILLS

BRIEF SUMMARY

This summary is intended to alert practitioners generally to areas of substantive change and not to provide in-depth analysis. To access the bills themselves, visit the Legislature's website at www.leg.state.or.us/bills_laws/ and click on the appropriate session year and bill number. The effective date of each bill is noted below its summary. In most cases, bills take effect on January 1, 2012. Some bills have emergency clauses and take effect more immediately, or upon passage. Where known, the effective dates are identified and highlighted. As of this writing, the effective dates of some bills are unknown, as they are still awaiting the Governor's signature. For further information or answers to questions, feel free to contact Sybil Hebb (shebb@oregonlawcenter.org).

FAPA

1. **HB 2693: Creates a hearsay exemption for officers testifying in a civil or criminal proceeding regarding service of an official document, order, or notice. (ORS 40.460(8)(d), as amended).**
 - This is a bill brought by the sheriffs to relieve the burden on officers' schedules when they, for example, must attend a contempt hearing simply to testify that they served a restraining order.
 - **Effective on the 91st day after the session is adjourned (9/29/11).**
2. **HB 2928: Clarifies ability to request a telephone or other two-way electronic appearance in a FAPA contested hearing proceeding.**
 - The bill cross-references ORS 45.400 (telephone testimony statute) in the FAPA provisions, making it more evident to parties that they may request permission to appear by telephone/video conferencing in FAPA contested hearings. As currently provided in Chapter 45, the court has the discretion to grant such request and should base the decision on a finding of good cause. HB 2928 specifies that the court must consider the safety or welfare of the party or witness when making a good cause determination in the context of FAPA hearings. HB 2928 also directs the court to consider the expedited nature of FAPA proceedings when considering whether to waive the 30 day timeframe currently imposed by ORS 45.400. (ORS 107.700-107.735).
 - The bill specifies that neither a motion nor a finding of good cause is required for *ex parte* telephone applications for a FAPA as provided in ORS 107.718.
 - **Effective January 1, 2012.**

- 3. HB 3433: Provides standing for certain 18 year olds to renew the protection of a parent's FAPA order.** (ORS 107.725(1)(b), (3) as amended).
- Under current law, minor children in the custody of a Petitioner in a FAPA proceeding are covered by the protective terms of the order. The Petitioner may seek renewal of a FAPA, which could continue to cover the minor children in the custody of the Petitioner. The current structure leaves a gap in protection for minor children who turn 18 during the life of the order and thus lose coverage. If they do not independently qualify for an order themselves, they cannot not petition for a new order, yet they are often the target for a perpetrator's abuse.
 - HB 3433 attempts to fill this gap by modifying the renewal statute to allow a renewal of FAPA protection when a renewal request is submitted by a person:
 - i. Who is a child who was in the petitioner's custody during the time the order existed, who was also included as a protected person in the order, and who has reached 18 years of age since the date the order was entered;
 - ii. Who would reasonably fear further acts of abuse by the respondent if the order is not re-newed.
 - HB 3433 clarifies that the 18 year old may petition for renewal regardless of whether the original petitioner agrees or seeks renewal, and the court can modify the order accordingly.
 - *Effective January 1, 2012.*
- 4. SB 396: Authorizes sheriff to serve copy of protective order transmitted by electronic communication device from court or law enforcement agency.**
- Amends protective order statutes to allow sheriffs to receive electronic (to include **fax and email**) copies of orders for service and entry into the Law Enforcement Data System (LEDS). Current law allows faxed copies to be served and entered into LEDS, but not emailed copies. The bill will make it easier to serve and register orders when Respondents are living in counties other than where the order was issued.
 - Applies to restraining orders authorized by ORS 107.700-107.735 (FAPA), ORS 124.022 (Elder Abuse Prevention Act), ORS 163.741 (stalking), and ORS 419B.845 (child abuse).
 - *Effective January 1, 2012.*
- 5. SB 616: Protection for pets in FAPA proceedings.**
- This bill was sponsored by the Humane Society of the United States and amends ORS 107.718 (1)(h) to add a new provision allowing the court to grant, in the issuance of a FAPA restraining order, "other relief that the court considers necessary to... prevent the neglect and protect the safety of any service or therapy animal or any animal kept for personal protection or companionship." The bill makes clear that animals kept for business, commercial, agricultural or economic purposes are not included in this protection.
 - *Effective June 7, 2011.*

REPORTING

1. HB 2014: Adds registered nurses to group of medical professionals required to report non-accidental serious physical injury or injury caused by a deadly weapon.

