

The Bill Blackwood
Law Enforcement Management *of* Texas

Enforcing Protective Orders

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ABSTRACT

How have the complexity *of* protective orders and the emergence *of* modern media affected law enforcement's ability to uphold the law for those they are charged to protect, and can the effective use *of* modern media coupled with in-service training enhance enforcement *of* protective order violations?

The research concerning the enforcement *of* protective orders revealed that while there are Federal and State regulations detailing the specific roles and responsibilities of law enforcement, officers remain hesitant when enforcing the conditions *of* the orders. The reasoning behind this hesitation is as varied as the very orders themselves however, the proposed solution for clarifying confusion is clear - codification *of* orders, national registry for verification and in-service training department wide.

The author strongly supports that through in-service training officers will gain the knowledge and tools needed to perform their duties as outlined in the law while remaining sensitive to the needs *of* the victims in domestic violence cases. Further, the author proposes that while each department should maintain at least one specially trained officer to keep current with department policy, changing laws and community issues, the formation *of* strike teams is counterproductive to the ultimate goal *of* law enforcement to protect victims and deter domestic violence (National Center for Victims *of* Crime, 2002). By providing specialized training to one officer who in turn trains and disseminates information, the ownership of enforcing protective orders is considered department-wide.

The limitations *of* the research however, point out that in-service training can help law enforcement in assessing domestic violence scenes in order to properly document abuse cases and assist victims in breaking the cycle *of* violence.

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INTRODUCTION

How have the complexity of protective orders and the emergence of modern media affected law enforcement's ability to uphold the law for those they are charged to protect, and can the effective use of modern media coupled with in-service training enhance enforcement of protective order violations?

Law enforcement agencies across the country have had to deal with the sensitive, and often explosive, issues of domestic violence. In recent decades this issue has been transformed from a "private matter" to a "police matter" largely in part to victims, advocates, and society's strong support of legislation, both in the Federal and State arenas. While domestic violence laws adequately address the who, what, where, when, and whom of enforcing protective orders, often law enforcement agencies are not fully aware of the scope of application due to the absence of in-service training outlining changes in laws, available access to information and changing elements in domestic violence itself.

The introduction of readily available information, via the internet, that can be accessed twenty-four hours a day from any location, offers victims, victims advocates and the public to voice opinions, gain information, promote theories, and scrutinize police actions. This same medium provides the victim of domestic violence the opportunity to explore options to end the cycle of violence unknown to her or his batterer. Law enforcement can utilize the internet to develop and search domestic violence databases to verify protective orders and document protective order violations. The very nature of domestic violence with strong emotions and visual depictions of victims and abusers captivates the public's, as well as the media's, "thirst" for a good

story. The inability, or perceived inability, of law enforcement to protect victims of domestic violence has become an area of increased attention for the public as an added element in the tragic stories portrayed and further evidence of police misconduct. The internet offers individuals the opportunity to mass distribute this information virtually uncensored from truth or reality.

This project will address how modern media affects the public's perceived knowledge of protective orders and the portrayal of the inability of officers to properly protect victims through protective order enforcement.

The purpose of this project is to establish the need for in-service training in the various types of protective orders, changing legislation and department policies through the chain of command is vital in enduring proper enforcement and protection from lawsuits. These protective orders include, but are not limited to: 1) Emergency Magistrate Protective Order, 2) Temporary *Ex Parte* Order, 3) Full Protective Order, and, 4) Foreign Protective Order.

The intended outcome of this research will establish that through in-service training law enforcement at all levels will better serve the public and the letter of the law providing needed protection to victims and assisting in the prosecution of protective order violations. In this respect the research demonstrates that most law enforcement agencies recognize the importance of enforcing protective orders and the limitations of enforcement imposed by confusing and unverifiable orders. Further, in-service training will minimize law enforcement's exposure to potential lawsuits, a growing concern for all departments - and citizens - across the United States.

The research will show that there are initiatives in place to codify protective orders and their filing to assist officers in their understanding and enforcement, however, these initiatives are not addressed or utilized across the nation.

Because the internet plays an increased role in the public's access to information the research will primarily be focused in that medium supported by the author's own experience gained in sixteen years in the field, four of the sixteen as an instructor.

REVIEW OF THE LITERATURE

A Department of Justice (July 1994) study based on registry data produced several significant findings: 1) a restraining order is issued every two minutes in Massachusetts, 2) almost half of all restraining orders involve people who have been in a dating relationship, and, 3) approximately 43,000 Massachusetts children are exposed to acts of violence between members of their household each year. The American Bar Association reports, "domestic violence crosses ethnic, racial, age, national origin, sexual orientation, religious and socioeconomic lines" (American Bar Association Commission on Domestic Violence, 2002, 1). Clearly these findings illustrate that the issue of domestic violence will confront law enforcement agencies and their officers not only on a continuous and regular basis, but also, in every neighborhood in their jurisdiction.

The involvement of law enforcement in domestic violence began in the 1970's in response to lawsuits, recommendations for department policy, political lobbying from victims and victim's advocates and society's changing views on the acceptance of a man's right to discipline those under his care (New York State Office for the Prevention of Domestic Violence, 2002).

