



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

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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
- $\frac{1}{4}$ of convicted rapists serve no prison time; $\frac{1}{4}$ 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

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

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

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

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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

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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!

