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Refining the Meaning and Application of "Dating Relationship" Language in Domestic Violence Statutes

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INTRODUCTION

Many young people date in high school, and Lisa Santoro was no exception.¹ Her father Tom tells her story:

In January, 1994, Lisa started to date a guy [named "Dan"]. . . . In the five months Lisa dated this guy, I never really understood why she was attracted to him. . . . Around June, when Lisa started to work at the swimming pool, she met another guy who was in charge of the pool. . . . Shortly after, Lisa [broke] up with Dan. Dan tried to get Lisa to go back to him, but Lisa had her mind made up. . . . On July 27th, Dan called Lisa and asked her to go out to exchange letters they had written to each other when they were dating. Lisa agreed to meet Dan on the 28th. . . . About 1 a.m. that evening, I got a call from my wife. Lisa wasn't home and she was supposed to be home at midnight. I came home from the firehouse, tried calling the house where Lisa was supposed to be, and got a satanic recording. I told my wife that I was going to take a ride to the house to look for Lisa. When I got to the house, I saw the police car and the ambulance in front. I knew my Lisa was dead.²

That night, Lisa's ex-boyfriend beat her to death with a baseball bat.³ Unfortunately, Lisa is not alone in suffering a violent—and in her case, deadly—fate from dating abuse.⁴

But not all high school dating violence escalates to the same brutal heights. Battered victims often escape from violent relationships in time. One high school survivor anonymously submitted her story, in her own words, to a local newspaper:

I don't remember what I told him that made him so mad that he did what he did. I spoke to him. He got mad and stood up. He got off his chair and yanked me out of my seat. He lifted me up and sat me on his lap. His hands were covering my face and I couldn't breathe because he was squeezing me so hard. I could not see. . . . Then he started to watch me more closely at school. He also had his friends watching me. . . . He would hit me sometimes, but not so hard that I would get bruises or any open cuts.⁵

1. SUSAN M. SANDERS, *TEEN DATING VIOLENCE* 13 (2003).

2. *Id.* at 14 (paragraph distinctions removed).

3. *Id.* at 13.

4. Sara Taylor, *Vigil Addresses Teen Dating Violence*, LAS CRUCES SUN-NEWS, August 18, 2005, at 5A (discussing the death of Ashley Wax, fifteen, who allegedly was murdered by her boyfriend).

5. *True Love Doesn't Hurt*, SANTA FE NEW MEXICAN, June 24, 2005, at D1, available at 2005 WLNR 10740875; see also Kimberly Hayes Taylor, *Girls Can Beat Teen Dating Abuse*, DETROIT NEWS, Nov. 2, 2004, at 1F, available at http://groups.msn.com/DomesticViolenceResourceCenter/general.msnw?action=get_message&mview=0&ID_Message=2167&LastModified=4675496548721998314 (mentioning the 2004 attack on sixteen-year-old Nicole Louise Lambert, in which her ex-boyfriend stabbed her in the back with an eight-inch kitchen knife); *Teen Dating Violence Is Far Too Common*, WICHITA EAGLE, Apr. 17, 2005, at 1B, available at 2005 WLNR 23080249 (describing how Rashawnda Wheaton's life "came to a horrific end [found shot to death] after she got caught up in a bruising cycle of teen dating violence" and how a seventeen year-old was recently struck in the face by her boyfriend, breaking her nose and cracking the bone around her eye).

Another girl, "Cheryl," fell in love at the age of fifteen, after her new boyfriend showered her with affection.⁶ Eventually, her boyfriend grew more aggressive, forbidding her from seeing friends and hiding her keys so she could not leave; the abuse culminated in an altercation during which Cheryl was left bloodied and crying, her head having been slammed into a towel rack.⁷

Sometimes victims suffer from verbal and emotional abuse. One teenager made his girlfriend "sleep with the phone on her pillow, just so he could hear her breathing and know she wasn't out with other guys."⁸ Another teen stalked his ex-girlfriend, leaving his name in the dust on her car so she knew that he was watching her every move.⁹

