

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

MEETING MINUTES

September 25, 2024

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

MEMBERS

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

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 September 25, 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 9:08 am.

II. Roll Call and Establishment of Quorum

Roll call was conducted at 9:08 am. Quorum was achieved at roll call with 12 members present. An additional member arrived after roll call for a total of 13 members present during the meeting. One alternate designee was present but was not counted towards quorum at the time of roll call due to the primary designee being present. The alternate designee was Angela Beatty (OCADVSA). DVFRB staff present included Anthony Hernández Rivera, OAG DVFRB Program Manager (PM) and Nicholas Massey, OAG Research Analyst (RA).

Quorum was maintained throughout the meeting. It must be noted there were two additional individuals present during the open session of the meeting. The first was guest speaker First Assistant District Attorney (DA) Eric Epplin (District 4). OAG Deputy Director of Government Affairs Macey Whitehouse was also present.

III. Discussion and Possible Action on Approval of Minutes from the August 28, 2024, Regular Meeting*

Shelly Harrison (NAAV) moved to approve the August 28, 2024, regular meeting minutes at 9:10 am. Natascha Ferguson (OJA) seconded the motion. The motion to approve the minutes passed by roll call vote (9 Aye, 3 Abstain, 0 Nay).

IV. DVFRB Grant Applications Status Update and Discussion on Upcoming Lethality Assessment Protocol (LAP)-related Projects – U.S. Department of Justice (USDOJ) – Improving Criminal Justice Responses Program (ICJR) & Byrne State Crisis Intervention Program (Byrne SCIP)

Mr. Hernández notified members the Oklahoma Attorney General's Office (OAG) had been awarded approximately \$1.3 million in federal grant funds to carry out a statewide LAP implementation campaign, as well as onboard 50 law enforcement agencies to a new digital database platform that will streamline the LAP referral process. He stated he, alongside the OAG Grants Administrator Stephanie Lowery, worked on two federal grant proposals earlier in the year and recently received news that they had been awarded the funds. Both the ICJR and Byrne SCIP will enable the OAG to hire three LAP training coordinators who will be responsible for implementing the LAP grant goals and objectives on behalf of the DVFRB. Mr. Hernández reminded members these grant applications were developed and submitted to address DVFRB recommendations about the need to address LAP implementation issues. He said DVFRB staff have been actively offering LAP training over the past year at different venues throughout the state. Mr. Hernández added these trainings would be taken over by the LAP coordinators once they are hired and trained. He later played a video overview of the new LAP 2.0 platform so members could get a better idea of what it entailed. After watching the video, Shelly Harrison (NAAV) asked what would happen after the three-year grant period. Mr. Hernández stated the ideal scenario would be to pursue legislation to fund the implementation of the LAP 2.0 platform statewide. He added this could be tied in to making LAP and DV training in general part of annual peace officers continued education requirements like it was suggested in the review board's 2022 recommendation. Mr. Hernández added ultimately, DVFRB staff could continue applying to the grant so that it can continue supporting the 50 law enforcement agencies onboarded during the initial three-year grant period.

V. Guest Speaker – First Assistant District Attorney Eric Epplin from the 4th Prosecutorial District. Discussion Subject: Current Issues/Challenges when Prosecuting Domestic Violence Crimes and Potential Policy Recommendations

First Assistant DA Eric Epplin began his presentation by giving a brief introduction on his background and career. He stated he previously worked as a prosecutor at the Oklahoma County DA's Office, the Kingfisher County DA's Office, Canadian County DA's Office before a brief stint as the Assistant Executive Coordinator at the Oklahoma District Attorneys Council (DAC). He said he most recently moved on from that role to become the First Assistant DA for the entirety of 4th prosecutorial district, which encompasses Blaine, Canadian, Garfield, Grant and Kingfisher Counties. He moved on to the topic of his presentation, titled "Suggestions for Adding Tools to Hold Offenders Accountable." The main objective would be to suggest to the review board areas in our statutes that could be improved to give prosecutors more tools to hold abusers accountable.

