



# OCVLC NEWSLETTER



## From the Executive Director

BY ROSEMARY BREWER

As we head into a new decade (and our 11th year of providing legal representation to victims!) OCVLC's attorneys and advocate remain committed to ensuring Oregon's victims have their voices heard throughout the justice system. This past year saw OCVLC providing legal representation and/or advocacy to more than 300 crime victims in Oregon, our largest number yet, and we worked in counties across the state, including one for the very first time. In 2020 we will continue to reach out to all of Oregon's 36 counties to ensure we're able to represent and advocate for those victims who need assistance.

In 2019 we represented victims on a wide variety of rights issues, including a victim's right to be present and to be heard at release hearings, at parole board hearings, and at sentencing. We worked with prosecutors across the state to ensure that victims had their privacy maintained throughout the criminal proceeding, and we assisted many victims of domestic violence, sexual assault, and stalking with restraining order hearings for their safety. We also provided trainings to attorneys and advocates throughout Oregon to ensure that all those working with victims are aware of the constitutional and statutory rights afforded to victims, and how best to honor those rights. OCVLC continues to partner with a number of community organizations to ensure that we are all doing the best we can to assist victims who may be encountering the criminal justice system for the first time, an often overwhelming and confusing experience. After her case concluded one of our former clients wrote, "This was an exceptionally trying time for me and for my family. My attorney's expertise and compassion allowed us to continue to focus on our safety and healing."

We look forward to 2020, as we continue working to ensure that all victims have a meaningful role in the justice system. Our goal is to see the day where every right of every victim is honored in every case!

# Advocacy Corner: Stalking

BY TAYLOR KILKENNY

The crime of stalking is prevalent, dangerous, and frequently misunderstood. Nearly 1 in 6 women and 1 in 17 men report experiencing stalking at some point in their lifetime. The legal definition of stalking is two or more incidents of unwanted, obsessive attention directed at a specific person that would cause a reasonable person to feel fear. Some examples of stalking are tracking a person's location, following them, repeated phone calls, showing up at a person's work or school or contacting family members and friends, and threats. More often than not, a victim knows their stalker and most commonly they are a former intimate partner.

Stalking victims can feel that they have lost control over their life as they have had to change routines and may regularly feel unsafe. An advocate can help the victim take some control back by providing safety planning, accompanying them to file police reports, discussing a protective order, and explaining the stalking statutes for your state. Spyware and GPS monitoring devices are very accessible and are commonly used by stalkers. It could be helpful for an advocate to explain how spyware and GPS devices work if the victim suspects the person is tracking them via technology. Spyware can be easily installed on one's devices and can give a stalker access to the victim's location, personal information, emails, and texts. Purchasing a new phone or tablet isn't always an option for victims, so victims who think they are being tracked may ask their phone service provider to check for spyware. GPS devices can easily be purchased and placed on vehicles to track the victim's location. This could be indicated by the stalker showing up at places where the victim has visited, whose whereabouts should otherwise be unknown. To detect a GPS device on a vehicle, do a sweep of the interior and exterior to look for a device that shouldn't be there. Some law enforcement officers and auto body shop workers will check vehicles for GPS devices.



Further safety planning around stalking will depend on the type of behaviors that are taking place. If possible, a victim should get a protective order and report incidents of stalking and threats to the police to help build a case. If a victim thinks their phone has spyware installed on it, they should consider leaving it at home or drop it off with a friend before they go out so they can't be followed. If it's an option, the victim should purchase or borrow an extra phone for emergencies, for times they don't have the monitored phone with them. Advocates can help victims identify the nearest police station or domestic violence shelter in case a safe location is needed in times of imminent danger. Routines can be changed by visiting different grocery stores and changing other frequently visited locations. One can use different routes to locations that aren't able to be changed, such as work or school. If possible, a victim can request to change work and school hours so that a stalker won't know their schedule. Letting coworkers, family and friends know about the stalking and providing a photo of the abuser will help them identify the stalker if they show up at the work place or home.

The Stalking Prevention, Awareness, and Resource Center (SPARC) has a guide for victim service providers working with stalking victims at: <https://www.stalkingawareness.org/victim-service-provider-resources/>. For additional resources contact OCVLC.

