

Tri-County Batterer Intervention Provider Network Meeting Minutes March 10, 2015

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Minutes by Rachel Smith, edited by Chris Huffine

Discussion Topic: No-Contact Orders

No -Contact Orders (NCO)--why do we have them, are they helpful, how do we deal with them?

Editor's clarification: While, in a general way No Contact Orders are similar to Restraining Orders (aka Family Abuse Prevention Act Restraining Orders aka FAPA orders), they follow very different paths and are not the same. Restraining Orders common from the civil court (not the criminal court) and are triggered by a victim petitioning the court, which, if it meets criteria is then issued. Restraining Orders are enforced by the judge and violation of the restraining order leads to a Contempt of Court charge. No Contact Orders, on the other hand, come from the criminal court and are only issued when an individual has been arrested for a crime (e.g., as part of a release agreement from jail) or has been convicted of a crime and is on probation. Note that this is a discussion of No Contact Orders, not Restraining Orders, although some of the points made would apply to both.

Counties vary a great deal in terms of their approach to NCO's. Clackamas County will not look at lifting orders for deferred sentencing until offenders have been in a program for at least 12 weeks. Under the Clackamas County process, contact is allowed (aside from cohabitation) after lifting no-contact orders is cleared with victim services for a given case. For those on formal probation in Clackamas County there is also an 18-week criterion for considering lifting orders. In Washington County offenders on deferred sentencing and probation are required to attend a program for 12 weeks and must pass a polygraph test before a no-contact order can be lifted. Multnomah County has no standard for lifting no-contact orders; instead, the process is approached on a case-by-case basis. However, parole officers and judges in Multnomah County will generally want to have some input from the BIP. In Marion County, NCOs are typically for six sessions.

When do we know when we are doing harm by not allowing contact? One difficulty is when the victim wants contact but we do not think the couple is ready for that step yet. For example, there have been cases in which a no-contact order is in place and the offender is the one who initiates

the hearing for modification and the judge allows contact if the couple goes to couples counseling. This protocol is concerning, particularly when couples counseling is ordered in place of an actual batterer intervention program.

The issue of no-contact orders is one of the most common complaints partners have, especially as it relates to the order being potentially harmful to the family. For instance, there seems to be an increase in calls during the holidays from partners who want the order lifted so the offender can be with the family during the holidays. These complaints/requests are typically from partners who do intend to reconcile with the offenders, but we also know that the offenders will use manipulation with the partners and try to work the system to get the orders lifted.

As BI providers, we are typically more comfortable sharing concerns than sharing encouragement when asked to offer input to parole officers, judges, and victim services regarding no-contact orders. If he has a lot of hostility and other risk factors, it is easier/more comfortable for us to block no-contact orders than to advocate lifting them. Parole officers may ask BI providers whether a no-contact order should be modified, when a better question may be whether the BI provider has concerns about lifting the order. As with risk, we are typically more comfortable/confident in expressing concerns rather than expressing optimism.

Using polygraph tests does help ensure that offenders are likely to adhere to the no-contact order, but there are drawbacks to the polygraphs, such as the monetary and time expenses of administering them and the fact that they are not perfectly reliable.

It is important to maintain a balance when addressing questions around lifting versus maintaining no-contact orders. For instance, should there be something in place to prevent the partner from contacting him while a no-contact order is in place so that she can experience the benefits of not having contact with him for a period of time? We should not try to punish her for testing out the safety, but if an individual in one of our groups shares that the victim is contacting him, we can tell him to let his parole officer know that she is reaching out to him. However, it is important to note that this can also be used as yet another manipulation tool for him, which is further reason why it is important to educate survivors on the process and legal issues around no-contact orders.

One approach to handling whether or not to advocate lifting an order is to ensure that the victim attends (or has already attended) the Victims' Safety Class and to talk to the victim about communicating, honestly, with the BI provider about the abuser's behaviors. For instance, Victims' Safety Classes are required as part of the process for getting a no-contact order lifted in Marion County. The partner's role(s) in no-contact orders raises the issue of "making" partners do something, and the implications of doing so. As BI and Victims' Services providers, we cannot "make" the partners do anything, but we can say to them things like, "if you do this class, I will be more likely to lift the order". Another question this raises is at what point do victims get to make their own decisions? A tremendous challenge regarding the self-determination piece is that the system should be set up in a way that the person who has committed the crime should be held responsible for doing so, yet, many times the system results in the victim(s) of a crime being

held responsible for the perpetrator's behavior. Part of this is requiring the victim to do things or ignoring the victim's wishes, particularly when what she wants is contact.