He stated the best tool that could be added to a prosecutor's toolbox would be a domestic violence (DV)-specific hearsay exception. He said this would be timely due to the legislature recently showing a willingness to expand Child Hearsay during the last two legislative session, which included the successful passing of SB 619 in 2023 and HB 3774 in 2024. This exception would allow prosecutors to have juries consider more information in the prosecution of offenders that would otherwise not be permitted due to hearsay rules. First Assistant DA Epplin explained Oregon currently has a DV-specific hearsay exception in ORS 40.460 Section 803(26). He went

over his proposed language for an Oklahoma DV-hearsay exception and specified his proposed language would be added to 12 O.S. §2803.3 (see slides). First Assistant DA Epplin said several other states already have DV-specific hearsay exceptions, including Oregon, Michigan, and California. He noted the California statute is not DV specific, but the spirit of it allows “statements that explain the infliction or threat of physical injury upon the declarant.” The California statute also requires unavailability.

He then proceeded to discuss the second proposal on DV propensity. He added DV propensity would be modeled on 12 O.S. §2413 and §2414, which cover Sexual Abuse Propensity and Child Sexual Abuse Propensity. Mr. Epplin stated this type of law would be better than *Burks* and pointed that the instructions would allow jurors to “consider (the) evidence for its bearing on any matter to which it is relevant along with all of the other evidence and give this evidence the weight, if any, you deem appropriate...” He then pivoted towards speaking about current issues surrounding the Stalking Warning Letter. The main one being that arguments are being made against prosecutors filing charges for stalking due to the letter not being served. Mr. Epplin outlined three options could be considered; first, to make it clear in the statute that having issued a warning letter is not a prerequisite to the filing of charges for stalking; second, make service of the letter only “upon the request of the victim”; third, eliminating the letter altogether. Finally, First Assistant DA Epplin provided suggestions related to adjudications to enhance protective order (PO) violations. He stated currently, deferred sentences can be used to enhance certain crimes such as driving under the influence (DUI), domestic assault and battery (A&B), but the same cannot be done for PO violations. He suggested the PO statute should have the same provisions so that offenders can be held accountable more effectively for repeatedly violating PO’s.

Mr. Epplin emphasized the importance of cooperation and collaboration between stakeholders to get changes like these passed at the legislature. He added a coalition between the Attorney General’s Office, the District Attorneys, Chiefs of Police, and Sheriffs is a formidable bloc that gets legislator’s attention. First Assistant DA Epplin said the review board can count on him with whatever is needed and thanked the members for hosting him.

VI. Early Discussion on Possible Recommendations for the 2024 Edition of the DVFRB Annual Report*

The first recommendation candidate discussed was related to the presentation by District Attorneys Council (DAC) Assistant Executive Coordinator Ryan Stephenson during the Wednesday, August 28, 2024, DVFRB regular meeting. In his presentation, titled “The Life and Death of SB 1557”, he talked about domestic violence (DV) propensity evidence and the recent attempt to pass legislation on the matter during the most recent legislative session. Mr. Hernández reminded members SB 1557, also known as the DV Propensity Evidence Bill, would have allowed for previous acts of DV or abuse to be considered admissible evidence in certain proceedings against defendants accused of DV or abuse. He added this bill was ultimately vetoed by the Governor and since then the DAC, as well as the Oklahoma District Attorneys Association (ODAA), had been weighing their options on whether they would run the bill again in the next legislative session. Mr. Hernández stated he recently received an update from Mr. Stephenson on the DAC and ODAA decision against running the bill in the upcoming legislative session and waiting one or two years to potentially run it again.

The second recommendation candidate discussed was related to the presentation by First Assistant

DA Eric Epplin and the presentation by Oklahoma County DV prosecutors on May 29, 2024, both of which called for some form of DV-specific hearsay exception legislation. Angela Beatty (OCADVSA) stated this was an interesting proposition and would provide an avenue for many people to testify on what the victim said. She added it takes pressure off survivor and takes into consideration medical professionals and other witnesses. Sean Webb (DAC) added confrontation clauses need to be considered and that it be better to start high and negotiate down. Board members agreed this should be a priority.

