

OREGON LAW CENTER

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MEMO

To: Governor's Domestic Violence Prevention and Response Task Force

From: Sybil Hebb

Date: November 12th, 2014

Re: Oregon's Family Abuse Prevention Act: Gaps in Coverage

This memo is meant to provide a brief overview of priority gaps in Oregon's civil restraining order process. In selecting the issues to discuss, I considered:

- the needs of our clients who are survivors as we have observed over time;
- the voices of domestic violence advocates whose input we solicit on a regular basis;
- the National Council of Juvenile and Family Court Judges model protection order code.

The issues identified for discussion below are the issues that seem to me to be of greatest importance in Oregon. I thought about the numbers of survivors impacted, the significance of the impact, and the greatest safety solutions. This is a subjective assessment; others might have come up with different topics to discuss.

Overall, Oregon's civil restraining order system is extremely well-written and crafted. It stacks up very well with respect to other states' protection order systems, and does a good job of providing immediate access to emergency court protection for victims and their children. However, there are several key gaps in protection:

- **Teen victims, and victims of dating violence where there has not been sexual intimacy, have limited access to protection.**
 - Teens who are victims of physical violence within a sexually intimate relationship cannot access a restraining order unless the abuser is over 18, or a spouse/former spouse.
 - Victims (adults or teens) of physical violence in a dating (non-sexually intimate) relationship do not qualify for a restraining order at all.
 - Oregon gets a **D** on this issue from the national Break the Cycle teen advocacy organization, and as of 2010, approximately 33 states allow teens greater protection than in Oregon.
 - The NCJFC model protection order code recommends coverage of teen victims and adults **in** dating relationships.
 - Passage of the Healthy Teen Relationship Act in 2012, which required schools to

implement training and standards for response to dating violence, was a good start, but there has not to date been sufficient funding to support curriculum development or in-school safety counseling and education for teens.

- **Violation of a FAPA restraining order is not a crime, but is instead punishable by punitive contempt.**
 - In approximately 39 other states, a violation of a restraining order is some level of a crime (misdemeanor in most circumstances, felony in others) (Thanks to Gina Skinner for this research)
 - The NCJFC model protection order code recommends that a violation of an order be a crime.

- **There is no state prohibition against firearm possession by domestic violence perpetrators subject to restraining orders.**
 - Federal law prohibits firearm or ammunition possession by domestic violence perpetrators subject to qualifying restraining orders.
 - Oregon is hampered in its ability to enforce that law because we do not have a similar state law.
 - Approximately 2/3rds of states as of May 2014 have some form of state law prohibiting firearm possession by offenders subject to restraining orders, and this authority is recommended by the NCJFC model code.

- **There is no authority for law enforcement to seek an Emergency Protection Order on a 24 hour basis at the scene of a domestic disturbance.**
 - At least 12 other states provide law enforcement with this tool to allow immediate entry of an order of protection on a 24 hour basis to address circumstances in which the victim may not be able to access the courthouse right away but needs immediate protection. (Thanks to Erin Greenawald for this research)
 - The NCJFC model protection order code recommends law enforcement be provided with this authority.

- **Inadequate funding for advocates to assist victims in seeking protection.**
 - The restraining order system is one that must be accessible to victims in crisis on an emergency basis. Oregon's system is designed with that purpose in mind, but it is still confusing, intimidating, and dangerous for victims to seek help.
 - The NCJFC model protection order code recommends courts be funded to contract with community-based advocates to ensure the availability of assistance for victims seeking protection orders, to help them understand the process, understand what safety and shelter resources are available to them, and to provide safety planning.

These are selected key gaps with respect to Oregon's civil restraining order system identified by comparing victim needs with national best practice restraining order standards. However, it is important to note that others may have identified other gaps, and that even the best civil restraining

order system will not fully provide safety. Without adequate access to safe emergency shelter, transitional housing, safety -planning, and support, victims may be unable to overcome barriers to safety. And a fully funded and expert coordinated community response across all systems (community non-profit based, child welfare, law enforcement, prosecution, health care, etc) is necessary to successfully address domestic violence. The restraining order system is a key piece of the coordinated community response, but must be seen as a just one piece of that whole.