Other victims work to spread awareness and prevent future abuse. Lisa Kapler, a member of the high school drill team with good grades, would go to school with black eyes, bruises, and fat lips as a result of being punched and kicked by her boyfriend;¹⁰ he threatened her with guns and knives and promised to kill her if she ever left.¹¹ Now the wife of a professional baseball player, she speaks out about her past as a victim of dating abuse to publicize the potential for violence in high school relationships.¹² Consider the case of Megan Prebble, who, as a teen, struggled to end an abusive relationship with a boy who strangled her.¹³ Megan and her mother now act as victim advocates, helping teens to see the signs of dating violence and to end their relationship.¹⁴

Each of the girls in these stories was a victim of teen dating violence,¹⁵ also called intimate partner violence. Researchers have

6. Jennifer Barrios, *Domestic Violence*, NEWSDAY, Nov. 19, 2006, at A7, available at 2006 WLNR 20075879.

7. *Id.*

8. *Id.*

9. *Id.*

10. Bella English, *Fighting Back as a Teen, Red Sox Wife Lisa Kapler Had a Secret. Now, She Hopes that Telling Her Story Will Make Others Aware of Dating Violence*, BOSTON GLOBE, June 24, 2004, at D1, available at 2004 WLNR 3612607.

11. *Id.*

12. *Id.*

13. Pat Reavy, *New Sandy DVD Helps Fight Date Violence*, DESERT MORNING NEWS (Salt Lake City, UT), Oct. 26, 2006, at A1, available at 2006 WLNR 18643712; see also Cara Spaziani, *Program Targets Abuse on Dates*, WICHITA EAGLE, June 10, 2005, at 4A, available at 2005 WLNR 23068006 (discussing the story of Ivette Diaz, a victim of teen dating violence who went on to form "Love Is Not Abuse," a dating violence and abuse prevention program taught to ninth-graders).

14. *Id.*

15. The phrase "teen dating violence" will be used throughout this Note, as it is the common phrase associated with domestic violence committed against young people. However, young

studied this phenomenon sporadically over the past twenty years, but teen dating violence began receiving serious attention only in the last decade.¹⁶ Alarming, a 2004 study revealed that eighty-one percent of parents did not know or did not believe that teen dating violence was a problem.¹⁷ Though a cohesive picture of violence among teens is lacking, one online news source recently reported that one in five high school girls will become the victim of dating violence, while other news sources indicate that as many as one in three high school girls will be abused by a boyfriend.¹⁸

As a result of these findings, school officials and legislators have taken the initiative to increase the public consciousness about teen dating violence. In October¹⁹ 2005, for example, students in an Idaho high school broadcasting class created and filmed five public service announcements portraying the consequences of teen dating violence as part of a week-long awareness campaign.²⁰ During the same month, nineteen pilot schools across the country launched a curriculum on teen dating violence.²¹ At the state level, then-New York Governor George Pataki announced a campaign to raise teen dating violence awareness, which included radio public service announcements, mall kiosk displays, and school mailings.²² In January 2007, the Delaware State Senate passed a resolution naming

people in middle, junior, or high school are the focus of this Note. This would include individuals who are not “teens” but rather eleven or twelve years old.

16. Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 HARV. WOMEN'S L.J. 351, 358 (2003).

17. Christopher Caskey, *Teen Love Often Includes Abuse: Friends, Family Usually Don't Know When Violence Is Part of Relationship*, MODESTO BEE, Oct. 21, 2006, at B1, available at 2006 WLNR 18327216.

18. Deborah Feyerick, *Young Women Form Anti-Abuse Group*, Feb. 10, 2006, <http://www.cnn.com/2006/US/02/08/teen.abuse/index.html>. This statistic from a 2001 study also was published in the Journal of the American Medical Association. See Taylor, *supra* note 5, at 1F (citing a Bureau of Justice Special Report on intimate partner violence); see also Jennifer Scott, *Breaking the Silence: Abuse Can Take Many Forms in Teen Relationships*, WIS. ST. J., Oct. 23, 2005, at I1, available at 2005 WLNR 17257331 (reporting that one in three high school and college girls will experience violence and one in two young women suffered physical, sexual, emotional or verbal abuse from a dating partner).

