

# The Good Fight

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## Emergency Protective Orders: When and Why



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On January 1, 2016 HB 2776, amending ORS 133.310, went into effect. This bill authorized law enforcement officers to apply for and a circuit court judge to enter an ex parte emergency protective order (EPO) when the court finds probable cause that a person is a victim of a domestic disturbance or abuse and the protective order is necessary to prevent abuse. Between its passage in mid-2015 and when it went into effect on January 1st, a lot of work has gone into developing EPO forms and protocols. As with many new laws, challenges with effectively using the EPO have been identified. However, so, too have there been situations where the EPO has proven itself to be what it was intended: a valuable tool for law enforcement to help ensure and improve victim safety. *Here are a few circumstances where EPOs have been issued:*

**(1) (Large, metro county)** The Defendant moved out of state and was gone for a few months. During that time, the victim moved out of the home, putting their kids into different schools. The Defendant returned and began sending the victim what she perceived to be threatening messages. The victim eventually contacted the police and *disclosed long-term abuse*. Officers talked to the victim about the option of an EPO which she agreed to. The Defendant ended up coming to the police department while they were speaking to the victim so they were able to serve him with the EPO. The case was forwarded to the DA's office and charges are currently being considered but have not yet been issued. The victim did apply for and receive a FAPA Restraining Order (RO) the day after the EPO was issued. **(2) (Small, rural county)** The Defendant and Victim are members of one of Or-

egon's nine tribal nations. The EPO incident happened *on a Saturday evening when the victim would not have been able to apply for and receive a FAPA RO*. During the incident, the Defendant, among other things, shot arrows into all of the victim's pictures, and destroyed much of the victim's home before he left the residence. Criminal charges were eventually filed against the Defendant. After the EPO lapsed, the victim did not file for a FAPA RO as the Defendant provides child-care for the couple's young son during the day while she works. **(3) (Medium, rural county)** The Victim and Defendant had been divorced for 18 months but continued to live in the same house. Leading up to the incident which prompted the EPO, the Defendant began to escalate his behavior, insisting to the Victim that they were not actually divorced.

## EPO: When and Why

(Continued from the Cover Page)

The Defendant also threatened the Victim that he would send pictures of the Victim in a state of undress to the her employer. The week leading up to the EPO, the Defendant parked near the Victim's place of employment and then followed her wherever she went. Three days before reporting to law enforcement, the Victim decided to stay the night at a friend's home. The Defendant showed up at the friend's house at midnight, pounding on the door. When confronted by the friend's husband, the Defendant demanded that "his wife" come home. The Respondent told the Victim he would find out who she was cheating on him with and kill that person. The year before, the Respondent had shown the Victim his guns and told her that one was for him and one was for her which the Victim took as a threat. Based on the initial information, the Officer did not feel that there was enough to arrest the Defendant, but did feel that there was enough to is-

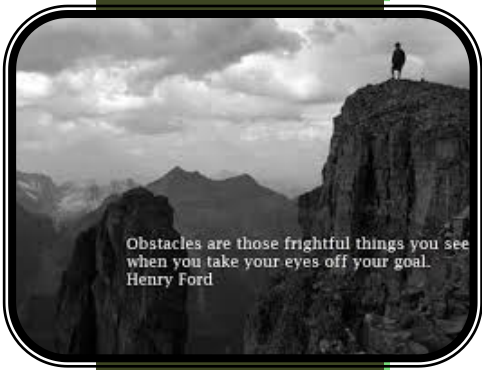
sue an EPO and the Victim agreed. *During the course of processing the EPO the Victim disclosed an assault* that occurred four days prior which ultimately led to the Defendant's arrest. **(4) (Large, urban county and medium, rural county)** The Victim was a disabled, older woman who reported that her drug-addicted adult son had abused her. The two lived in a large county but the assaultive incident happened in a more rural county. When the Victim contacted law enforcement in the larger county, she was told that her situation was "civil" and that nothing could be done. The Victim then contacted the National DV Hotline and was connected with an advocate in the more rural county. *The advocate connected the Victim with local law enforcement* (in the rural county) who traveled to the Victim's home (in the larger county) where the EPO was eventually issued and served on the Defendant (who had just injected heroin at the home he shared with

the Victim).

As noted, there are challenges with the new law. Some have observed that: 1) The process, while not difficult, can be time-consuming since the issuing officer has to find a judge to sign the Order and then return it to the petitioner, as well as serve it upon the Respondent; 2) In counties that have yet to designate an on-call judge it is often difficult to find a judge to sign the Order; and 3) Law enforcement are not yet accustomed to asking a victim about whether s/he would like an EPO leaving missed opportunities for improved victim safety.

Anticipating these challenges, the workgroup that developed the forms and the training video will meet periodically to assess whether amendments to the law should be suggested and, if so, what those amendments should be. There are agencies, however, that are finding ways to make the process workable for them, and for the victims they serve.