# Join us Wednesday April 22, 2020 for The Third Annual Hardy Myers Dinner

OREGON CRIME VICTIMS LAW CENTER  
CORDIALLY INVITES YOU

## THE THIRD ANNUAL HARDY MYERS DINNER

WEDNESDAY, April 22, 2020  
THE LOFT at 8th Ave | 2010 SE 8th Ave, Portland  
6:00PM

[www.ocvlc.org/hardy-myers-dinner](http://www.ocvlc.org/hardy-myers-dinner)



OCVLC staff attended the National Center for Victims of Crime 2019 National Training Institute in Denver this past December. The sessions were geared towards training professionals in the field to improve response to victims of crime. We are grateful to have been able to attend such an important and informative conference.

# New Laws in Effect in 2020

BY MELANIE KEBLER

Last year's legislative session resulted in several significant law changes in the criminal justice system, as well as changes in other areas that will affect crime victims. Here are some of the laws that became effective January 1, 2020. Special thanks to the Oregon Alliance to End Violence Against Woman, whose legislative summary was relied upon in making this list.

## **Sexual Abuse Protection Order Improvements**

Senate Bill 995

Several significant improvements were made to the Sexual Abuse Protection Order (SAPO) process in Oregon.

- The requirement that a SAPO be filed within 180 days of the sexual assault has been removed, which means that whenever the victim is ready to come forward they can apply for a SAPO.
- The period for which a SAPO is in effect has been increased to five years, or, for minors who are under 18 at the time of filing, until the minor turns 19, whichever is later. Previously, a SAPO would only last for one year if granted and upheld.
- A permanent SAPO will be available in certain circumstances, including a mandatory permanent order if, at the time of the petition or renewal, the respondent has been convicted of a sex crime against the victim. The court also has discretion to enter a permanent order if the court makes certain findings in other situations.

## **Domestic Violence Restraining Orders firearm dispossession process improvements**

House Bill 2013

State gun prohibitions have been expanded to apply to protective orders that have been upheld after a hearing as well as protective orders that are upheld by operation of law, meaning those that are upheld because respondent doesn't request a hearing or withdraws the request for hearing. This closes a gap that could have allowed respondents to continue to possess guns if they did not have a hearing on their protective order.



photo by: Gary Halvorson

Additionally, the law now has specific requirements for dispossessing DV offenders and respondents in protection orders of their firearms. Those requirements include:

- A prohibited person must transfer firearms and ammunition to a law enforcement agency, gun dealer, or qualified third party within 24 hours of being subject to the prohibition.
- A prohibited person must provide the court and the District Attorney with a declaration within 48 hours stating they don't have any firearms, have transferred their firearms, or asserting their right not to self-incriminate. If a third party is holding the guns for the prohibited person, they must also sign a declaration. The DA can bring contempt proceedings for not complying with this requirement.
- Before any gun that was removed is returned to a person, for example after a restraining order has expired, the law enforcement agency, gun dealer, or third party must do a background check.
- Law enforcement must notify the Department of Justice of any request for a return of a firearm so that the victim can be notified, and the agency must hold any firearm for 72 hours after they receive the request for return.

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## Juvenile justice system reforms

Senate Bill 1008

The Legislature made sweeping changes to the juvenile justice system in Oregon with this bill. Here are some of the changes that could affect victims of juvenile offenders:

- Prosecutors are now required to request a court hearing before charging juveniles who commit Measure 11 crimes as adults. Previously, juveniles accused of M11 crimes were automatically tried as adults.
- Juveniles convicted of Measure 11 crimes have an opportunity for a “second look” hearing halfway through their sentences, during which a judge will consider whether to allow juvenile offenders to serve the rest of their sentences under community-based supervision.
- Juveniles can no longer be sentenced to life without parole, and juvenile offenders can seek parole after 15 years.

It is unclear whether some of the offenders currently serving life sentences due to crimes committed as juveniles will attempt to argue that this law applies to their cases. The bill’s sponsors have said it was not intended to be retroactive.



## Unlawful Dissemination of an Intimate Image criminal statute update

House Bill 2393

This crime was updated to remove the requirement that the image had to be shared on the internet, so that images shared by text, mail, or otherwise are included. The new statute also provides for a civil cause of action against a perpetrator to allow victims to sue specifically for damages related to this crime.

## Use of pseudonyms for victims in criminal proceedings

Senate Bill 597

In cases alleging sex crimes, prosecutors can now use pseudonyms, initials, or other signifiers instead of the name of the victim in an indictment.