19. October is Domestic Violence Awareness Month.

20. Emily Simnitt, *Stop the Violence*, IDAHO STATESMAN, Oct. 16, 2005, at 1. The announcements were played in area high schools. *Id.* Examples of the subject matter include: a girl putting on make-up before school in order to cover her bruised face and a girl giving a monologue about a relationship gone awry, with images of the relationship flashed throughout her speech. *Id.*

21. Megan Hawkins, *Teen Dating Violence Is Curriculum's Focus*, DES MOINES REGISTER, Oct. 14, 2005, at 1A.

22. Gov. Pataki Promotes Awareness of Teen Dating Violence, U.S. ST. NEWS, Sept. 23, 2005, available at 2005 WLNR 15435504. The campaign was called “If It Doesn't Feel Right, It Probably Isn't.”

February 2007 "Teen Dating Violence Awareness and Prevention Month."²³ The federal government has gotten involved, as well. California Representative Juanita Millender-McDonald introduced the Teen Dating Violence Education Act of 2005,²⁴ providing for authorized domestic violence education programs to include state-specific information on the legal rights of victims of teen dating violence.

Despite such efforts, the legal response to teen dating violence has not been sufficient; in fact, young people may have been overlooked by the law.²⁵ The legal system's adult-centered approach often excludes teens in need of protection merely because of their age.²⁶ Currently, victims of domestic violence, including those under the age of eighteen, find refuge in domestic violence statutes by petitioning for an order of protection to be issued against the abuser. To qualify, victims must satisfy a relationship requirement; for young people, that often means establishing that a dating relationship existed at some point in time between the victim and abuser—that the two are or were "a couple." In the past several years, a number of states have added "dating relationship" language to their domestic violence statutes. But while such inclusion marks significant progress in the battle against teen dating violence, courts have struggled to interpret and apply the meaning of "dating relationship," even with the aid of additional statutory language. It is incumbent upon state legislatures and courts to do more for teenaged victims of dating violence by extending protection to all victims of abuse. Consequently, the meaning and application of "dating relationship," the avenue for protection under the current statutory set-up, should be refined and broadened in order to assist more teens in obtaining protection from abuse.

This Note explores the applicability of domestic violence statutes to teenagers like those mentioned above. Part I discusses how teen dating violence, a particular species of domestic violence, affects

23. Senate and House bills designated the weeks of February 6, 2006 and February 5, 2007 as "National Teen Dating Violence Awareness and Prevention Week." H.R. Res. 1086, 109th Cong. (2006); S. Res. 621, 109th Cong. (2006); H.R. Res. 483, 109th Cong. (2005); S. Res. 275, 109th Cong. (2005).

24. H.R. 2947, 109th Cong. (2005). There were sixty-six co-sponsors for the bill. The last action taken on the bill was July 25, 2005, when the bill went to the House Subcommittee on Education Reform.

25. For another commentator's view on the deficiencies in the law, see Kathryn E. Suarez, Comment, *Teenage Dating Violence: The Need for Expanded Awareness and Legislation*, 82 CAL. L. REV. 423, 424 (1994).

26. Roger J.R. Levesque, *Dating Violence, Adolescents, and the Law*, 4 VA. J. SOC. POL'Y & L. 339, 342-43 (1997).

young people in dating relationships. This Part begins by providing a definition for teen dating violence and an explanation of the phenomenon, including statistics. It then describes the similarities and differences between adult domestic violence and teenage dating violence as a means to recognize the dangerous reality of teen dating violence and the importance of protection for both teenagers and adults. Part II presents the status of state laws that address teen dating violence by outlining the relevant language in state domestic violence statutes.²⁷ Part III scrutinizes the practical meaning of state statutory law and of case law interpretations of those statutes; it also considers how these statutes actually apply to and affect teens victimized by dating violence. Finally, Part IV proposes new methods for applying domestic violence statutes to teens by suggesting statutory amendments and interpretive guidelines for courts. Part IV closes with a discussion of the limitations of and possible objections to this approach.

I. TEENAGERS AND DOMESTIC VIOLENCE

This Part lays the foundation for a legal analysis of domestic violence statutory law by summarizing background information on teen dating violence: the definition of teen dating violence, the nature of teen dating violence, and the similarities and differences between teen dating violence and traditional notions of domestic violence.