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Obstacles are those frightful things you see when you take your eyes off your goal.  
Henry Ford

Despite challenges, local law enforcement agencies are finding ways to make the EPO process work for them and for the victims they serve.

## EPO: When and Why

**Beaverton Police Department (BPD)** is, on many fronts, leading the way with EPOs. Soon after the new law went into effect, BPD Officer Mandi DeFrain authored a law enforcement training bulletin for her colleagues. Officer DeFrain was also instrumental in the creation of an amended EPO form that BPD is currently using. While working through the requirements of the law, she and colleagues noted that there was not a space on the EPO form to write in the Petitioner's date of birth. During the drafting process this piece of information was deliberately left off the form to protect the Petitioner's confidentiality. However, the information is necessary for law enforcement to enter the EPO into the Law Enforcement Data System (LEDS) which HB 2776 requires. Officer DeFrain worked

with others at her agency to create a triplicate form. The form allows the officer to fill in the Petitioner's date of birth which shows up on only the copy of the form that the law enforcement agency keeps and enters into LEDS. The Petitioner's and Respondent's copies do not include the Petitioner's DOB. To date, BPD has issued more EPOs than any other agency in the state. If you would like Officer DeFrain's Training Bulletin or BPD's EPO form, you can contact her at:

**Officer Mandi DeFrain**  
 503-526-2261 ext 9228  
[mdefrain@beavertonoregon.gov](mailto:mdefrain@beavertonoregon.gov)

Despite the potential challenges, *there are a number of reasons why EPOs should be utilized:*

- An EPO is a stop-gap which provides the victim with additional time to obtain a permanent FAPA Restraining Or-

der;

- When there isn't a mandatory arrest situation but the officer feels that the victim is in immediate danger of abuse, an officer can, with the victim's consent, issue an EPO. Again, this provides the victim with extra time to obtain an RO or pursue other safety measures.
- An EPO is an excellent tool when Probable Cause is slim but an arrest is still made. The EPO will provide protection if charges aren't filed by the DA's office resulting in the criminal no-contact order being dropped;
- In the event that a victim/survivor does not want to participate in the trial, an EPO can help the prosecution illustrate the victim's fear at the time of the incident.

For more info, contact:  
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### EXPANDED REACH: OREGON CRIME VICTIMS LAW CENTER

The **Oregon Crime Victims Law Center** provides free legal representation to crime victims throughout the state. Founded in 2009 with one part-time attorney, **OCVLC** has grown to include **four attorneys, one victim advocate and a project manager**. This expansion has enabled them to assist more victims and take on a greater number of cases than ever before. One of the new attorneys, Yazmin Wadia, works four days a week at the Gateway Center, which provides survivor-centered advocacy and services to domestic violence victims in Multnomah County. Yazmin assists victims with restraining order hearings and crime victims' rights issues. Nelly Wright, a former prosecutor who recently joined OCVLC, is currently working on a number of cases involving issues ranging from contested restraining order hearings to Title IX reports and helping victims with privacy concerns. Under an Office of Violence against Women (OVW) grant OCVLC has been able to represent victims in contested restraining order hearings in Marion and Multnomah Counties. **(CONT'D Back Page)**

## LET'S GET UPDATED!

**Assault in the Fourth Degree/Physical Injury:** *State v. Guzman*, 276 Or App 208, \_\_ P3d \_\_ (2016)

**FACTS:** Defendant was convicted of assault in the fourth degree constituting Domestic Violence based on the theory of substantial pain (the trial court did not believe there was sufficient evidence to support a finding of impairment of physical condition). The victim did not appear for GJ or for trial despite many attempts by the State to procure her attendance. (It is clear from a footnote in the opinion, which presents a text message from the defendant to the victim, that the defendant had tampered with the victim/witness.) Despite the victim's lack of attendance, the State went forward with the case. The State had independent witnesses who made good observations of the victim's demeanor and physical appearance. There was also a 911 call and pictures of the victim's injuries. The pictures "depict[ed] bright red scratches on the victim's chin and left cheek; some swelling on both of the victim's cheeks, around both of her eyes, and on the left side of her forehead; and more pronounced swelling on the right side of the victim's forehead, from her eyebrow to her hairline." The holding hinges on the court's analysis and conclusion about the factfinder's ability to infer (rather than speculate) whether the victim suffered substantial pain. **HELD:** Conviction affirmed.