- Current law requires physicians, interns, and residents to report injuries caused by a deadly weapon, or any serious physical injury, caused by non-accidental means to be reported to the medical examiner.
- The bill amends ORS 146.750 to add registered nurses licensed under ORS 678.010 to 678.410 to make reports.
- HB 2014 further changes the reporting requirement to require that reports be forwarded to an appropriate *law enforcement agency*, as opposed to the appropriate medical examiner.
- *Effective January 1, 2012.*

2. HB 2183: Creates the crime of making a false report of child abuse.

- A person commits the offense of making a false report of child abuse if, knowing that the report is false and with the intent to influence a custody, parenting time, visitation or child support decision, the person either makes the report to DHS or law enforcement, or makes the report to a public or private official with the intent that the official make a report of child abuse to DHS or law enforcement. Making a false report of child abuse under this bill is a Class A violation. (ORS 419B.005-419B.050, as amended).
- *Effective January 1, 2012.*

HOUSING AND WORKPLACE ISSUES FOR VICTIMS

1. HB 3482: Expands current workplace protections for victims of domestic violence, sexual assault, and stalking to victims of harassment. Other additional amendments.

- In 2007 and 2009, the Legislature passed laws to allow unpaid leave from work for eligible employees who are victims of domestic violence, sexual assault, or stalking and to prohibit discrimination against employees on these bases. (ORS 659A.270, et seq, and 659A.290)
- HB 3482 expands the scope of this protection to include victims of harassment. The bill cross-references ORS 166.065 (criminal harassment statute) to define “victim of harassment,” and allows the Bureau of Labor and Industries (BOLI) to further define the term by rule. ORS 166.065 defines harassment as harassing or annoying another person by:
 - i. Offensive physical contact;
 - ii. Public insult by abusive words or gestures intended and likely to provoke a violent response;
 - iii. Conveying a false report concerning death or serious physical injury which reasonably would be expected to cause alarm; or
 - iv. Telephonic, electronic or written threat to inflict serious physical injury or to commit a felony involving the person or property of

that person or any member of that person's family, which threat reasonably would be expected to cause alarm.

v. Knowingly permitting any telephone or electronic device under the person's control to be used to do the above.

- The bill also adds a provision in ORS Chapter 240 (state personnel relations) that to allow certain state employees, if not confidential, managerial, or supervisory employees, and not otherwise represented by a labor union, to be accompanied by an individual of their choosing during any interview with the employee that was requested by the appointing authority, manager or supervisory of the employee.
- In addition, the bill expands the types of documentation an employee may use to certify that she is a victim, to include evidence from an administrative agency indicating that the employee has appeared in or has been preparing for an administrative or other action related to one of the eligible crimes.
- *Emergency clause, takes effect on passage and applies to actions before, on, or after effective date. (As of August 1, not yet signed by Governor.)*

2. **SB 293: Expands current housing protections for victims to clarify that early lease termination provisions cover the victim as well as any immediate family members who are tenants.** SB 293 is the omnibus residential landlord-tenant bill put together by the statewide general landlord-tenant coalition every session.

One section of the bill specifically addressed issues important to survivors:

- Current law (ORS 90.453 and 90.456) allows a victim of domestic violence, sexual assault, or stalking to terminate a tenancy for safety reasons with 14 days' written notice, if the tenant meets certain criteria and can certify eligibility as a victim. Only the tenant and minor children living with her are covered under the current law.
- SB 293 amends current law to allow immediate family members who live with a tenant who is a victim to accompany the victim-tenant when breaking a lease for safety purposes.
 - i. "Immediate family member" is defined as an adult person related by blood, adoption, marriage or domestic partnership; cohabitant in an intimate relationship; unmarried parent of a joint child; child, grandchild, foster child, ward, or guardian of the victim or immediate family member.
- *Effective January 1, 2012.*

SEXUAL ASSAULT

1. **HB 2908: Prohibits a person from knowingly performing a pelvic examination on a woman who is anesthetized or unconscious in a hospital or medical clinic.**

- Exceptions: the woman or person authorized to make health care decisions for the woman has given specific informed consent to the exam, the exam is necessary for diagnostic or treatment purposes, or a court orders the performance of the exam for the collection of evidence.

- Penalty: Violators subject to discipline by any licensing board that licenses the person.
- *Effective January 1, 2012.*

2. SB 64: Restricts application of Uniform Act on Blood Tests to Determine Paternity in criminal cases to criminal nonsupport cases only.