A. *Teen Dating Violence*

1. A Definition for “Teen Dating Violence”

Before exploring the prevalence, nature, and effects of teen dating violence, it is important to understand what teen dating violence is in the most basic sense. A number of domestic violence scholars have offered their own definitions for this alarming phenomenon among young people. This Note’s definition draws on language and concepts from a variety of those definitions.²⁸ Each

27. Such statutes normally include language that explicitly or implicitly allows minors to obtain orders of protection and that defines “victim” as including persons in a “dating relationship.”

28. Kathryn E. Suarez defines “teen dating violence” as “an act, or a threat, of physical abuse in context of any interaction involved in the courtship or mate selection process,” intentionally leaving out any reference to psychological abuse. Suarez, *supra* note 25, at 426. Suarez then defines “dating” as “a dyadic interaction that emphasizes mutually rewarding activities that can enhance the likelihood of future interaction, emotional commitment, and/or

definition contains several specific characteristics: (1) acts or threatened acts of some form of abuse; (2) young people; (3) and some form of intimate or romantic relationship. Thus, any form of abuse or threat of abuse that occurs between young people who are in a dating relationship constitutes teen dating violence.

For the purposes of this Note, then, "teen dating violence" is defined as physical, psychological, or sexual abuse, or threats of such abuse, occurring between individuals, at least one of whom is under the age of eighteen, who are in a dating relationship; the underlying, i.e. pre-violence, relationship should be mutually rewarding and indicative of some form of commitment. Notice, however, that this term is somewhat deceiving: although referred to as "teen" dating violence, the definition does not include all teenaged victims, but only those young people of junior high or high school age. This Note focuses on those dating violence victims whose rights are different under the law as a result their minority status.

2. Teen Dating Violence Studies: Describing the Nature of Teen Dating Violence

Teen dating violence statistics give substance to a generic definition and demonstrate that teen dating violence does exist and occur in our world and in our neighborhoods every day. This subsection lays out some of the data associated with teen dating violence by looking at specific research studies, surveys administered by the government, and statistics listed on awareness websites. In addition, the common reasons behind, the cycles, and the forms of teen dating violence are presented.

The findings of some specific research studies bolster the numbers cited in the Introduction—that somewhere between one in three and one in five high school students will encounter violence in a dating relationship. One survey of high school students in Sacramento, California, established that 35.5% of students

physical intimacy." *Id.* (quoting David B. Sugarman & Gerald T. Hotaling, *Dating Violence: A Review of Contextual and Risk Factors*, in *DATING VIOLENCE: YOUNG WOMEN IN DANGER* 100, 103 (Barrie Levy ed., 1991)). Stacy L. Brustin, on the other hand, defines "teen dating violence" as "physical, psychological, or sexual abuse occurring between individuals, at least one of whom is under eighteen, who are married, living together, have children together or are involved in a dating relationship or in an attempted dating relationship." Stacy L. Brustin, *Legal Responses to Teen Dating Violence*, 29 *FAM. L.Q.* 331, 332 (1995). Yet another definition, articulated by Christine N. Carlson, states that "teen dating violence is 'a pattern of repeated actual or threatened acts that physically, sexually, or verbally abuse a member of an unmarried heterosexual or homosexual couple in which one or both partners is between thirteen and twenty years old.'" Carlson, *supra* note 16, at 360 (quoting Barrie Levy, *Introduction to DATING VIOLENCE: YOUNG WOMEN IN DANGER*, *supra*, at 4).

experienced some form of violence or threats of violence while in a dating relationship and that 26.9% of students experienced actual violence in a dating relationship.²⁹ Another study of students in three Midwestern high schools reported that twenty-eight percent of the students had experienced some form of abuse (physical, sexual, or verbal) from a dating partner.³⁰ The results of these studies lend support to the belief that approximately twenty to thirty percent of high school teens will experience some form of dating violence.

