

Oklahoma Domestic Violence Fatality Review Board
313 N.E. 21st Street, Oklahoma City, Oklahoma 73005
(405) 522-1984 | FAX (405) 557-1770

MEETING MINUTES

May 29, 2024

Meeting Venue: Office of the Oklahoma Attorney General
313 NE 21st St, Oklahoma City, OK 73105

MEMBERS

Celia Cobb (OCME) [P]	Natasha Ferguson (OJA) [P]	Brandon Pasley (OCADVSA)
Karen Cunningham (OAG) [P]	Scott Hawkins (OSA) [P]	[P]
Brandi Combs (OSDH alt.) [A]	Don Sweger (OACP) [A]	Sheila Stinson (Supreme Court)
Emily Nicholls (OSDH IPS alt.) [P]	Julie Goree (OBA) [A]	[P]
Leslie Hargis (OKDHS alt.) [P]	Sean Webb (DAC) [P]	Shelly Harrison (NAAV) [P]
Heather Cropper (OSBI) [P]	Martina Jelley (OSMA) [A]	Tania Bardin (NAAV) [P]
Melanie Ferguson (ODMHSAS) [P]	Sara Coffey (OOA) [A]	
	Janice Carr (ONA) [A]	
	Laura Kuester (OCADVSA) [P]	

I. Call to Order and Confirmation of Compliance with Open Meeting Act

Chair Brandon Pasley presided over the regularly scheduled meeting of the Oklahoma Domestic Violence Fatality Review Board, which was held at the Office of the Oklahoma Attorney General, 313 NE 21st St, Oklahoma City, OK on May 29, 2024. Notice of the meeting was posted annually with the Secretary of State before the December 15, 2023, deadline and at the front door of the Office of the Attorney General more than 24 hours in advance. Chair Brandon Pasley (OCADVSA) called the meeting to order at 9:18 am.

II. Roll Call and Establishment of Quorum

Roll call was conducted at 9:18 am. Quorum was achieved at roll call with 14 members present. One alternate designee was also present but was not counted towards quorum at the time of roll call due to the primary designee being present. The alternate designee present was Angela Beatty (OCADVSA). DVFRB staff present included Anthony Hernández Rivera, OAG DVFRB Program Manager (PM) and Nicholas Massey, OAG Research Analyst.

Quorum was maintained throughout the meeting.

III. Discussion and Possible Action on Approval of Minutes from the April 24, 2024, Regular Meeting*

Shelly Harrison (NAAV) moved to approve the April 24, 2024, regular meeting minutes at 9:20 am. Karen Cunningham (OAG) seconded the motion. The motion to approve the minutes passed by roll call vote (10 Aye, 4 Abstain, 0 Nay).

IV. Continued Discussion on DVFRB Member Designees, Nominations and Attorney General Appointments for the July 2024 – June 2026 DVFRB Term

DVFRB PM Anthony Hernández Rivera reminded appointed members that their current two-year term was set to expire on June 30, 2024. He updated members on the status of the DVFRB

appointment process and said the appointments should be finalized before the end of June. Mr. Hernández said he would be notifying members via email with a signed letter by Attorney General Gentner Drummond.

V. Guess Speakers & Presentation – Assistant District Attorney (ADA) Madison Ewald from the Oklahoma County District Attorney’s Office. Presentation Subject: Current Issues/Challenges when Prosecuting Domestic Violence (DV) Crimes and Potential Policy Recommendations

DVFRB PM Anthony Hernández Rivera introduced ADA Madison Ewald and told members he recently met her when he visited the Oklahoma County District Attorney’s (DA) Office for a meet and greet with the DV prosecution team. He added they talked about the DVFRB’s work and the 2023 DVFRB policy recommendations and agreed to setup a presentation for the review board about areas in our state statutes that could be improved to give prosecutors more tools to hold offenders accountable and keep victims safe. Mr. Hernández said the hope was for the presentation to serve as a potential starting point for future collaboration between Oklahoma County DV prosecutors and DVFRB staff in the crafting of policy recommendations.

ADA Madison Ewald thanked the review board for the invitation and introduced her colleague, ADA Madison Newbury. She provided an overview on her responsibilities at the DA’S Office as the lead DV prosecutor and how her team works cases. ADA Ewald then gave a brief overview of the inherent challenges with prosecuting DV, which mainly include victims who do not wish to cooperate with prosecutors because of the dynamics that characterize abusive relationships. ADA Ewald stated there are several kinds of DV cases, including criminal felonies, misdemeanors, stalking, and VPO violations.

She stated prosecutors rely on the DV statute in 21 OS § 644 to prosecute DV offenders. ADA Ewald gave an overview of the statute and emphasized how DV Assault and Battery (A&B) with a Deadly Weapon can only be filed when a shooting element is present. She stated this statute should mirror its non-DV counterpart where A&B with a Deadly Weapon includes any instrument designed or constructed to cause death or great bodily injury. ADA Ewald then moved on to discuss a proposal that was suggested by Oklahoma City Police Department (OCPD) detectives, who suggest “roommates” should be removed as a category in domestic violence cases due to them not having the same power and control dynamics as other domestic relationships such as intimate partner violence (IPV). Her third proposal was the creation of a provision in 21 OS § 644 that prohibits misdemeanor domestic violence offenders, where there has been a finding of guilt, from possessing firearms. ADA Ewald stated the punishment for violating this statute should be a felony punishable by 1-10 years in Department of Corrections (DOC) custody. She explained the argument behind this proposal was that the risk of victims being killed exponentially increases when abusers are in possession of a firearm, which is something that is repeatedly shown in research on the presence of firearms in abusive relationships.