It is important to keep reinforcing that she is not responsible for his behaviors. It is good to encourage the women to get educational information about their situations, but their only problem is that they were abused, and it is not their responsibility to fix the perpetrators' abusive behaviors. Her part in his abuse is zero. It is entirely the perpetrator's responsibility and there is a delicate balance between empowering a survivor to realize that she is in control of her own life *and* that she is not responsible for his behavior and his abuse. This is another reason why the no-contact orders can be so tricky.

We should also be conscientious of the difficult position the entire process places the victim in. Often, she sees a dilemma in that the court is now keeping her from seeing him and thus her family may fall apart, but her safety and her family's safety are also top priorities for her. She has to make difficult decisions on what is best for her and her family that only she can know.

Another source of stress for victims is when they are pursuing a divorce through civil court while he is on probation. The numerous different systems the victim has to work through in the courts when dealing with divorce, especially with kids involved, places additional difficult burdens on the victim due to the serious disconnect between the way things are handled in the civil courts and in the criminal justice system.

All of this relates to the importance of collective and coordinated community responses to domestic violence, and the responsibility of service providers involved in those responses. A potentially ideal process would involve a victim's advocate working with the victim, doing interviews with the offender, and getting input from the BIP to fully determine whether an order is in fact detrimental to the victim. However, from a victim advocacy perspective, actual resources to achieve all of that simply do not exist. Also many people who go through the courts do not get connected to victim advocates. Further, there are sometimes strings attached to her getting a no-contact order lifted, usually put in place by the offender (e.g., finances). Advocates are working to make sure her needs are met, both in terms of safety *and* in terms of her life as a whole. So, victim advocates will often work with the parole officers to work around the order, as opposed to modifying the order.

Offenders typically have an outward focus which is part of what drives their abuse and control. Part of this is the amount of blaming they do of the victim for their own struggles. Another benefit of the no-contact orders is that they make the offenders concentrate on themselves for an extended period of time. While they can clearly continue to blame their partner, they aren't able to do it directly to her. It's perhaps the best chance they will get to get further clarity on their accountability for their own well-being.

If they are going to be having contact again, it is crucial that they do so while the offender is currently under the supervision. However, if they are violating an order, they likely are not going

to tell us in group how things are going and then we will not really be able to assess if he is actually changing.

One pro and con of an NCO is that it creates an artificial sense of safety for the victim (presuming he abides by it), especially if she does want to reconcile. Should we allow contact so that victims can experience his manipulation and come to her own decisions about ultimately leaving him? If she has had some increased safety and sense of peace while there has been no contact then the contrast of how that shifts again when there is contact may further clarify for her what she needs to do.

One intermediate step, that some probation departments use, is to allow an intermediate level of contact between no contact and full contact, referred to as no *offensive* contact. This allows for some level of contact, but if it is deemed by the court/probation officer that it has been offensive contact, then it can be considered a violation. Attached is a document from Multnomah County that further defines offensive contact. The benefit to this intermediate step is that it means the perpetrator needs to be on his best behavior. It also empowers the victim to indicate if she believes he is acting disrespectfully to her even if he is not technically breaking the law.

It was suggested that it is preferable when NCO's can be treated on a case by case basis. Ultimately, those involved in addressing whether or not an order is lifted should be asking how will modifying the order be helpful and how might it be hurtful. Each victim can be different in terms of where they fall on that continuum, meaning that a timeline that may be helpful for one may be hurtful for another.

Regarding whether or not no-contact orders actually work, they are useful in reducing the frequency of abusive behaviors for those men who are choosing to be in compliance with the order. Obviously, a no contact order is not going to stop the men who are determined to continue their abuse. If it's being abided by, the NCO may lead to the victim feeling safer.