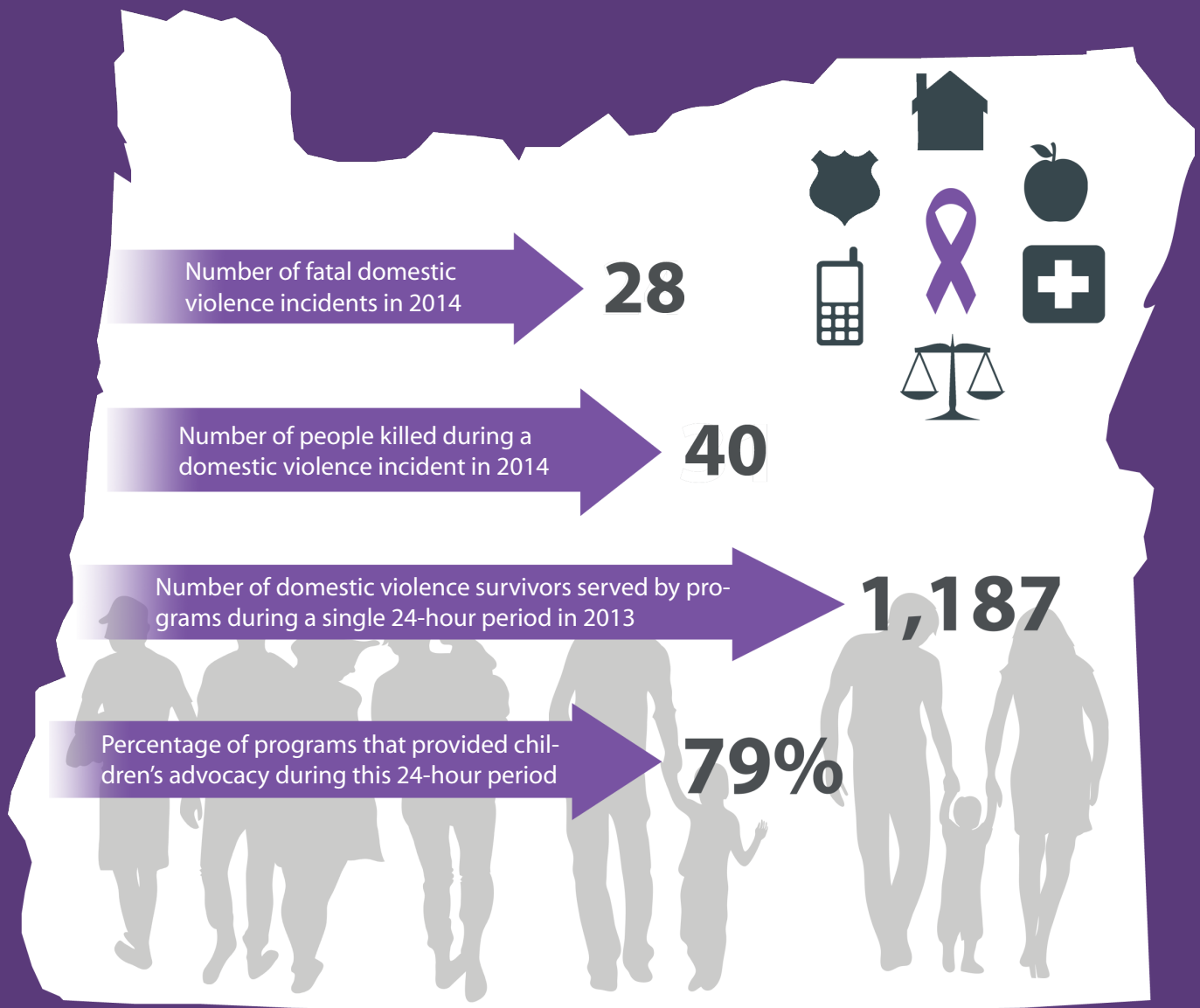


Report and Recommendations on Improving the Efficacy of Oregon's Family Abuse Prevention Act (FAPA) Order

Oregon Domestic Violence Fatality Review Team



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Improving the Efficacy of Oregon's Family Abuse Prevention Act (FAPA) Order

Domestic violence affects everyone:

The greatest perceptible cost to our communities of domestic and family violence is the tragic loss of life. Especially on a local level, the aftershock effects of these deaths are often felt for generations. In 2014, forty domestic-violence related deaths in Oregon occurred during the course of 28 separate incidents in 14 separate counties.¹ Since 2003, nearly every county in Oregon has suffered a loss of life due to domestic and family violence.