## U-Visa process improvements

Senate Bill 962

Victims who are seeking immigration relief through the U-Visa process will now have increased access to the process by which they are certified as victims of crime. Improvements include requiring local law enforcement agencies to have policies and procedures in place for certification requests, creating a presumption that the victim was cooperative and helpful, setting timelines for issuing the certification, and requiring an explanation if the certification is denied.

## Protection against prosecution for prostitution for victims who report person-felony crimes

Senate Bill 596

If a person reports a person-felony crime (examples: Assault, Rape, Coercion) evidence of prostitution that is obtained as a result of the victim making that report may not be used against the victim in a prosecution for prostitution or attempted prostitution.

## Paid Safe Leave for victims

House Bill 2005

Oregon’s new Family and Medical Leave program includes a provision for taking leave related to domestic violence, stalking, sexual assault, or harassment. This is called “safe leave” and can be used by victims or family members of victims for obtaining law enforcement or legal assistance, medical treatment, counseling, victim advocacy, and relocation.

# Stalking Protective Orders

BY YAZMIN WADIA

An estimated 6 to 7.5 million people are the victims of stalking each year in the United States.[i] Nearly 1 in 6 women and 1 in 17 men have experienced stalking victimization in their lifetime.[ii] Oregon recognizes the severity of stalking and has classified a first offense as a Class A misdemeanor and two or more convictions of stalking, or violations of a stalking protective order, as Class C felonies.

In addition to pursuing criminal charges against their stalkers, victims have the ability to seek a stalking protective order. Stalking protective orders, or SPOs, are lifetime protective orders against a stalker. To qualify for a stalking protective order a petitioner must show the following by a preponderance of the evidence[iii]:

- You or a member of your household/immediate family have experienced unwanted contact by the offender at least two times within the past two years;
- This contact caused you fear and/or coercion;
- It is reasonable that you felt fear (alarmed) or coerced;
- The repeated and unwanted contact caused you reasonable apprehension or concern about the personal safety of you or someone in your household/immediate family.

Unwanted contacts by an offender may vary in nature. However, if the contacts by the offender are communicative, meaning the contacts are text or speech based, Oregon courts have imposed additional requirements (*State v. Rangel*.[iv]) If contacts are communicative, they must communicate a threat that instills a fear of imminent and serious personal violence on the victim, be unequivocal, and be objectively likely to be followed by unlawful acts.[v] One critique of the *Rangel* standard is that it is an outdated approach to addressing stalking in today's increasingly technological society.[vi]

Although the Court of Appeals did not address issues with *Rangel* in *A.A.C. v. Miller-Pomlee*, the Court did discuss a modern day tactic used by stalking offenders, the use of GPS monitoring and tracking. In *Miller-Pomlee*, the respondent asserted that "tracking" is not a contact for the purposes of ORS 30.866.[vii] The Court rejected this argument, and found that tracking is contact in that it is similar to physically following a person and it is the "kind of conduct that the statute intended to prevent." [viii]

The tension between modern day stalking tactics and the current state of laws surrounding stalking and stalking protective orders highlight the importance of safety planning and working with victim advocates to assess and address the needs of stalking victims.

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[i]"Stalking Fact Sheet", Stalking Prevention Awareness and Resource Center, 2018,

[www.stalkingawareness.org/wp-content/uploads/2019/01/SPARC\\_StalkingFactSheet\\_2018\\_Final.pdf](http://www.stalkingawareness.org/wp-content/uploads/2019/01/SPARC_StalkingFactSheet_2018_Final.pdf).

[ii] Id.

[iii] Preponderance of the evidence means that the moving party (party requesting order) has demonstrated to the finder of fact (the court) that there is a greater than 50% chance the claim true or demonstrates that the claims are more likely true than not true.

[iv] *State v Rangel*, 328 Or 294 (1999).

[v] *State v. Rangel*, 328 Or 294, 304-306 (1999).

[vi] See Comment, *Cyberstalking and Free Speech: Rethinking the Rangel Standard in the Age of the Internet*, 90 Or. L. Rev. 303.

[vii] *A.C.C. v. Miller-Pomlee*, 296 Or App 816, 824 (2019).

[viii] *Miller-Pomlee*, 827.





