Sexual Assault Protection Orders: A National Perspective and a Statewide Model

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The Scenario
What We’re Addressing Today

- National landscape regarding Sexual Assault Protection Orders (SAPOs)
- The need for a sexual assault-specific protective order
- The most important elements of an effective SAPO statute in your jurisdiction (state, tribe or territory); a national perspective
- Lessons learned in the development and implementation of a SAPO in Illinois
Who Are the Victims of SA?

- Majority of sexual assault survivors are victims of non-intimate partner SA:
  - 11-18% of sexual assaults are committed by strangers
  - 27-33% of rape and attempted rape victims are sexually assaulted by an acquaintance, such as a friend, neighbor, co-worker, etc.
  - 18% - 23% of SA victims are assaulted by relatives other than a current or former spouse
  - 11% of SA victims are assaulted by a father or step-father
  - 24% of victims are assaulted by a current or former spouse or live-in partner
Who Are the Victims of SA?

- Females ages 12 to 24 are at the greatest risk for experiencing a rape or sexual assault
- 15% of victims are under the age of 12
- 29% are age 12 – 17
- 80% are under the age of 30
Who Are the Perpetrators of SA?

- Offenders are mostly male
- Choose vulnerable victims who they believe will be seen as less credible
- Involve drugs/alcohol in the assault
- Premeditate (not a miscommunication)
- Are repeat offenders
- Use relationship with the V to perpetrate the crime
- Use intoxication, credibility and/or consent as defenses to sexual assault
- Have access to consensual sex
Why Criminal Prosecution Alone Cannot Keep SA Survivors Safe

- Only 16% - 25% of rape victims report the crime to law enforcement.
- Over half of all rape prosecutions are either dismissed before trial or result in an acquittal.
- A rape prosecution is more than twice as likely as a murder prosecution to be dismissed.
- ¼ of convicted rapists serve no prison time; ¼ serve 11 months or less in jail.
- A convicted rapist is 50% more likely to receive probation than a convicted robber.
- 98% of rape victims will never see their assailant apprehended, convicted and incarcerated.

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A Quick Review of DV
Civil Protective Orders (CPO)

- Purpose(s)
- Who has them
- What are the remedies typically available
- Benefits
- Challenges
Who Has SAPOs?

- Illinois was the first state to pass a SAPO (2004)

- 21 more states have since followed suit
  - Alaska
  - California
  - Colorado
  - Florida
  - Illinois
  - Maine
  - Maryland
  - Massachusetts
  - Michigan
  - Minnesota
  - Montana
  - New Mexico
  - North Carolina
  - Oklahoma
  - Rhode Island
  - South Dakota
  - Texas
  - Tennessee
  - Vermont
  - Virginia
  - Washington
  - Wisconsin

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Five Critical Issues in States with SAPOs

1) Who is eligible
2) How/Is “sexual assault” defined
3) Standard of proof/Showing required
4) Relief available
5) Sanctions/Enforcement
Who Is Eligible?

- Non-intimate partner only?
- Adults only versus minors too?
- Multiple orders?
- Victim who lacks capacity?

**Best practices:**
- Broadest category possible
- Include protections for minors
- Consider which courthouse most appropriate
- Allow multiple orders if terms are different
- Avoid unintended beneficiaries (invites backlash)
- Long time period in which to apply
- Multiple portals for Vs who do or may lack capacity

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Underlying Conduct?

- Sexual assault only?
- How is the underlying conduct defined?
  - Criminal codes are too narrow
  - Don’t want it to look like a criminal hearing minus def’s rights
  - If it’s a detailed list, risk you leave something out

- Best practices:
  - Create your own definitions
  - Do not rely solely on criminal statutes
  - Go broad
  - Get judicial input: assess risks if judges likely default to crim law definitions & standards
Standard of Proof?

- Currently in use: (1) Preponderance (more likely true than not); and (2) clear and convincing (highly & substantially more probable that it is true than that it is not true)
- “Threat of future harm”
- Police report
- What evidence is allowed / excluded

**Best practices:**
- Lowest threshold – Preponderance
- Address what showing is required (substantial likelihood; reasonable fear); Include for the various hearings (ex parte, continuation, renewal, etc.)
- Do not require a report to LE
- If a time period is proscribed, allow supporting evidence that falls outside the period
Relief Available?

- Stay away / no contact
- Compensation for damage to property
- Moving expenses
- Mental health counseling ($ for V; mandated for Resp)
- Attorney’s fees
- Gun dispossession
- School remedy
- Duration

Best practices:
- Be inclusive / think broadly
- Include generic language to give court additional authority
- Mandate the most important elements
Implementation and Enforcement

- Mandatory Arrest
- Is violation a crime? Contempt? Both?
- Forms
- Service
- Entry into LE data base

**Best practices:**
- Know how forms are approved & distributed in your jurisdiction
- Mandatory arrest for violation
- Forms:
  - Make them accessible on multiple website & in different languages
  - Provide for updates
- Allow for civil suit and damages in addition to other remedies
10 Additional Considerations or Tips to Take Home

1) Strategy & timing / Criminal & civil
2) Venue
3) Discovery
4) Rape shield
5) Victim appearance/testimony
10 Additional Considerations or Tips to Take Home cont.

6) Aiding and abetting
7) Protected parties
8) Attorneys for petitioners
9) School remedy/School issues
10) Nondisclosure of address
Creating a Protective Order in Your State

Illinois Civil No Contact Order as a model
Establish Need

- Determine whether your state’s current law protects *all* sexual assault victims
- Create a concept paper
- Identify allies
Interdisciplinary Focus Groups

- Composition
- Geographic diversity
- Who will organize them?
- Questions to ask
Legislative Drafting

- Will your bill be brand new or look like something your state already has?

- Identify the “deal-breaker” elements to your statute.
Working at the Capitol

- Work with staff
- Select sponsor carefully
- Who are the other stakeholders at the Capitol?
- Necessity of victim testimony
Anticipating and Responding to Barriers

- What if the victim is lying?
- Won’t the defendant be unfairly labeled a rapist?
- Doesn’t the victim have to allege the same elements as a sex crime?
- Shouldn’t this case be criminally prosecuted?
Anticipating and Responding to Barriers

- Prosecutors won’t want the victim’s prior testimony on the record.
- This order will divert/impair prosecutions.
- Implementation will be a bear.
- Shouldn’t she have to file a police report to get an order?
Anticipating and Responding to Barriers

- If the victim appears *pro se*, the defense will attack her.

- What prevents a victim from waiting a long time to get a CNCO?
How many have been issued?
What would we do differently?
Resources

- Civil No Contact Order: www.icasa.org

- SAPO chart of state laws (by ABA with VRLC updates)

- Courtwatch: Reflections on Justice - Analyzing the Impact and Application of the Sexual Assault Protection Order in King County (April 2011) available online at: http://www.kcsarc.org/sites/default/files/CourtWatch%20Report%20April%202011.pdf

- VRLC Technical Assistance (TA) Team: Free legal TA!
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Time for Q & A!