What is domestic violence?

Domestic violence is a pattern of coercive tactics that can include physical, psychological, sexual, economic, and/or emotional abuse, perpetrated by one person against a family member or intimate partner, with the goal of establishing and maintaining power and control. Domestic violence occurs in all kinds of intimate relationships, including married couples, people who are dating, couples who live together, people with children in common, same-sex or gender non-conforming partners, people who were formerly in a relationship with the person abusing them, and teen dating relationships.

While the senseless deaths of our fellow Oregonians often attract more of our focus and media-driven attention most non-fatal domestic violence incidents, of which there is a staggering amount, are hidden behind closed doors and kept off the front pages of our daily newspapers or on internet sources of information. Domestic violence, however, is not a private or "family" matter. Domestic violence is an issue that deserves public attention, discourse, and, most importantly, action. We need to improve community awareness and take concrete steps, at the individual and societal levels, to recognize that domestic and family violence is a grave threat to the health, well-being, and safety of our state and its citizens. Domestic violence is a public health issue, a public safety issue, and a problem that affects each of us.

The following statistics bear out the truth of these statements.

Prevalence and need:

Nine percent (or about 78,000) of Oregon women reported being physically assaulted by an intimate partner in the past five years, and three percent reported having been assaulted in the preceding year.² While there is severe under-reporting of these crimes to law enforcement, victims who do not reach out to

police, in many instances, still request assistance in other ways. In 2012, Oregon domestic and sexual violence programs answered 156,665 calls for help.³ On September 17, 2013, the National Network to End Domestic Violence conducted a national census of services. In Oregon, 34 out of 48 local domestic violence

¹Media-reports of domestic and family violence deaths; list compiled by Oregon Coalition Against Domestic and Sexual Violence and Oregon Department of Justice.

²Drach, L. (2005) Costs of Intimate Partner Violence Against Oregon Women. Portland, OR: Oregon Department of Human Services, Office of Disease Prevention and Epidemiology

³Oregon Department of Human Services (2013): Striving to meet the need: Summary of services provided by the Sexual and Domestic Violence Programs in Oregon.

programs participated. During that one day, 1,187 victims were served—538 were provided emergency shelter or transitional housing. Unfortunately, there were 312 unmet requests for services; 67% of those requests were for housing.⁴ While we do not always know what happens when a victim is unable to find housing or other resources, 65% of Oregon programs report that victims are forced to return to their abusers, 50% report that victims become homeless, and 21% report that victims and their families are forced to live in their cars.⁵ The census highlighted other startling information: 38% of Oregon's domestic and sexual violence programs reported reduced government funding and 18% of those programs reported not enough available staff. In fact, across Oregon during 2013, thirty-three staff positions were eliminated and most were direct services positions.⁶

Effects of domestic violence:

Domestic and family violence has a direct and long-term impact on Oregon's economy, our communities, and the health of our citizenry. Domestic violence victimization is strongly associated with mental health problems, such as depression, anxiety, and post-traumatic stress disorder (PTSD).⁷ The total number of mental health care visits in Oregon for female intimate partner violence (IPV) victims age 20-55 is estimated at just below 220,000 every year.⁸ The costs of intimate partner sexual and physical assaults in Oregon exceeds \$50 million each year, nearly \$35 million of which is for direct medical and mental health care services.⁹ Additionally, from July 2011 through December 2012, \$7,759,670 was spent on emergency assistance for victims of domestic violence through the Temporary Assistance for Domestic Violence Survivors Program (TA-DVS). Approximately 500 families a month who are escaping domestic violence receive help from this program.¹⁰

Furthermore, IPV victims often lose time from work, are unable to complete household chores, or participate in leisure activities due to injuries and mental health issues. The estimated cost of lost productivity due to IPV-related physical and sexual assault amounts to \$9.3 million dollars per year.¹¹ The statistics could go on and on, each more sobering than the last.

Domestic violence nationally:

Oregon is a microcosm of the national domestic violence landscape. On average, nearly 20 people per minute are victims of physical violence. That means that every three seconds, a person is being victimized by his or her partner. During one year, this equates to more than 10 million women and men.¹² One in three women and one in four men have experienced physical violence by an intimate partner within their lifetime.¹³ One in five women and one in seven men have experienced severe physical violence by an

⁴2013 Domestic Violence Counts: A 24-Hour Census of Domestic Violence Shelters and Services (NNEDV).

⁵Id.

