

District Attorney's, Chief's and Sheriff's Domestic Violence Policy Package Summary

1. Strangulation and Assault IV:

This bill proposes small amendments to the assault IV and strangulation statutes to provide that their felony upgrade criteria are consistent with one another.

- *Modifies strangulation statute to felony when defendant knows victim is pregnant (currently the law for assault IV).*
- *Modifies assault statute to felony when defendant has been previously convicted of not only assault (current law), but also strangulation or menacing of the same victim, or has been convicted three times previously (of any combination of assault, menacing or strangulation) against any victim (currently the law for strangulation).*

2. Modify ORS 135.247 - Order prohibiting contact with victim of sex crime or domestic violence while in custody:

Currently, when a defendant is charged with a domestic violence or sex offense and is in-custody pending trial, the defendant is prohibited by ORS 135.247 from contacting the named victim. This bill adds the prohibition of "or attempting to contact, directly or through third parties" to the statute to prohibit defendants from intimidating or manipulating victims by making repeated attempts (often unknown if successful) to contact the victim by phone, letter and email from the jail, or to accomplish the same through third parties.

3. Amend Physical Injury Definition:

This bill amends the definition of physical injury to include "physical trauma." "Physical trauma" adds to the definition an objective measurement of an injury such as fractures, cuts, punctures, bruises, discoloration, burns or swelling. This amendment will enable charges to be filed in injury cases with child (non-verbal), elderly, and vulnerable victims who are unable to articulate the current legal standard. This is in response to recent case law that held that severe bruising on a child and hair pulled out of a domestic violence victim's head did not meet the current standard of "physical injury."

4. Kids Who Witness domestic violence are "victims":

Currently, the crime of misdemeanor assault IV or strangulation can be elevated to a Class C felony when the minor child of the victim, the defendant, or child residing in the home, witnessed the crime. This language was previously added recognizing the harm to a child who witnesses domestic violence. Current case law holds that for purposes of charging and sentencing, the state may only file one charge regardless of the number of children that witnessed the crime.¹ The Appellate Court has subsequently ruled that individual animals are "victims" for purposes of charging and sentencing.² Given this holding, this bill amends the relevant statutes to allow for separate charges to account for each child who witnesses a domestic violence assault or strangulation.

¹ In *State v. Glaspey*, the defendant was convicted of two counts of felony assault in the fourth degree based on a single assault on his wife in front of their two children. In that case, the court held that although ORS 161.067(2) provides that conduct violating a single statute may result in multiple convictions if it caused injury to multiple victims, the only "victim" for purpose of those statutes is the person defendant assaulted, not the children who observed the assault (337 Or 558, 100 P3d 730 (2004)).

² Animals can be victims within the meaning of the anti-merger statute and, accordingly, the court reversed and remanded for entry of a judgment of conviction on each of the 20 counts and for resentencing. *State v. Nix*, 251 Or App 449, 283 P3d 442 (2012).

5. Venue Issue (where the case can be filed):

This bill adds another provision to the venue statute that will allow charges of domestic violence, child abuse, and elder abuse that occurred between the same defendant and victim to all be filed in one county, at the same time, regardless of where they occurred. This type of provision is currently allowed in many circumstances in theft, forgery and identity theft cases. This will benefit both victims and defendants by reducing the number of court appearances for the case and help to bring a sense of closure sooner in time. It will also have the benefit of judicial economy with one consolidated prosecution.

6. Coercion:

Currently the coercion statute prohibits the defendant from compelling or inducing the victim to engage in or abstain from actions based on various threats. This is commonly done by defendants in domestic violence cases in an effort to control and manipulate them. This bill adds the threat of causing physical injury to any animal, a threat often made to domestic violence victims to prevent them from leaving the situation.

7. Create "Statements by Translator" non-hearsay provision:

Pursuant to current case law, someone who acts as an interpreter or translator during an investigation creates another level of hearsay that often prevents those statements from being used in court, regardless of the quality of the interpretation. As a result, victims of domestic violence who are non-english speaking, are often put in a worse situation because the translated statements that they give during an investigation, that would otherwise be admissible, are often not admissible in court. This bill would create a new provision in the evidence code that would make the translator a "language conduit" from speaker to the investigator without adding another level of hearsay. This is the current law in several other states and Federal Circuit Courts around the country.

8. Funding:

Proposes funding for two annual domestic violence trainings for prosecutors; on-going training on emerging issues for law enforcement; and increases capacity for District Attorney's offices to provide advocacy to every domestic violence victim, and to meet statutory and constitutional requirements regarding their rights.

9. Emergency Protective Order:

Police officers at the scene of a domestic violence incident would have the authority to contact a judge by telephone and obtain a temporary emergency protective order when an adult, child or elder is in immediate and present danger of abuse by a family or household member. The emergency protective order would offer immediate protection and give victims of domestic violence time to apply for a permanent restraining order.