The court concludes:

"A rational juror could infer from the evidence, including the 9-1-1 call, the descriptions of the victim's condition and demeanor by the two witnesses, and the photographs of the victim's injuries, that the victim physically struggled against defendant and that he scratched and punched her face, or that her face collided with a hard surface in the car during the struggle. And, based on those inferences and the photographs, a rational juror could infer that the victim's injuries involved "ample" or "considerable" pain that was "more than \* \* \* fleeting." Lewis, 266 Or App at 527-28. That is, given the basic facts adduced at trial, there is a reasonable probability that the victim's significant facial swelling immediately after the altercation was painful and that her injuries turned into significant bruising and soreness that persisted for a consequential See *State v. Pipkin*, 245 Or App 73, 77, 261 P3d 60 (2011), aff'd, 354 Or 513, 316 P3d 255 (2013) ("evidence that the victim was still in pain at least an hour after the attack and that her injuries were of substantial degree—her eye was swollen," inter alia, "was sufficient to create a question for the jury about whether the victim suffered substantial pain")."

The Court dismissed, without discussion, the defendant's assignment of error to the admission of the victim's 911 call.

<http://www.publications.ojd.state.or.us/docs/A155005.pdf>

**Assault in the Fourth Degree/Physical Injury:** *State v. Johnson*, 275 Or App 468, \_\_ P3d \_\_ (2015)

**FACTS:** As a result of a domestic dispute, defendant was charged with, among other offenses, fourth-degree assault for slapping the victim, ORS 163.160. At trial, the victim testified that she felt "a sting" when he slapped her. He moved for a judgment of acquittal on that charge, but the trial court denied the motion and the defendant was convicted.

**HELD:** Physical injury means substantial pain or impairment of a physical condition. The victim's testimony that she felt a "sting" is "insufficient to support a finding of substantial pain. Moreover, there is no evidence that the victim suffered any impairment of her physical condition as a result of defendant's slap." Conviction reversed and remanded for sentencing.

<http://www.publications.ojd.state.or.us/docs/A151101.pdf>

**Unlawful Use of a Weapon:** *State v. Smith*, 274 Or App 562, \_\_ P3d \_\_ (2015).

**FACTS:** In the course of a domestic argument, the defendant pointed a loaded revolver at his wife and son and threatened them. He was charged with, among other offenses, two counts of unlawful use of a weapon, ORS 166.220(1)(a). At trial, he moved for a judgment of acquittal on the Unlawful Use of a Weapon charges, contending that pointing the firearm was not "use" within the meaning of the statute, the trial court denied that motion and the defendant was convicted. **HELD:** In light of *State v. Ziska*, 355 Or 799 (2014), which held that the display of and threat to use a dangerous weapon constitutes "use" within the meaning of ORS 166.220(1)(a), the trial court correctly denied defendant's motion for judgment of acquittal.

<http://www.publications.ojd.state.or.us/docs/A152558.pdf>

## Domestic Violence Fatalities: Lessons Learned

In total in 2015, there were 46 deaths in 37 separate incidents in thirteen Oregon counties related to domestic violence. These numbers represent an increase over the prior year; in 2014 there were 40 deaths in 28 separate incidents in 14 Oregon counties. These numbers, whether 40 or 46, 28 or 37, are discouraging, disheartening, and tragic. As we try to comprehend what these figures mean, it is vitally important for all of us to remember that these numbers are more than just numbers—they represent real people. There were 86 real people who died due to domestic violence in the last two years—real people who had families, friends, neighbors, and communities who loved them and are, almost certainly, still reeling from the profound loss every day.

The Domestic Violence Fatality Review Team (DVFRT), through its review process, endeavors to remember *the people* who have died due to domestic violence, as well as those who continue to grieve them.

The Team reviewed two cases in 2015. The first case involved a familicide. At the time of the murder, the female victim and the male perpetrator, her husband, had been separated and living apart in a rural, western Oregon county. The couple had two children, a son (elementary age) and a daughter (middle school age). There was a long history of domestic violence in the relationship, perpetrated by the husband on the wife, though none of the abuse was formally reported until shortly before the murders. The perpetrator shot and killed his wife and their children before shooting and killing himself.

The second case reviewed in 2015 involved a married couple living together in a southern Oregon coastal community. The male perpetrator had a long history of domestic violence (with the victim and with others) as well as other criminal activity. He was involved with a local government agency at the time of the murder. The female victim was born with a physical disability and suffered from other physical ailments. She was not formally engaged with local services at the time of the murder. The couple was involved in the local faith community. The perpetrator shot and killed the victim. The perpetrator is in prison.

Through multiple days of intense examination and thoughtful discussion of police reports, photographs, court records, interviews, and DVFRT-member provided information, the Team, in these case reviews, identified dozens of critical issues and potential areas for system improvement. Recognizing the limitations of time, funding, and resource capacity, the Team synthesized its observations and offered nine findings and attendant recommendations. Those recommendations included:

### Firearms

- Oregon lawmakers should continue to build upon firearm restrictions placed on DV offenders;
- Policies in local jurisdictions regarding protection and no-contact orders should be implemented to restrict access to firearms by DV offenders and those subject to protection and no-contact orders.