⁶Id.

⁷See Footnote 1 at page 4.

⁸Id.

⁹Id at iii. As noted in Drach's report, these numbers are based on a subset of victims: women age 20-55 years old. They do not include the cost of IPV against men or against women younger than 20 or older than 55. The numbers are based on 2001 dollars and should be adjusted for inflation. The numbers also do not include all services that victims might need including criminal justice services, services for children who witness IPV, social services (e.g., shelter stays or employment assistance), and some medical services. Also, these numbers were in part based on national numbers, so the costs might be higher or lower.

¹⁰Department of Human Services Executive Summary: 2013 Report to the Legislative Assembly pursuant to ORS 411.154

¹¹Department of Human Services Domestic Violence Intervention biennial report, 2011.

¹²Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J., & Stevens, M. (2011). The National Intimate Partner and Sexual Violence Survey: 2010 Summary report. National Center for Injury Prevention and Control, Centers for Disease Control and Prevention. Retrieved from: http://www.cdc.gov/violenceprevntion/pdf/nisvs_report2010-a.pdf

¹³Id.

intimate in their lifetime.¹⁴ On a typical day, there are more than 20,000 phone calls placed to domestic violence hotlines nationwide.¹⁵ Almost one-third of female homicide victims that are reported in police records are killed by an intimate partner.¹⁶

Civil restraining orders are important to the safety of domestic violence victims

Many domestic violence victims enlist the help of law enforcement, seeking safety and an end to the abuse that they, and often their children, have endured. Some victims, however, do not want to engage the criminal justice system right away, or at all. For those victims and survivors, one way that they often try to escape an abusive relationship or end the abuse in a relationship is by obtaining a protection or civil “restraining” order. Sadly, the decision to leave an abusive relationship can often be the most dangerous decision a victim will make.¹⁷ It has been consistently shown that at the time of separation a domestic violence perpetrator will increase his abuse in order to maintain control over her and the relationship. However, restraining orders, as part of a more comprehensive safety plan, can provide an important measure of security for victims and provide a tool by which the civil and criminal justice systems can protect the victim and her children from unwanted violent contact from the perpetrator. Moreover, results from a recent study have persuasively documented the effectiveness of protection orders in terms of their demonstrated ability to reduce abuse and violence, as well as how effective the victims perceived the orders to be.¹⁸ Additionally, restraining orders were found to be at a minimum, a “cost-neutral” safety intervention, and at best, contributed to significant cost savings or avoided costs to the state.¹⁹ In other words, restraining orders are critically important to victim safety and peace of mind, public safety, and make economic sense, as well.

Restraining orders that provide protection for victims of domestic and family abuse are available through Oregon’s Family Abuse Prevention Act.

OREGON LAW: Family Abuse Prevention Act (ORS 107.700 through 107.735)

a. Who may petition for an RO: A Person who has a “family/household” relationship with the respondent.

b. How: A petitioner must file an affidavit with the court in the county where either the petitioner or the respondent resides (ORS 107.728).

c. What the petitioner has to allege to get an RO: (ORS 107.710(1))

- A “family/household” relationship with the respondent
- “Abuse” has occurred (same definition as in ORS 135.230)
- “Abuse” happened w/i 180 days of the request for the RO (w/ limited exceptions).
- The petitioner is in imminent danger of further abuse by the respondent and the respondent represents a credible threat to the physical safety of the petitioner or petitioner’s child.

d. Standard of proof to RECEIVE RO: Preponderance of the evidence (ORS 107.710(2)).

e. Duration of RO: One year (ORS 107.718(3)), but can be renewed.

¹⁴Id.

¹⁵2013 Violence Counts: A 24-Hour Census of Domestic Violence Shelters and Services.

¹⁶Federal Bureau of Investigation, Uniform Crime Reports “Crime in the United States, 2000,” (2001).

¹⁷Campbell, J., et al. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447915/>

¹⁸TK Logan, Ph.D., Robert Walker, M.S.W., L.C.S.W., William Hoyt, Ph.D., Teri Faragher, M.S.W. The Kentucky Civil Protective Order Study: A Rural and Urban Multiple Perspective Study of Protective Order Violation Consequences, Responses, & Costs, page 116, September 2009.

¹⁹Id at 149-150.