- Current language in ORS 109.260 (Uniform Act on Blood Tests to Determine Paternity) applies to all proceedings where paternity is at issue. The Act was principally designed for use in paternity establishment, child support establishment, and support enforcement proceedings, but applies in all paternity proceedings.
- Oregon State Police forensic labs do not meet the criteria established by the Act, and so have been unable to perform paternity analysis in criminal cases (such as rapes, incest, etc.).
- SB 64 acts to resolve this issue by providing that the requirements of the Act apply only to criminal nonsupport cases, and not to other criminal cases that may involve paternity.
- *Effective January 1, 2012 and apply to criminal cases pending before, on or after the effective date.*

3. SB 557: Directs the district attorney in each county to organize a sexual assault response team (SART).

- This is a bill from the Attorney General's Sexual Assault Task Force that specifies SART membership (representatives from the district attorney's office, a prosecution-based victim assistance program, the county sheriff's office or local law enforcement or both, a nonprofit agency or program that receives DHS or DHS victim service funds, a sexual assault forensic examiner, and other persons that the district attorney considers necessary) and meeting requirements (at least quarterly and independent of the county child abuse team), and directs the teams to develop and adopt protocols addressing the response to adult and adolescent sexual assault victims in the county.
- The bill further directs hospitals, emergency medical service providers, intermediate care facilities, skilled nursing facilities, long term care facilities and residential care facilities to adopt policies for the treatment or referral of acute sexual assault patients. Those providers that perform forensic medical exams of sexual assault patients must adopt the Oregon Medical Guideline for Sexual Assault Evaluation of Adolescent and Adult Patients developed by the Attorney General's Sexual Assault Task Force, and employ or contract with at least one sexual assault forensic examiner (this latter provision does not apply to a hospital that performs forensic medical examinations solely of sexual assault patients who are minors).
- *Effective date July 1, 2011. Policies and protocols must be developed no later than December 31, 2012 and directive to employ at least one sexual assault forensic examiner must be complied with no later than December 31, 2012, or December 13, 2013 for counties with a population of 150,000 or fewer people.*

CRIMINAL RECORDS

1. **HB 2698: Specifies that arrest that court has set aside does not disqualify application to set aside subsequent arrest.**
 - Under current law, a motion to set aside an arrest will not be granted if the applicant has been arrested at any point within three years of the application.
 - This bill provides that an arrest that has been set aside may not be considered for the purpose of determining whether an applicant is eligible. (ORS 137.225(8), as amended).
 - *Effective January 1, 2012.*
2. **HB 3376: Authorizes court to enter order setting aside conviction for Class B felony after the latter of 20 years or the release of the person from imprisonment for the conviction.**
 - Set aside not permitted if conviction was for violation of ORS 166.429 (felony with a firearm) or any crime classified as a person felony. (ORS 137.225(5)(a), as amended).
 - Set aside not permitted if the person has been convicted of or arrested for any other offense, excluding motor vehicle violations, after the date the person was convicted of the offense sought to be set aside. (ORS 137.225(8), as amended).
 - *Effective January 1, 2012.*

CRIMINAL LAW

1. **HB 2925: Directs release assistance officers, release assistance deputies, and courts to issue no-contact orders against defendants charged with a sex crime or a crime constituting domestic violence to be in effect while the defendant is in custody awaiting arraignment or trial.**
 - Under current law, a defendant charged with a sex crime or a crime constituting domestic violence who is released into the community pending arraignment or trial is automatically subject to an order prohibiting contact with the victim. If, instead of being released, the defendant is held in jail pending arraignment or trial, there is no prohibition on contact with the victim.
 - HB 2925 stops this gap by requiring the entry of a no-contact order prohibiting contact with the victim while defendant is in custody.
 - i. Order must be entered by the court upon arraignment, or if a county has release officers deputized to enter orders, by the officer at time of booking.
 - ii. Upon petition of the victim, the court may terminate the order if the court finds, after hearing, that terminating the order is in the best interest of the parties and the community.
 - iii. Violations are punishable by contempt.
 - *Effective June 2, 2011.*

2. HB 2940: Increases the classification of the crime of strangulation from a Class A misdemeanor to a Class C felony in certain circumstances.