Officer's, as the initial witnesses to domestic violence, are required to uphold the provisions of domestic violence laws and are directly responsible for ensuring victim safety and proper enforcement of protective order violations. A Police Training Video (2002) states for-cause arrests Statutes are sensitive to the primary goal of crime prevention and community protection while providing protection to the responding officer and department from liability. The inability of law enforcement to protect victims is potentially more dangerous to everyone involved, including the department (prabhu,2000). Through training, reliable sources, and firm departmental policies the officer should be motivated to act in good faith by protecting the victim as is mandatory under Federal Law (Prabhu, 2000). The prerequisite to effective enforcement of protective orders, and for-cause arrests, are the values and priorities that the command staff demands from their officers (Prabhu, 2000).

The mandate to provide full faith and credit to protective orders nationwide offers new challenges to officers who are already struggling to understand the complexity of protective orders issued in their own state and the exposure to liability for failure to enforce (Turner, 2002). Law enforcement and prosecutors are limited in enforcement and prosecution to order violations if they are aware of its existence and terms (National Center for Victims of Crime, 2002). The Violence against Women Act (1994) requires that law enforcement bear the burden to verify valid protective orders and terms. The establishment of automated central registries and the National Crime Information Center (NCIC) Protection Order File (POF), while a potentially efficient tool currently offers limited assistance to law enforcement attempting to verify protective order information. The lack of participation into the NCIC POF by all fifty states as well as the disclaimer

that, "if a query does not result in a positive hit, the order may still be a valid and enforceable order" are the primary limitations (The Full Faith and Credit Project, 1995, 3).

While technological advances are enabling law enforcement to access information and databases, the same mediums are affording the public the opportunity to access the same information and the forum to scrutinize police actions (Butzer, Bronfman, and Stipak, 1996).

METHODOLOGY

How have the complexity of protective orders and the emergence of modern media affected law enforcement's ability to uphold the law for those they are charged to protect, and can the effective use of modern media coupled with in-service training enhance enforcement of protective order violations?

Research indicated that there is an increased interest on behalf of the public to identify, expose, and prosecute violators of protective orders in domestic violence cases. This emerging interest has shifted the blame for domestic violence from the victim to failures by law enforcement to properly enforce the law and protect victims.

Due to changing laws, the need for departmental policies and public involvement in-service training is necessary in providing law enforcement with the knowledge and tools to protect victims by ensuring the proper enforcement of protection order violations. Further, in-service training on domestic violence can increase successful prosecution and arm judges with the historical documentation needed for violations when administering relief to victims and justice to the abuser while protecting officers from exposure to potential liabilities.

Victims and victim's advocates are utilizing the ability to reach large and distant audiences to disseminate information in an attempt to provide education and assistance on the issues surrounding domestic violence. Law enforcement must recognize that the abuser also identifies himself, or herself, as the victim - whether of the system or society - and that they too are utilizing the same medium for the same purpose.

The information available on the internet takes different forms, and viewpoints, but the content remains the same - ineffective enforcement of protection order violations by law enforcement and prosecutors at the expense of the "victim". The overwhelming solution to this problem is for community policing to end domestic violence and, "gross failures of criminal justice officials" (De Santis, 2000, 2).

FINDINGS

As defined in § 88.002, "Protective Order" means an injunction or other order, issued by a tribunal under the domestic violence or family violence laws or another law of an issuing state, to prevent an individual from engaging in violent or threatening acts against, harassing, contacting, or communicating with, or being in physical proximity to another individual. § 86.001 establishes that each law enforcement agency shall establish procedures to in the agency to provide adequate information or access to information for law enforcement officers of the names of each person protected by an order issues and of each person against whom protective orders are directed. Presentation of a certified copy of a protective order is not required for enforcement, as stated in § 88.004.

Different procedures and remedies apply to the different types of protective orders which cause confusion in the appropriate enforcement of the orders (National Center for

Victims of Crime, 2002). The complexity of protective orders is furthered by the semblance of language contained in Temporary Restraining Orders (TRO) and Final Protection Orders however; the TRO and similar orders are civil orders and not criminally enforceable (Texas Commission on Law Enforcement, 2002).

Law enforcement in the State of Texas when responding to domestic violence incidents are required to make an arrest without a warrant when the elements of probable cause exist to support the arrest (Texas Commission on Law Enforcement, 2002). The Texas Commission on Law Enforcement Officer Standards and Education clearly defines the criteria that officers can not consider when making probable cause arrests providing the support needed during initial training to reinforce the view that domestic violence is not a family matter and dependent upon the victim filing a formal complaint.

Realistically law enforcement officers are unable to memorize Federal and State laws but should have at least a general knowledge of their content and be prepared to consult the actual text as needed (Texas Commission on Law Enforcement, 2002).

Magistrate's Order for Emergency Protection must be filed on behalf of the victim if the batterer uses or exhibits a weapon or the victim sustains serious injuries. The judge has the ability to prohibit the respondent from certain activities in relation to the applicant and establish restrictions pertaining to locations associated with the applicant. This protective order is criminally enforceable for duration of 31 -61 days.