While the restraining order process in Oregon is relatively accessible, significant barriers exist that make it difficult for victims to benefit from this important measure of protection. The statewide Domestic Violence Fatality Review Team (DVFRT) has identified a number of these barriers during the past three years of case reviews. These barriers include:

- Limitations on how and when petitioners/victims can obtain a restraining order.
- Procedural and statutory obstacles that make it difficult for one jurisdiction (counties and tribal nations) to identify or recognize the validity of another jurisdiction's protection order.
- Training gaps for judges which result in: a) not accurately identifying the needs of the petitioner and, b) inadequately imposing the appropriate conditions on the order.
- Training gaps for investigators and prosecutors which result in inadequate enforcement of restraining order violations. Enforcement of the conditions of the restraining orders is oftentimes underwhelming. Oregon law mandates arrest when a restraining order has been violated, but oftentimes an arrest is not made, even when the perpetrator is located.
- Weak penalties for violating a restraining order. Current penalties for violating a restraining order are not commensurate with the harm inflicted. Increasing these penalties, making a violation of a restraining order a crime, would recognize the dangers a victim/petitioner faces upon obtaining the restraining order and would especially recognize the dangers associated with a respondent who chooses to violate the very order that is meant to keep the petitioner safe.

Overcoming these hurdles would vastly improve a restraining order's capacity to protect the victim/petitioner.

Recommendations to Improve the Safety Provided by Restraining Orders

1. Enact an emergency protection order law:

i. The problem:

When law enforcement responds to a domestic violence call, the victim is often in need of immediate protection. In recognition of this fact, Oregon has long had mandatory arrest provisions, requiring the arrest of the primary aggressor after an incident of violence. After such an arrest, a no-contact order will be issued prior to any release. This has been a successful tool to help provide a zone of safety for survivors in the aftermath of abuse. However, there are two gaps in protection: First, the arrest provisions apply in a narrow set of circumstances, only after an assault, strangulation, fear of imminent serious physical injury (typically a "menacing" charge), or sex abuse. If this standard is not met, arrest is not mandatory. There are many situations that may not rise to the level of the limited number of mandatory arrest crimes where the victim may need the protection of a no-contact order. Second, even if the arrest standard is met, it is often the case that an arrest cannot be made, because the officer is unable to locate the perpetrator. This challenge is particularly relevant in this era of reduced funding for local law enforcement.

ii. The solution:

An emergency protection order (EPO) would provide law enforcement with the capacity to seek an immediate, temporary no-contact order from a judge on a 24 hour basis, through a process similar to that used to issue warrants. This no-contact order would be of limited duration, and would expire by its own terms five days from the date of issuance. This would

provide law enforcement with an additional tool to protect survivor safety when there is a risk of physical injury but an arrest cannot be made, and would give the survivor the brief window of time necessary to seek more permanent protection from the court during official open hours.

2. Amend the foreign restraining order statute:

i. The problem:

In 1999, HB 2325 bill replaced former ORS 24.185. ORS 24.185 provided for a temporary 30-day protection period upon entry into the state for an individual protected under a foreign restraining order. After 30 days, however, the foreign restraining order would not be enforceable unless the protected person filed the foreign judgment with a local circuit court. After filing with a local court, the clerk of the court would then deliver to the sheriff a true copy of the foreign restraining order. Upon receipt of the true copy, the sheriff would then enter the order into LEDS (Law Enforcement Data System). Due to the passage of HB 2325 a foreign restraining order remains valid without filing. Still, the newer version of the statute also provides for the ability of the “protected person” to file the foreign restraining order with a county sheriff for entry into LEDS. ORS 24.190(3)(a).

That statutory language (allowing for the foreign restraining order to be filed by the “protected person”) was at the center of a recent discussion about who is allowed to present a foreign restraining order for entry into LEDS. Specifically, the statute says that, “[a] person protected by a foreign restraining order may present a true copy of the order to a county sheriff for entry into the Law Enforcement Data System maintained by the Department of the State Police. Subject to paragraph (b) of this subsection, the county sheriff shall enter the order into the Law Enforcement Data System if the person certifies that the order is the most recent order in effect between the parties and provides proof of service or other written certification that the person restrained by the order has been personally served with a copy of the order or has actual notice of the order.” Some read the statutory language to mean that while a sheriff’s office is mandated to enter the protected order into LEDS if presented by the protected person, the statute doesn’t prohibit another person besides the protected person from delivering the restraining order to a sheriff’s office for entry into LEDS. Others read the statute to mean that only the protected person may submit the protection order. This ambiguity creates safety concerns for the protected person. Additionally, it creates problems for law enforcement agencies tasked with entering and maintaining records of protection orders. The current safety-gap could be corrected with a statutory amendment.