ADA Ewald then pivoted towards explaining her fourth proposal which was to have a cleanup bill so that there is only one version of 21 OS § 644. She explained there were currently two versions of the law online due to changes being made during a recent legislative session. ADA Ewald says this sometimes causes confusion and it be ideal to only have one online. The fifth proposal was related to the Violation of a Protective Order (PO) Statute in 22 OS §60.6, which requires a defendant be served when a PO is filed against them. ADA Ewald proposed that a provision be created allowing notice of the PO to satisfy the requirement when there is evidence the person has knowledge of the PO and has been evading service. A sixth proposal involved changes to 22 OS §60.6(A)(2) & (B)(2), which requires a “conviction” to file a subsequent PO Violation as a felony. ADA Ewald suggested the word “conviction” should be changed to “finding of guilt” so a

subsequent offense can be charged as a felony even if the offender received a deferred sentence or a low fine. A seventh proposal involved creating a statutory enforcement of surrendering firearms when the box is checked on the PO. ADA Ewald stated even though the firearm surrender box is present in the PO form that there is no enforcement mechanism. This provision would give police departments the ability to search for and confiscate firearms when required by the PO.

ADA Ewald then talked about changes to the stalking warning letter statute outlined in 21 OS § 1173.1. She stated the current law states that law enforcement “shall” be required to provide a copy of a stalking warning letter to the accused when they receive a complaint of stalking and find the conduct occurred. ADA Ewald suggested the statute should be changed so that it says that law enforcement “may” issue the letter. The reasoning behind this change is to address issues surrounding the service of the letter. Board members discussed issues with implementing this when service is necessary in another county.

Finally, the ninth proposal involved the hearsay exception statute outlined in 12 OS §2803. ADA Ewald and Newbury provided an overview of the challenges that characterize evidence-based prosecution. The first one is that victim’s statements cannot come in unless they fall under a hearsay exception. They explained this must take into consideration excited utterances and medical exceptions. It also requires in court identification that the defendant is the person who committed the crime. This can be done when the victim has given name and date of birth of the defendant and the detective can confirm the defendant has the same identity. Both prosecutors mentioned prosecution is often not possible due to victims being uncooperative. They mentioned this happens in over half of declined DV cases in Oklahoma County. In addition, nearly half of charged cases are dismissed because a victim will not testify. They then provided an overview of the constitutional law that set the standard for determining the admission of hearsay, which includes landmark cases like Crawford v. Washington and Davis v. Washington. The first case established that prior testimonial statements of unavailable witnesses are not admissible unless there was an opportunity for cross-examination. The second defined what constituted *testimonial* after the Crawford decision left it open and undefined. It specified that statements are nontestimonial when made during a police interrogation when the primary purpose is aiding the police in meeting an ongoing emergency. They are testimonial when there is no ongoing emergency, and the primary purpose of the interrogation is to prove past events for criminal prosecution. This decision enabled prosecutors to use 911 calls with an unavailable victim. ADA Newbury explained she briefly practiced law in Michigan and there was a hearsay exception in statute that would be helpful if legislated in Oklahoma. The proposal would be to create a hearsay exception for victims and witnesses of domestic violence when they are describing the abuse and naming the abuser to police during an ongoing emergency. They stated this proposal would enhance the ability of prosecutors in Oklahoma to hold abusers accountable using evidence-based prosecution. They specified it could be implemented in Oklahoma by adding a provision to the hearsay statute that allows the exception to apply to naming the abuse; incorporating Oklahoma’s definitions of domestic violence; and by allowing the hearsay to be admissible at preliminary hearing and trial.

DVFRB members asked questions about the hearsay statute. Angela Beatty (OCADVSA) asked whether there were any other states closer to Oklahoma with a similar statute. ADA Ewald and Marbury could not say if any of the surrounding states have a similar statute. Sean Webb (DAC) asked what kind of arguments defense attorneys used in Michigan against these hearsay exceptions. ADA Newbury mentioned they would mainly involve attacking the credibility of victims and witnesses. ADA Newbury also answered questions on how this would be implemented in practice in court. She stated the court will ultimately determine whether this exception could be used. Karen Cunningham (OAG) mentioned the parallels to child hearsay. ADA Newbury emphasized this exception relies on the indication of trustworthiness and the importance of substantive evidence.

ADA Ewald and Newbury concluded their presentation by thanking the DVFRB for the invitation. Members expressed gratitude for taking the time to visit and for their service to the state. DVFRB PM Anthony Hernández thanked them and said he would be potentially reaching out in the future to collaborate on a recommendation for the 2024 edition of the DVFRB report.

VI. Consideration of Motion to Adjourn to Executive Session*

Pursuant to 25 O.S. § 307B for the purpose of case review

- a. Adjourn to Executive Session*
- b. Review and Discussion of case #220033
- c. Discussion of June 26 Community Review Case Candidates #210094, #220027, #220033
- d. Consideration of return from executive session and return to regular meeting agenda.

Emily Nicholls (OSDH-IPS) made a motion to adjourn to executive session at 10:42 am. Melanie Ferguson (ODMHSAS) seconded the motion. The motion passed by roll call vote (14 Aye, 0 Abstain, 0 Nay). Quorum was maintained throughout the executive session. The Board concluded and came out of executive session at 11:36 am.

VII. Announcement by Chair as to the necessity of any Board action as a result of Executive Session. Vote as a result of Executive Session*

No action was taken as a result of executive session.

VIII. New Business Not Known or Which Could Not Have Been Reasonably Foreseen Before the Posting of the Agenda *in Accordance with 25 O.S. § 311(9)*.

No new business.

IX. Announcements

No announcement.

X. Adjournment*

Heather Cropper (OSBI) made a motion to adjourn. Shelly Harrison (NAAV) seconded the motion. The meeting adjourned at 11:36 am.