The third recommendation candidate discussed was related to calling for funding to setup a statewide program that provides wraparound services to children and caregivers who have been impacted by intimate partner violence (IPV)-related homicide. Mr. Hernández said this proposed program would be modeled after the Arizona Child and Adolescent Survivor Initiative (ACASI). He reminded members this was the program that did a presentation to the review board during the April 26, 2023, DVFRB regular meeting. Mr. Hernández added the idea was to, if the funding is secured, to closely collaborate with our ACASI partners so that Oklahoma can build what could be a sister program called the Oklahoma Child and Adolescent Survivor Initiative (OK-CASI). He further added the collaboration with ACASI would be supported by the ongoing memorandum of understanding (MOU) between the Oklahoma Attorney General (OAG)-based DVFRB and the National Domestic Violence Fatality Review Initiative (NDVFRI) led by Dr. Neil Websdale at the Family Violence Center (FVC) at Arizona State University. ACASI is an FVC-based program so a potential OK-CASI program would benefit from the technical assistance partnership already enshrined in the MOU. Mr. Hernández also added this could be tied up to the potential recommendation article included in the 2022 DVFRB report. In terms of implementation, he said the original idea was to wait till DVFRB staff could apply to the FY 2025 Office of Juvenile Delinquency Prevention (OJJDP) – Strategies to Support Children Exposed to Violence Grant, which is for \$850,000 over a three-year period. However, after speaking with members from the OAG Government Affairs Team, he said there is internal support at the agency to make this funding request via state appropriations. In terms of options if the funding is secured the idea would be to either subgrant the funding so the program can be setup by another partner agency, for example the University of Oklahoma Center on Child Abuse and Neglect, or it could be an internal program within the OAG Victim Advocacy and Services Unit (VASU). Angela Beatty (OCADVSA) commented this needed to happen due to the urgent need we see during monthly case reviews by the DVFRB. The members representing OJA, DHS, OSDH IPS and ODMHSAS made comments in support of having a program in Oklahoma like ACASI. There was wide consensus on this recommendation needing to be a priority.

The fourth recommendation candidate discussed was related to calling for changes to our current protective order (PO) laws. Mr. Hernández reminded the membership that the presentations by the Oklahoma County DV prosecutors on May 29, 2024, and the one by First Assistant DA Jacobi Whatley on August 28, 2024, pointed to changes that will help prosecutors hold abusers accountable if they violate a protective order. The first change discussed was on the violation of protective orders as an enhancer. As it currently stands, for a second PO violation to be a felony, the first is required to be a conviction, and as a result a deferred sentence, would not enhance the next PO violation to a felony. Mr. Hernández said the idea proposed by our guest speakers was to change the word “conviction” 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. This would mirror closely

enhancers for DV in 21 O.S. §644 and for driving under the influence (DUI) under 47 O.S. §11-902. The second potential change was to address situations when there is evidence the abuser is actively evading service when he has knowledge a PO has been filed against him. The idea would be to create a provision to allow for other means of notice in case they are evading service, such as serving a known household member (e.g. perpetrator's parents, roommate, etc.). This would be similar to a provision potentially already enacted in the state of Missouri. Sean Webb (DAC) first commented on the enhancement provision and agreed that changing the language to "finding of guilt" would help prosecutors have more leeway on the options they have to file charges. He also provided a brief explanation on the kinds of case dispositions the recommendation would need to take into consideration, such as deferred, suspended, and an actual conviction. Scott Hawkins (OSA) agreed the PO violation enhancers would be beneficial, but added stakeholders would raise concerns about the alternative means of service by arguing how would it be known if the defendant was served by using alternative means. He added the recommendation should also address the issuing of POs after hours and address not having victims come in to file another PO on the next judicial day. The DVFRB membership agreed the PO violation enhancers should be a priority in the development of a recommendation targeting this system.

The fifth and sixth recommendation candidates discussed were related to changes on how DV bond is set. Mr. Hernández said this would address some of the concerns outlined by First Assistant DA Whatley in her presentation. In her presentation, First Assistant DA Whatley pointed to 22 O.S. §1105(B) and how some judges/districts are interpreting the statute. She stated having a requirement in the statute so that bail may not be set until the next judicial day might be beneficial to allow time for the state to comply with 22 O.S. §1105 and provide the appropriate information to the court. The same would be done for 22 O.S. §1101(E) so that judges making bond decisions can have as much information in front of them to set an appropriate bond. Emily Nicholls (OSDH-IPS) stated this might be more of a legal education issue. Sean Webb (DAC) gave an overview of how bond setting is supposed to be done. He also had questions on the background of these recommendations by First Assistant DA Whatley. Several members recalled it may have been to address situations when an offender is arrested over the weekend and released on bond before prosecutors have a chance to provide as much information as possible when they return to the office at the start of the week. The DVFRB agreed this might be better addressed in a judicial training recommendation in a future edition of the DVFRB report.