ii. The solution:

A potential statutory fix could read as follows:

ORS 24.190 (3)(a): Any individual may present a copy of a foreign restraining order to a county sheriff for entry into the Law Enforcement Data System maintained by the Department of State Police. To enter a copy of a foreign restraining order an individual shall present a certified copy of the foreign restraining order to the local sheriff. The individual presenting the foreign restraining order for entry into the Law Enforcement Data System shall

present a certified copy of the foreign restraining order to the local sheriff. The individual presenting the foreign restraining order for entry into the Law Enforcement Data System shall also provide proof of service. If the certified copy of the foreign restraining order recites that the respondent appeared in person before the court, separate proof of service is not necessary. If the individual presenting the order is not the protected person, the individual presenting a certified foreign restraining order for entry into the Law Enforcement Data System shall also provide an affidavit signed by the protected person stating that the protected person agrees to entry of the order into the Law Enforcement Data System. Upon receipt of the required information and subject to paragraph (b) of this subsection, the county sheriff shall enter the order into the Law Enforcement Data System. Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of the restraining order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of the order may be informed of the existence and terms of the order. The order is fully enforceable as an Oregon order in any county or tribal land in this state.

Subsections (b) and (c) of the current statute would not change.

(d) If a foreign restraining order presented for entry into the Law Enforcement Data System is part of [initiated from/connected to] a pending criminal case, a court or law enforcement officer may present the certified copy of the foreign restraining order along with proof of service or proof of actual notice to the restrained person in court of the order to a county sheriff for entry into the Law Enforcement Data System without providing an affidavit signed by the protected person as required in paragraph (a).

(e) A sheriff may enter into the Law Enforcement Data System a certified copy of the foreign restraining order that was transmitted, along with the proof of service or proof of actual notice to the restrained person in court of the order, to the sheriff by a court or law enforcement agency using an electronic communication device. Before transmitting a copy of the restraining order to a sheriff under this subsection by telephonic facsimile or electronic mail, the person sending the copy must receive confirmation from the sheriff's office that an electronic communication device is available and operating. For purposes of this subsection, "electronic communication device" means a device by which any kind of electronic communication can be made, including but not limited to communication by telephonic facsimile and electronic mail.

3. Improve judicial, prosecutor, and law enforcement training:

i. The problem:

Restraining or "protective orders are just pieces of paper in the absence of assertive enforcement."²⁰ A recent comprehensive study of civil protective orders presented several findings in relation to protection order efficacy and enforcement. In those cases where the orders were not violated, victims indicated they believed the protective order was obeyed

²⁰See FN 19, page 156.

because the perpetrator was afraid of legal repercussions. As noted by the study, “this underscores the importance of the criminal justice system response to protective order violations.” Yet, we know from the study and anecdotally²¹ that restraining order enforcement is not always what we would want it to be.

ii. The solution:

“If offenders learn there are no consequences to violations but victims take the risk of reporting violations, offenders may retaliate.”²² This sentiment applies to all criminal justice system partners: law enforcement, prosecutors and the courts. All judges, court staff, prosecutors, and law enforcement need compulsory, on-going training on the dynamics of domestic violence, separation violence, and the increased risk in safety for victims who have attempted to or failed to have their orders enforced.²³

4. Support implementation of protocols regarding firearm surrender and seizure:

i. The problem:

The potential lethality of the combination of domestic violence and gun possession has been well-documented. Sixty-plus percent of all DV-related homicides in Oregon are the result of a gunshot wound. On average, DV-related homicides comprise 20% of all violent deaths in Oregon. This number spiked in 2010; in that year, one in three of all homicides were DV-related. Significantly, nearly 75% of all homicide/suicides are DV-related, and 85% (or more) of those homicides/suicides involved the use of a firearm.²⁴

There are many other concerning statistics in relation to gun use and domestic violence:

- A 20 times higher risk of homicide exists in homes where the perpetrator has access to a gun and there is a history of domestic violence.²⁵
- Family and intimate assaults with firearms are 12 times more likely to result in death than non-firearm assaults.²⁶
- Apart from the increased risk of death, there is evidence to suggest that abusers who possess guns tend to inflict the most severe abuse on their partners.²⁷

ii. The solution:

Despite these sobering facts, no Oregon statute sets out how firearms should be removed from persons after a judge has ordered that the person is prohibited from possessing fire-

²¹Last fiscal year, due to a reported resource shortage, the Portland Police Bureau investigated only 13 percent – or 151 -- of 1,137 restraining order violations. That’s despite having probable cause and information on the suspects in 75 percent of the cases, police said. http://www.oregonlive.com/portland/index.ssf/2014/11/lax_enforcement_leaves_guns_in.html

²²See FN 19 at 156-158

²³*Id.*

²⁴2014 Fatality Review Report, pages 3-4.