Government sources provide a broader look at the problem of teen dating violence. For example, the U.S. Department of Health and Human Services and the Centers for Disease Control administer the Youth Risk Behavior Survey, which examines the general behavior of teens.³¹ In 2001, the Department's survey claimed that 9.8% of young women reported being intentionally injured by a date in the past year, while 17.7% of sexually active girls reported similar injuries.³² The findings section of the proposed Teen Dating Violence Education Act of 2005 includes even more statistics:

- Young women between the ages of sixteen and twenty-four comprise the demographic most vulnerable to domestic violence and experience the highest per capita rate of non-fatal dating violence
- One-third of teens report experiencing some kind of abuse, including verbal and emotional abuse, in a romantic relationship
- Approximately one in five adolescent girls report being physically or sexually hurt by a dating partner
- Forty percent of girls ages fourteen to seventeen report knowing someone their age who has been hit or beaten by a boyfriend

29. See Nona K. O'Keeffe, Karen Brockopp & Esther Chew, *Teen Dating Violence*, 31 SOC. WORK 465, 466 (1986) (reporting the results of the survey). The sample size was 256, with 135 girls and 121 boys participating (ninety percent were juniors or seniors, sixty-five percent were white, and most came from middle class homes and were average or above-average students). *Id.*

30. Libby Bergman, *Dating Violence Among High School Students*, 37 SOC. WORK 21, 23 (1992). The percentage of students reporting only physical abuse was about seventeen percent. *Id.*

31. Nan Stein, *A Rising Pandemic of Sexual Violence in Elementary and Secondary Schools: Locating a Secret Problem*, 12 DUKE J. GENDER L. & POLY 33, 40-41 (2005). Two of the questions posed to 15,000 students (fourteen to eighteen years of age) in 2003 related to teen dating relationships and teen dating violence. *Id.* The study was also reported in the *Journal of the American Medical Association*. Jay G. Silverman et al., *Dating Violence Against Adolescent Girls and Associated Substance Use, Unhealthy Weight Control, Sexual Risk Behavior, Pregnancy, and Suicidality*, 286 J.A.M.A. 572, 573-78 (2001).

32. Stein, *supra* note 31, at 40. The survey compiled answers from 6864 females. *Id.*

- Twenty-six percent of high school girls have been the victim of physical abuse, sexual abuse, or date rape.³³

Additionally, domestic violence websites often compile statistics and create fact sheets that provide easy access to information about teen dating violence. According to several such websites, one in three high school students have been or will be involved in an abusive relationship; forty percent of teen girls between the ages of fourteen and seventeen know someone their age who has been hit by a boyfriend; and seven percent of all murder victims in 1995 were young women who had been killed by their boyfriends.³⁴

The rationales behind, and paradigmatic situations of, teen dating violence furnish another level of specificity for the definition of teen dating violence beyond these bare statistics. A number of common motivations lie behind teen dating violence. In one survey asking young people why they became violent in a relationship, both males and females most frequently chose anger, with jealousy as the third most cited answer.³⁵ A desire to gain control over their partners was the second most cited reason by males, while self-defense was the second-most cited basis for violence by females.³⁶

If dating violence does occur, it follows a somewhat predictable pattern. The abuse typically takes place on weekends and in private settings, most often in a parent's home or possibly in a vehicle or outside.³⁷ And, if violence in the relationship happens once, it is likely to happen again.³⁸ After the episode, most victims respond with anger, followed by fear and surprise, while abusers most often feel sorrow.³⁹ However, only about one in twenty-five victims seeks professional help and most instead choose to talk to friends or, occasionally, family members.⁴⁰ Even more troubling, 70.4% of casual daters and only 32.9% of steady daters ended the relationship after a violent

33. H.R. 2947, 109th Cong. § 2 (2005).

34. Alabama Coalition Against Dating Violence, <http://www.acadv.org/dating.html> (last visited Feb. 21, 2007).

35. Maura O'Keefe, *Predictors of Dating Violence Among High School Students*, 12 J. INTERPERSONAL VIOLENCE 546, 556-57 (1997). The researcher surveyed 939 students (385 boys and 554 girls) in six Los Angeles high schools, ranging from fourteen to twenty years of age. *Id.* at 552; see also David B. Sugarman & Gerald T. Hotaling, *Dating Violence: Prevalence, Context, and Risk Markers*, in VIOLENCE IN DATING RELATIONSHIPS: EMERGING SOCIAL ISSUES 3, 12-13 (Maureen A. Pirog-Good & Jan E. Stets eds., 1989) (describing anger and jealousy as main causes of violent behavior).