- The elevated penalty applies when: (1) the crime is committed in the immediate presence of, or witnessed by, a person or victim's minor child or stepchild or minor child residing in the household, (2) the victim is under 10 years old, (3) the person used or attempted to use a weapon during the commission of the crime, or (4) the person had other previous convictions for certain crimes. (ORS 163.187, 166.470, 133.055, as amended).
- The bill adds both felony and misdemeanor strangulation to the list of crimes qualifying for a longer statute of limitations if committed against a minor. (ORS 131.125, as amended.)
- The bill also amends ORS 133.055 to add strangulation to the list of crimes requiring mandatory arrest, if committed by a family member against a family member.
- *Effective January 1, 2012.*

CRIME VICTIMS: RIGHTS AND CONFIDENTIALITY

1. HB 2244: Exempts records of a domestic or sexual violence service or resource center from public records laws. There are many general provisions of the bill, but Section 6 pertains specifically to domestic violence resource centers. The provisions of Section 6 were drafted to address the problem presented by the fact that the Gateway Center for Domestic Violence Services in Portland, because of its sponsorship by Multnomah County (a public agency), is subject to current public records disclosure laws. The bill exempts the Gateway Center from public records laws, so that it is on equal footing with other domestic violence service providers in its ability to protect victims' records from disclosure.

- The bill defines "domestic violence service or resource center" as "an entity, the primary purpose of which is to assist persons affected by domestic or sexual violence by providing referrals, resource information or other assistance specifically of benefit to domestic or sexual violence victims."
- The bill protects from public disclosure records that relate to the name or personal information of an individual who visits a center for service.
- *Emergency clause, takes effect upon passage. As of 8/1/11, awaiting Governor's signature.*

3. HB 2663: Modifies rights granted to victim of crime in criminal prosecution.

- Greater participation in criminal prosecution for crime victims. Requires prosecutor to inform the court of whether the victim was informed of each conference or hearing (ORS 147.512(1), as amended). Requires the prosecutor, at the request of the victim, to make reasonable efforts to consult the victim of violent felony before making a plea offer and before

entering into a final plea agreement, and requires that the court ask the prosecutor about these consults. (ORS 147.510(2), as amended).

- Extends time for victim to request reconsideration of a release decision. Time limit extended from 7 to 30 days for victims to request that prosecutor request reconsideration of a release decision. Clock begins to tick at the point that the victim knew or reasonably should have known of the release decision that is to be reconsidered. (ORS 147.508(1)(b), as amended).
- Extends time for victim to allege a violation of victims' rights in criminal prosecution. Time limit extended from 7 to 30 days; clock begins to tick on the date the victim knew or reasonably should have known of the facts supporting the allegation. (ORS 147.515(1), as amended). Expands acceptable methods of service under the section to include email or fax. (ORS 147.515(20), as amended).
- *Emergency clause, takes effect upon passage. As of 8/1/11, awaiting Governor's signature.*

4. HB 2683: Establishes procedure for requesting confidential information in protective proceeding.

- This was a bill brought forward by the Elder Law Section of the Oregon State Bar. The bill specifies what constitutes good cause when a member of the public wants to access information disclosed as part of the protective order petition process. It also adds a section discussing inspection of information disclosed as part of the petition process. (ORS 125.012, as amended).
- *Effective June 2, 2011.*

5. HB 3021: Modifies DOJ crime victims' compensation program.

- The bill removes procedural barriers to victims' access to compensation funds, including extending the period of time to file an application for compensation from 6 months to 1 year (ORS 147.015(6)(a), as amended) and expanding the availability of post-conviction counseling benefits if the offender is going through post-conviction processes (ORS 147.035, as amended). It also specifies that the benefits cap is \$20,000 for victim's reasonable medical and hospital expenses, including counseling expenses.
- *Effective May 19, 2011.*

6. HB 3066: Directs the Department of Justice to establish a restitution collection pilot program to increase collection of restitution for crime victims. *Sunsets 1/2/2014.*

- Programs to be dispersed in counties and regions. DOJ will make grants from the new Restitution Collection Pilot Program Fund to enable the district attorney's office to employ at least one restitution clerk on at least a part-time basis, to employ collection agents, and to fund other positions, activities and expenses related to collection of restitution.

- Role of the restitution clerk. Restitution clerks will investigate damages and defendant's ability to pay and provide such information to the prosecuting attorney before any hearing on the issue of restitution. The district attorney will present such information to the court. The bill gives DOJ rulemaking authority over the role of the restitution clerk.
- Role of the collection agent. Collection agents will conduct collections and collection investigation work to collect restitution from offenders and liable third parties, coordinate collection investigation work with the respective restitution clerk, and present results of investigation work in judicial proceedings. The bill gives DOJ rulemaking authority over the role of the collection agent.
- *Emergency clause, takes effect upon passage. As of 8/1/11, awaiting signature by Governor.*