Final Protective Orders require a hearing within 14 days of issue, unless the applicant requests an extension. A Final Protective Order must be issued if the judge determines that domestic violence has occurred and is likely to reoccur in the future or the respondent is found to be in violation of an existing order in which the determination

does not need to be established. Final Protective Orders are criminally enforceable and must be served to the person whom the order applies whether at the conclusion of the hearing, personally at another location, or through registered/certified mail. The contents of the Final Protective Order are not standardized in the State of Texas.

Temporary *Ex Parte* Protective Orders require only one party to be present at application. Violations of *Ex Parte* Orders are not criminally enforceable therefore officers are unable to arrest for protective order violations. The *Ex Parte* Order is valid for a period not to exceed 20 days but can be extended.

The National Center for Victims of Crime (1997) states that officers are required to inform victims of their legal rights, enforce protective order violations and use all means to prevent abuse. In addition officers should have general background knowledge about the patterns of domestic abuse in order to effectively deal with victims, abusers and their families (Texas Commission on Law Enforcement, 2002).

Failure to properly enforce protection order violations and protect the victim has devastating results affecting the victim, abuser and the image of all law enforcement agencies. Through these failures the victim's sense of helplessness increases and the abuser learns that he or she is able to "get away with it" (Texas Commission on Law Enforcement, 2002). Further, these failures are in direct opposition to the primary goals of all law enforcement agencies and their officers to enforce the law and protect the community.

The important role of modern media can not be ignored as a powerful tool utilized by the public to disseminate information and expose the inability of law enforcement to protect victims. The media is important in providing images of experiences most people

are unable to have in order to generate support and outrage for any given issue (Greek, 1996). The ability to portray the experiences of others can be important in shaping a person's view of reality (Greek, 1996).

Materials pertaining to protective orders, training and law enforcement are prevalent on the internet. Any combination of these keywords on an internet browser generates thousands of "hits". Sorting through these hits and finding both relevant and reliable information provides examples of the very different viewpoints on the issues of domestic violence and law enforcement as well as the scope of interest on the issue around the world.

Police and their actions have been scrutinized for years due to the nature and power associated with law enforcement positions (Terrill, 1996). The Civil Rights Movement greatly increased the scrutiny of law enforcement tactics and encouraged the calls for police oversight by the community (Terrill, 1996).

The call for community involvement in reporting, and investigating, domestic violence incidents, and the failures of law enforcement to enforce protective orders, places untrained officers at a disadvantage and compromises their ability to properly protect victims. Well meaning citizens emboldened by social outrage are encouraged to investigate and prod law enforcement on domestic violence issues often at the crime scene with downloaded information in hand quoting laws and past police failures.

In-service training which includes community-based groups are encouraged to participate are vital in exposing: 1) law enforcement to the issues and needs of the community, and, 2) the community to law enforcement's commitment to upholding the law and protecting victims of crime.

DISCUSSION/CONCLUSION

How have the complexity of protective orders and the emergence of modern media affected law enforcement's ability to uphold the law for those they are charged to protect, and can the effective use of modern media coupled with in-service training enhance enforcement of protective order violations?

The research into the enforcement of protective orders revealed that while there are Federal and State laws detailing the specific roles and responsibilities of law enforcement, officers remain hesitant when enforcing protection order violations. The reasoning behind this hesitation is varied as the very orders themselves however, the proposed solution for clarifying the confusion is clear - standardized formats, national registry for verification and in-service training department wide.

The author strongly supports in-service training to provide the necessary knowledge and tools law enforcement needs to properly perform their duties as outlined in law while remaining sensitive to the needs of the victims in domestic violence cases. Specialized training for an individual or select group of officers can enable departments to keep current on changing laws, community issues and departmental policies and be utilized as instructors and sources of information for the front line officer. The formation of strike teams for domestic violence incidents is strongly discouraged by the author as counter-productive to the ultimate goal of law enforcement command staff to promote ownership and priority of domestic violence enforcement department-wide.

Research illustrated the frustration encountered by law enforcement agencies across the nation concerning the complex and confusing issue of protective orders. While the author refrained from citing issues faced in other nations, there are numerous

examples that the United States is not alone when confronting domestic violence issues and the need to simplify and standardize protective order format.

The primary limitations on the research is the lack of available research on the evaluation of the effects of training on protective order enforcement. The lack of quantifiable and accurate domestic violence statistics provided by law enforcement agencies also presented limitations in evaluating police training initiatives. Domestic violence presents a dilemma for recordkeeping because: 1) many victims do not report abuse, 2) medical professionals fail to recognize the signs of abuse, 3) many domestic incidents are misreported by dispatchers and officers, and, 4) the long and short-term effects on family members is not easily tracked. In short, domestic violence is a silent cancer in the fabric of our society striking in stealth behind closed doors on victims dependent upon their abuser. Unfortunately the cycle of violence is passed from generation to generation as children of domestic violence mature and start their own families. The limitations on the research however, support the need for in-service training to help law enforcement in assessing domestic violence scenes in order to properly document abuse cases and assist victims in breaking the cycle of violence.

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