36. O'Keefe, *supra* note 35, at 556-57.

37. Sugarman & Hotaling, *supra* note 35, at 11.

38. *Id.*

39. *Id.* at 13.

40. *Id.*

encounter.⁴¹ Furthermore, the “worst incidents” of dating violence occurred in steady dating.⁴²

Teen dating violence can take a variety of forms. A study by Maura O’Keefe found that males were more likely to force partners to provide sexual favors, while females were more likely to slap, kick, bite, or hit a partner.⁴³ Both males and females routinely pushed, grabbed, or shoved their dating partners, and throwing something at and slapping a partner were also highly reported behaviors.⁴⁴ Finally, two studies surveying high school students found that teen dating violence occurs more often in a reciprocal rather than one-sided manner and that the greatest amount of violence occurs in mutually violent relationships, as opposed to one-sided violent relationships.⁴⁵ This indicates that both parties in a relationship often commit violence against one another.

B. The Similarities and Differences Between Adult and Teen Domestic Violence

Domestic violence among teens and domestic violence among adults can be compared and contrasted. The similarities explain the existence and severity of teenage dating violence, while the differences support the need for individual attention to this special type of domestic violence.

41. James Makepeace, *Dating, Living Together, and Courtship Violence*, in VIOLENCE IN DATING RELATIONSHIPS: EMERGING SOCIAL ISSUES, *supra* note 35, at 94, 98. The break-up rate was 38.2% when the parties lived together and 11.1% when the parties were engaged. *Id.* However, another author found that as many as fifty percent of relationships do not terminate after a violent encounter. Levesque, *supra* note 26, at 347; *see also* SANDERS, *supra* note 1, at 116 (stating that the reasons young girls stay in the relationship is not well known). Sanders does cite a variety of disincentives to seeking help and a lack of knowledge on the part of teen girls as reasons for their inability to get out of the relationship. *Id.* at 117-31.

42. Makepeace, *supra* note 41, at 97.

43. O’Keefe, *supra* note 35, at 556.

44. *Id.*

45. Heather M. Gray & Vangie Foshee, *Adolescent Dating Violence: Differences Between One-Sided and Mutually Violent Profiles*, 12 J. INTERPERSONAL VIOLENCE 126, 134 (1997); *see also* O’Keefe, *supra* note 29, at 466 (reporting that the number of those surveyed who were both victims and perpetrators of dating violence was greater those who were solely victims and those who were solely perpetrators). Gray and Foshee administered a self-report questionnaire to 185 young people in the sixth through twelfth grades in public middle and high schools in Durham, North Carolina. Gray & Foshee, *supra*, at 130. The researchers used the responses of the seventy-seven students polled who reported some involvement with dating violence. *Id.* Of those reporting violence, about fourteen percent were only victims, almost twenty percent were only abusers, and more than sixty-six percent were both victims and abusers in the relationship. *Id.* at 134.

1. The Similarities

Though some researchers have portrayed dating as "a time of innocent exploration" and have classified intimate partner violence as "more a feature among conflict-ridden married couples,"⁴⁶ dating relationships, too, have been plagued by violence. In fact, dating relationships and marital relationships—usually thought of as adult relationships—share a number of familiar characteristics which separate these relations from other, less serious interactions:

- (1) a greater degree of mutual interaction in terms of time spent together, range of activities in which they are engaged, and higher levels of involvement;
- (2) a greater exchange of personal information;
- (3) a greater presumed right to influence the partner;
- and (4) a greater likelihood of conflict due to the need to negotiate roles and responsibilities and to cope with environmental stressors.⁴⁷

These shared characteristics indicate that conflict can occur just as easily in a dating relationship as in a marriage.