PROSTITUTION AND SEX TRAFFICKING

1. **HB 2714: Creates separate crime of "patronizing a prostitute" (Class A misdemeanor) with heightened fine for patronizing a minor (ignorance of age is not a defense). (ORS 167.007-167.017, as amended).**
 - *Effective January 1, 2012.*
2. **SB 425: Expands the crime of compelling prostitution to include an instance when a person knowingly *aids or facilitates* the commission of prostitution by a person under 18 years of age (ignorance of age is not a defense). (ORS 167.017, as amended).**
 - *Effective June 14, 2011.*

FUNDING for DV/SA VICTIM SERVICES

1. **Criminal Fines and Assessment Account DVSA Funding: Flat Funded**
HB 2712 modified the structure and make-up of the current Criminal Fines and Assessment Account (CFAA). A new account, called the Criminal Fine Account (CFA), is established. The CFA will be larger than the CFAA, but will also be responsible for funding many more services. The legislature retained the "systems critical services" language of the current statute, and maintained the current prioritization of the use of these funds, allocating crime victim services as #2 in the priority list, after DPSST. The legislature allocated full flat funding for the Domestic Violence Fund (\$2,224,675) and for the Sexual Assault Victims Fund (\$533,332). These funds are administered by DHS, in cooperation with DOJ. This funding retains its "other fund" status, and is therefore not subject to across-the-board allotment cuts by the Governor in the event of a crisis.
2. **Oregon Domestic and Sexual Violence Services Account (ODSVS): Reduction**
SB 5518 established the Department of Justice Budget, which contains the General Fund allocation to ODSVS. The DoJ administers ODSVS funds, in cooperation with DHS. ODSVS suffered a \$346,469 (7%) reduction from 09-11 funding levels. Overall, ODSVS was allocated \$4,343,405 for the 11-13 biennium.

3. Department of Human Services Budget Self Sufficiency and Child Welfare Domestic Violence Program: New Funding

HB 5030 established the Department of Human Services Budget. In this budget, \$6.2 million in new funding was allocated to DHS to create a new program allowing DHS to contract with non-profit victim services providers to place domestic violence advocates at child welfare and self-sufficiency offices to provide counseling and safety services to parents who are victims. Included in the package is funding for 1 FTE at DHS to oversee the program, and \$1 million of the package is set-aside for infrastructure support to the non-profit programs across the state. The infrastructure monies may be used for things like equipment, shelter repair and maintenance, beds, etc.

UNSUCCESSFUL BILLS AND CARRYOVER ISSUES

- 1. Sexual Assault Protective Orders.** Current Oregon law has in place strong and useful tools in the civil arena to protect victims of domestic violence and stalking from further abuse, but leaves many victims of sexual assault without similar remedy. Many instances of sexual assault take place between persons who do not have the type of relationship necessary to qualify for a FAPA order. Abuse between acquaintances or friends, or even those in dating relationships, is not covered by current civil protective order statutes. HB 2942 was put forward by the Attorney General's Sexual Assault Task Force to address this hole in the law. Mirroring the provisions and structure of the FAPA order, the bill created a civil sexual assault protective order and would have allowed any person who was subjected to unwanted sexual contact within the preceding 180 days to petition the court for relief. The estimate of cost to the state to implement the new law proved to be too significant an obstacle to overcome this session, but there is great support for the concept and hopefully it will get traction in the future.
- 2. Services to teen victims.**
 - a. Dating and sexual violence curriculum in schools.** Recognizing that young people experience the highest rates of rape and sexual assault, that dating violence and unhealthy behaviors are inextricably linked, and that early intervention can help break a cycle of violence and prevent future injury, Representative Bailey sponsored HB 2438 this session that would incorporate age-appropriate education about teen dating violence into the curriculum of grades 7-12. The program would help students get consistent messages about what signs to look for in an unsafe relationship and how to get help. The program would also establish a means by which reports about dating and sexual violence could be made, in order to help schools respond appropriately to keep students safe. The bill was not successful this session, but there is continued interest in the issue and the possibility for action next session.

- b. Shelter and support services for teen victims.** Senator Verger sponsored a bill that would have eased access to shelter for teen victims of domestic violence unaccompanied by a parent. Passage of the bill was not possible without subjecting DV shelters to significant reporting and supervision standards applicable to all state services for unaccompanied minors. Yet the problem of access to shelter and services for teens remains. There is continued interest in bringing people together for conversations about how to solve this problem.
- c. Teen dating violence restraining orders.** Teens who are victims of dating violence are ineligible for restraining order protection unless the victim was married to or sexually intimate with the abuser and the abuser is over 18. A bill was proposed to remedy this gap in protection, but it did not get a hearing. The problem remains.