### Community Corrections

- The minimum number of hours of DV training at the community correction basic academy should be increased;
- Mandatory annual continuing education training on domestic violence should be required;
- Advocates should be used in the supervision of DV

### DHS

- DHS' DV Council should create a committee to review program protocols, applications, personnel training and resources to determine how helpful and/or accessible the available resources are to victims;
- Quality, consistent training for all DHS workers should be required.

### Courts

- All judges, court staff, and court administrators should receive training on creating trauma-informed environments in family court, restraining order, stalking order, EPPDAPA, and other proceedings that victims/survivors attend.

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## EMERGENCY PROTECTIVE ORDER—TRAINING BULLETIN

**What:** Emergency Protective Order (EPO)

**When:** Effective January 1, 2016

**Who:** Law Enforcement May Offer EPO to victims of DV

### **Under What Circumstances:**

The victim has consented to and/or given permission for application for an EPO; AND  
The peace officer has probable cause to believe one of two circumstances, listed below, exists:

- When the peace officer has responded to an incident of a domestic disturbance and the circumstances for a mandatory arrest (per ORS 133.055(2)(a)) exist; **OR**
- The person is in immediate danger of abuse by a family or household member; AND
- The EPO is necessary to prevent the person from suffering the occurrence or recurrence of abuse

### **How Does An Officer Apply for an EPO:**

Fill out the top (sections 1 & 2) and center sections of the EPO (sections 6 & 7).

Locate a Circuit Court Judge to review and sign the Order (sections 3, 4, & 5). This process should be the same or similar to an agency's Search Warrant affidavit review process. (1)

### **After the EPO Is Signed By The Judge:**

Provide a certified true copy (section 9 requires peace officer signature) of the EPO to the Petitioner/victim.

Serve the Respondent personally and upon completion of service, fill in and sign the Declaration of Proof of Service (section 8).

File the Declaration of Service with the court.

Enter the EPO into LEDS.

One copy of the EPO goes each to: a) The Court; b) Respondent; c) Petitioner; d) Issuing Agency.(2)

### **Other:**

The EPO only lasts for seven calendar days from the date the Judge signs the Order.

If a peace officer cannot serve the EPO on the Respondent within one day of the Order's entry, the peace officer must notify the court, but can keep trying to locate and serve the Respondent.

Violation of an EPO is a mandatory arrest and can be prosecuted as a Contempt charge.

(1) A judge should be available 24 hours a day, seven days a week to review and sign EPOs.

(2) Right now the EPO form does not contain a space for the Petitioner/Victim's DOB. For LEDS entry, the Order must contain the Petitioner/Victim's DOB. After the EPO has been signed by the Judge, make two copies. On one copy write the Petitioner/victim's DOB. The "DOB" copy will be kept by your agency's Records Dept. for entry into LEDS. File a copy *without* the Petitioner/victim's DOB with the Court. Under no circumstances shall the Respondent receive a copy of the EPO with the Petitioner/Victim's DOB.

The information in this bulletin, provided by the DOJ DV Resource Prosecutor, is educational and intended for informational purposes only. It does not constitute legal advice, nor does it substitute for legal advice. Any information provided is not intended to pply to apply to a specific agency, individual, or case.

## SEXUAL ASSAULT AWARENESS MONTH

April is Sexual Assault Awareness Month (SAAM). Perpetrators who are physically violent toward their intimate partners are often sexually abusive as well. Victims who are both physically and sexually abused are more likely to be injured or killed than victims who experience one form of abuse.

- Between 40 and 45 percent of women in abusive relationships will also be sexually assaulted during the course of the relationship.
- Over half of women raped by an intimate partner were sexually assaulted multiple times by the same partner.
- Women who are sexually abused by intimate partners report more risk factors for intimate partner homicides than non-sexually abused women.

Source: <https://www.ncadv.org/files/Domestic%20Violence%20and%20Sexual%20Abuse%20NCADV.pdf>

### (OCVLC, Cont'd from page 3)

This year OCVLC is expanding that project into Washington County, as well. In 2015 OCVLC assisted more than 150 victims of crime throughout Oregon with two attorneys, helping those victims regain a sense of safety, giving them a voice in the criminal justice system, and working to ensure victims the rights guaranteed by the Oregon Constitution. With the expanded staff, OCVLC looks forward to helping even more survivors of crime, as well as continuing to provide training for those who offer services and support for victims. To contact OCVLC, visit its website:

<http://www.ocvlc.org/>

## Days

### To Remember

April 1: National Sourdough Bread Day

April 2: National PB & J Day

April 3: National Chocolate Mousse Day

April 5: National Caramel Day

April 8: National Empanada Day

April 12: National Grilled Cheese Day

April 18: National Animal Cracker Day

April 22: National Cherry Cheesecake Day

April 30: National Oatmeal Cookie Day