²⁵Kellermann AL, Rivara FP, Rushforth NB, et al. Gun ownership as a risk factor for homicide in the home. *New England Journal of Medicine*. 1993;329(15):1084-1091.

²⁶Saltzman LE, Mercy JA, O’Carroll PW, Rosenberg ML, Rhodes PH. Weapon involvement and injury outcomes in family and intimate assaults. *Journal of the American Medical Association*. 1992;267(22):3043-3047.

²⁷Jacquelyn C. Campbell et al., Risk Factors For Femicide in Abusive Relationships: Results From A Multi-Site Case Control Study, 93 *Am. J. of Public Health* 1089, 1092 (2003), abstract available at <http://www.ajph.org/cgi/content/abstract/93/7/1089>

arms. The statewide Firearms and Domestic Violence Task Force, sadly now defunct because of a lack of funding, drafted the Model Domestic Violence Firearm Surrender Protocols for use with court orders that prohibit defendants or restraining order respondents from possessing firearms. A number of Oregon counties have implemented a version of the Model Protocols: Clackamas, Clatsop, Multnomah, and Washington counties currently have dispossession protocols. **Greater implementation of dispossession protocols would increase victim and law enforcement safety.** Due to the great work of the statewide Firearms and Domestic Violence Team, and the counties which have already implemented variations on the Model Protocol, statewide implementation of a dispossession protocol has been made much easier.²⁸

5. Make violation of a restraining order a crime:

i. The problem:

In 1977, Oregon was one of the first four states in the nation to adopt a Family Abuse Prevention Act (FAPA) statute. Now, however, Oregon is significantly behind the curve in terms of the sanctions imposed when a FAPA protection (restraining) order is violated. A large number of other states already make the violation of a restraining order a crime. Oregon is not one of those states. In Oregon, a violation of a restraining order is simple contempt. Contempt is not a crime, nor even a criminal offense. This weakness is a significant barrier for prosecutors and law enforcement, and, most importantly, impacts victim safety. A contempt adjudication does not appropriately reflect the seriousness of the underlying circumstances which gave rise to the issuance of the order, nor does it reflect the potential dangers facing the petitioner when the order is violated. Also, the punitive sanction is relatively weak; the maximum sentence for contempt is only six months in jail. This sentence is very rarely imposed.

ii. The solution:

The violation of a restraining order should be criminalized. There are many reasons why a violation of a restraining order should be a crime. Some of these reasons include:

- A criminal sanction would impact a respondent's criminal history score, more accurately portraying his past criminal behavior.
- A perpetrator convicted of a criminal violation would more likely be placed on supervised probation.
- Law enforcement agencies would be more apt to use in-depth investigative tools, for example, writing search warrants, to investigate the alleged violations.
- Courts would consider petitioners "victims" for the purposes of providing them with their constitutionally and statutorily protected victims' rights.

Criminalizing violation of a restraining order would resolve these barriers, thus strengthening for victims the protective shield provided by this important safety tool.

²⁸Model Dispossession protocols can be found on the Oregon Coalition Against Domestic and Sexual Violence (OCADSV) website: <http://ocadsv.org/>

Conclusion

Civil restraining orders, as part of a more comprehensive safety plan, provide significant protection to victims of domestic violence. Oregon law provides a process by which victims of domestic violence can obtain a civil restraining order. While Oregon's restraining order process is meant to be easily accessible and protective, improvement in several areas could increase the order's efficacy.

Recommendations for improvement include: enact an emergency protection order statute; amend the existing foreign restraining order statute; improve judicial, prosecutor, and law enforcement training; implement protocols regarding firearm surrender and seizure; and make violation of a restraining order a crime.

*"No single legal intervention or even law in general, can be sufficient in itself to solve a problem as complex and deeply-rooted as domestic violence. Nevertheless, protection orders are in many ways ideally suited to advancing the interests of battered women."*²⁹

Respectfully submitted by the Oregon Domestic Violence Fatality Review Team.

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²⁹Goldfarb, S., "Reconceiving Civil Protection Orders For Domestic Violence: Can Law Help End Abuse Without Ending The Relationship?," page 1518, Cardozo Law Review, 2008.