## A Remedy by Due Course of Law

BY EMILY LA BRECQUE

An Oregon crime victim's ability to file a claim for violation of their rights is governed by ORS 147.500(1); ORS 147.502; Or Const, Art I, §§ 42(4) and 43(4)(b). A claim of violation can be made by the victim themselves, by an attorney for the victim, or on the behalf of the victim by the prosecuting attorney.

The legal system is imperfect. If violations of rights did not occur and law was applied perfectly, there would be no need for a system of review by higher courts, not only for crime victims but also for the parties of a criminal case. The existence of crime victims' rights within a criminal case are still relatively new, and the ability to seek a remedy for a violation of those rights is newer still. The court, prosecutors or defense may be taken aback when a rights violation is filed, seeing it as punitive, hostile, or an intrusion based on what may seem like a technicality or minor oversight. Hopefully with familiarity this view will change, and claims of violations of rights will be seen as what they are: the victim's tool to seek an appropriate remedy for the loss of something constitutionally guaranteed to them. It's the process used to restore the meaningful role of the victim within that criminal justice system. Mistakes and misapplications of the law happen, and participants within our legal system should be assisted in seeking appropriate remedies.

The reality is that many victims will not be represented by counsel, and may not be savvy enough to spot a violation of their rights, then file and litigate a claim of rights violation independently within what is already an intimidating and traumatic system. In such cases, the filing of a claim of rights violation by the prosecutor may be the only realistic avenue. Such filings are not statutorily or constitutionally limited by the perpetrator of the rights violation. The law allows a prosecutor to file a claim of rights violation even if they themselves committed the error. Using this process the prosecutor can seek a remedy for an error within the course of a case and uphold the Oregon Constitution.

If a crime victim is not allowed the opportunity to be heard at a sentencing or release hearing, the appropriate remedy may be for that hearing to be repeated. Such a remedy is not effected to punish or give offense to the court or any participant, but rather to preserve to constitutionality of our court system. Victims' rights guides and forms to assert claims of rights violations in both adult and juvenile cases are available at <https://www.doj.state.or.us/crime-victims/victims-rights/victims-rights-guides/>.

# Case Summaries

BY ROSEMARY BREWER

Catholic Charities referred a disabled victim to OCVLC's Gateway office for representation at his contested restraining order hearing after victim's estranged wife repeatedly broke into his apartment, physically assaulted him, and threatened to kill the victim and his family. An OCVLC attorney provided representation to the victim at the hearing, and the order was upheld. OCVLC coordinated with the victim, victim advocates, and community partners to develop a detailed safety plan and resources to accommodate the victim's disability and safety related needs.

OCVLC represented a victim who had been stalked by her abusive ex-husband. Even though he had been convicted by a judge of the crime of stalking earlier this year, the offender maintained his request for a contested hearing on the victim's civil stalking protective order. OCVLC's Bend attorney assisted the victim by filing a motion for summary judgment asking the court to find that because the offender had been convicted beyond a reasonable doubt of the elements of stalking, he could not contest those same facts in the civil stalking order case. The offender's attorney conceded the legal argument and the victim, who was spared the trauma of testifying at another hearing with the offender, now has a permanent stalking order protecting her.

OCVLC represented a minor victim and her mother in their fight to seek justice in a misdemeanor sex abuse case. An adult neighbor had sexually touched the victim on more than one occasion, but because of the victim's age the case was charged only at the misdemeanor level. The victims were notified at the last minute of a plea deal to dismiss all the sex abuse charges and reduce the case to a simple harassment. OCVLC represented the victims and helped them to bring attention to what they felt was an unjust plea deal that was made without their input. OCVLC assisted the victims with impact statements to present at sentencing, which resulted in the judge going beyond the plea deal and sentencing the offender to 30 days in jail. The victims also had the assistance of their OCVLC attorney in arranging for a media interview, where both mother and daughter expressed their disappointment with how they were treated, but also encouraged other victims to speak up and report crimes of sex abuse.

OCVLC represented the family of a couple who were murdered while visiting the Oregon coast. The couple were in their hotel room when a man broke into their room and stabbed the couple to death. The defendant was convicted of two counts of murder and sentenced to life in prison with a minimum of 30 years. OCVLC previously represented the family at the defendant's last parole hearing, and the defendant had been deferred for four years. Upon receiving notice of another hearing, the family reached out to OCVLC again for representation. An OCVLC attorney represented the family at the hearing in November and once again the defendant was deferred for another four year period.