The seventh recommendation candidate discussed was related to the recently enacted Stalking Warning Letter in 21 O.S. §1173.1. Issues surrounding the letter were raised in the presentations of the Oklahoma County DV prosecutors, First Assistant DA Whatley, and First Assistant DA Epplin. He reminded members the suggestion by the prosecutors was to make clear that the warning letter or whether or not one is issued should have no bearing on whether stalking is filed in a criminal case pursuant to 21 O.S. §1173. Sean Webb (DAC) commented the issue surrounding the current language of the law is that it is enabling arguments against arresting a defendant for stalking because the letter was never served. Lt. Scott Hawkins (OSA) stated there have been issues surrounding the service of the letter if the victim and perpetrator live in different counties. On some occasions, Sheriff's Offices have demanded a service fee for serving the letter in their county since the statute does not specify a mechanism to follow in those kinds of situations. Other members commented how the issuance of the letter can be potentially a precursor of homicide due to the perpetrator being notified that the victim made contact with law enforcement. The DVFRB

membership agreed this should be a priority in a potential recommendation or even a spotlight article within the report.

The eight-recommendation candidate discussed was one where the review board would revisit the second recommendation in the 2023 DVFRB report. That recommendation called for addressing the crime elements discrepancies between non-DV Assault & Battery (A&B) with a Deadly Weapon vs. DV A&B with a Deadly Weapon. The main difference between the two is that the shooting element is required to charge DV A&B but is not required in non-DV A&B. The recommendation also called for amending 21 O.S. §13.1 so that it includes domestic violence crimes outline in 21 O.S. §644 as 85% crimes and amend 57 O.S. §571 so that Domestic A&B Subsequent Offense and Domestic A&B on a Pregnant Person are statutorily considered violent crimes. Sean Webb (DAC) stated the first proposal should be prioritized because consistency in the law is important. He also emphasized the importance of making DV an 85% crime. He added the recommendation should have a statement about changing the uniform jury introductions so non-DV A&B and DV A&B parallel each other. The DVFRB membership agreed this recommendation should be a priority.

The ninth recommendation candidate discussed was supporting the passage of HB 3889, which was filed by Representative Ross Ford in the most recent legislative session but was not signed into law. The bill called for the establishment of a DV Examination Fund for the purpose of providing a victim of DV assault, a forensic medical examination by a qualified licensed health care professional. Mr. Hernández said the review board discussed during the year the importance of DV nurse examiners to evidence-based prosecution. Members also discussed how there is no state support to DV nurse examinations. Emily Nicholls (OSDH-IPS) stated this should be a priority and that it might be a good opportunity to highlight issues surrounding the funding pots for Sexual Assault Nurse Examiner (SANE) exams and the lack of funding altogether towards DV nurse examinations. The review board agreed this should also be a priority in the next publication of the DVFRB report.

Mr. Hernández finalized the discussion by saying he would be developing drafts of the recommendations the board said should be prioritized by the next meeting. He emphasized they would be short drafts and the finalized versions would be completed by the November meeting.

VII. 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 #220049
- c. Consideration of return from executive session and return to regular meeting agenda.

Chief Don Sweger (OACP) made a motion to adjourn to executive session at 11:29 am. Heather Cropper (OSBI) seconded the motion. The motion passed by roll call vote (13 Aye, 0 Abstain, 0 Nay). Quorum was maintained throughout the executive session. The Board concluded and came out of executive session at 11:52 am.

VIII. 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.

IX. 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.

X. Announcements

Angela Beatty (OCADVSA) reminded members the YWCA was organizing the annual Wreath of Hope ceremony which would take place on October 3, 2024, at 10:00 am on the South Lawn of the Oklahoma State Capitol. Brandon Pasley (OCADVSA) also mentioned the Domestic Violence Awareness Month Press Conference would be taking place at the OAG later that afternoon at 1:30 PM.

XI. Adjournment*

Chief Don Sweger (OACP) made a motion to adjourn. Shelly Harrison (NAAV) seconded the motion. The meeting adjourned at 11:52 am.