Furthermore, initial research conducted to determine the levels of abuse among dating college students did not surprise the research community and, in fact, confirmed the suspicions of some researchers: violence did exist among those dating couples.⁴⁸ Observations from as early as 1861 suggest that women accepted beatings as consonant with their roles in marriage and courtship, and more recent studies of the connection between battered women and patriarchy provide additional evidence that violence exists in dating relationships.⁴⁹ Experts say that "[t]eenage dating isn't always 'kid stuff.'"⁵⁰ As a result, some researchers have moved away from the debate around the existence of violence in dating relationships and focus instead on the risks or predictors for violence in dating relationships, such as growing up in a divorced home, dating at an earlier age, prior aggression, stress, and alcohol use, among others.⁵¹

46. Sugarman & Hotaling, *supra* note 35, at 3 (noting that a 1981 study contradicted such contentions).

47. *Id.* at 4.

48. *Id.* at 7.

49. *Id.* at 3. In fact, courtships themselves may be inherently violent. Levesque, *supra* note 26, at 350.

50. Barrios, *supra* note 6, at A7.

51. For example, researchers Sugarman and Hotaling compiled a list of risk markers for dating violence. A brief summary of their findings demonstrates that individuals are more likely to be involved in dating violence if: they are more accepting of marital violence; they grew up in homes plagued by divorce or separation and spent time without one parent; or they began dating at an earlier age. Sugarman & Hotaling, *supra* note 35, at 14, 16, 18. In a similar vein, researchers Riggs and O'Leary created a causal model for courtship aggression and identified two elements in dating violence: contextual variables to predict who will become aggressive and situational variables to predict when an individual will become aggressive. David S. Riggs & K. Daniel O'Leary, *A Theoretical Model of Courtship Aggression*, in *VIOLENCE IN DATING*

Because dating violence, including teen dating violence, is domestic violence, the basic attributes and characteristics of domestic violence remain the same whether the victim or perpetrator is an adult or a teenager. Domestic violence breaks down into four categories: (1) physical abuse, (2) verbal and emotional abuse, (3) sexual abuse, and (4) destruction of property.⁵² Physical violence is the most well-known and visible form of abuse and includes punching, slapping, pushing, choking, and other forms of physical attack.⁵³ At the other extreme, emotional abuse is the "most hidden, yet often the most detrimental, form of abuse" and includes insults, intimidation, and humiliation in the form of yelling, name-calling, isolation, and surveillance, among others.⁵⁴ Abusers may wage these emotional and verbal battles by threatening the victim or her family.⁵⁵ Sexual abuse occurs when the abuser rapes or attempts to rape the victim or coerces the victim into sexual intercourse.⁵⁶ Abusers may also destroy property that has emotional significance to the victim; for example, this may entail harm to beloved pets.

These various forms of domestic violence occur in a cycle: tension-building, explosion, and honeymoon.⁵⁷ In the first stage, minor incidents between the abuser and victim take place, causing the tension between the couple to escalate.⁵⁸ Eventually, the tension builds to a breaking point, and the explosion, or battering, of stage two occurs.⁵⁹ This explosion can manifest itself in any of the forms described in the previous paragraph. Finally, the parties reconcile in stage three. The abuser shows remorse for his or her actions and offers positive reinforcement for the relationship through apologies and presents.⁶⁰ For a while, there is calm; yet, tension eventually will mount again, and the cycle will recommence at an accelerated rate, with less time elapsing between each stage and the abuse becoming

RELATIONSHIPS: EMERGING SOCIAL ISSUES, *supra* note 35, at 53, 57. The contextual variables include aggression in intimate relationships, parental aggression toward the individual as a child, aggression as an appropriate response to situations, psychopathology and neuropathology, arousability and emotionality, personality, and prior aggression. *Id.* at 58. The situational variables include expecting a positive outcome from the aggression, stress, alcohol use, partner's use of aggression, and relationship conflict. *Id.* at 63.

52. Carlson, *supra* note 16, at 361.

53. *Id.*

54. *Id.* at 362.

55. *Id.*

56. *Id.* "Rape" refers to sex without consent, while "coercive sex" refers to sex with consent given only in order to escape a dangerous situation. *Id.* at 362-63.

57. *Id.* at 363-64.

58. *Id.* at 364.

59. *Id.*

60. *Id.* at 364-65.

more severe.⁶¹ When the victim tries to end the relationship, the risk of violence elevates even further.⁶²

Teen dating violence seems to be as prevalent as domestic violence between married persons (or adults in dating relationships).⁶³ Additionally, all people, regardless of economic status, race, culture, or sexual preference, can become victims.⁶⁴ The same control, violence, threats, and jealousy found in adult battering situations are present in teen dating violence, as well.⁶⁵ As a result, the psychological impacts on both adults and teens in violent relationships are severe.⁶⁶ Finally, young people, like adults, may be afraid to leave the relationship due to the psychological destruction committed against them through diminished independence and self-esteem resulting from the abuse.⁶⁷ Consequently, teen dating violence resembles domestic violence not only in basic form but also in impact on the victim.

2. The Differences

Teen dating violence differs from traditional adult domestic violence in a number of ways that actually may produce more damaging consequences for young people. The age of the victims and perpetrators can result in different reactions and more extreme emotional effects on teens. Teens may be more prone to dating violence.

Though there are often strong emotional attachments in a dating relationship, domestic violence and teen dating violence differ in that teen dating relationships usually do not have the legal and financial constraints of marriage.⁶⁸ Teens typically do not live under the same roof as their abusers and rarely depend upon them financially.⁶⁹ Additionally, the intent of the relationship may never

61. *Id.* at 365.

62. Carole A. Sousa, *Teen Dating Violence: The Hidden Epidemic*, 37 *FAM. & CONCILIATION CTS. REV.* 356, 358 (1999).

63. Suarez, *supra* note 25, at 430. Over one-third of people surveyed reported a violent encounter in a dating relationship. *Id.* This number is similar to the number reported in spousal abuse surveys. *Id.*

64. Sousa, *supra* note 62, at 358.

65. Suarez, *supra* note 25, at 430. Additionally, when the relationship turns serious enough that there is an exclusive, marriage-like situation, expectations tied to gender emerge (such as the man's right to control the woman and the woman's obligation to do as he pleases). *Id.*

66. *Id.*

67. *Id.* at 430-31.

68. Riggs & O'Leary, *supra* note 51, at 56.

69. Suarez, *supra* note 25, at 431.

have been to remain together forever.⁷⁰ Therefore, in theory it may be easier to escape the violence in a dating relationship than in a marriage.⁷¹ Yet these distinctions cannot be said to reduce the impact of teen dating violence or lessen the severity of the problem.

More apparent and substantial differences emerge when the ages of the parties are considered. Peer pressure plays a dominant role in teenagers' reactions to abuse. Because teens want to separate themselves from adults, they adhere to peer norms, which often include stereotypical roles for males and females.⁷² This adherence to gender roles may enhance the cycle of violence and place victims in greater danger.⁷³ Evidence suggests that teens may be at a higher risk for "traumatic bonding," which refers to a victim feeling more attached to her abuser as she loses her own identity, than adults because of these intensified gender roles and the need for social acceptance and self-esteem.⁷⁴

Emotional and developmental differences also separate adolescents from adults. First, limited dating experience may render teens less likely to understand that what is happening to them is wrong.⁷⁵ Teenagers often lack dating experience and therefore encounter control issues that fuel already "highly passionate, exciting, and possessive" relationships.⁷⁶ In fact, teens may confuse jealousy with love and remorse with intimacy.⁷⁷ Additionally, teens may not be able to handle difficult situations and may deny, rather than confront, such situations.⁷⁸

Additionally, teens are still growing and maturing. This rapid intellectual, moral, and emotional development makes teen abuse different than that between adults.⁷⁹ Adolescents may believe that what happens to them is "normal" and thus think that an abusive

70. Riggs & O'Leary, *supra* note 51, at 56.

71. *Id.*

72. Sousa, *supra* note 62, at 361. These stereotypes include girls being supportive and responsible for the success or demise of the relationship and boys being forceful, aggressive, and in control. *Id.*

73. Carlson, *supra* note 16, at 365. Young men may be supported by friends in believing that they can control young women by any means possible, while young women may not find support in female friends, who may view having a boyfriend as a status symbol. *Id.*

74. Levesque, *supra* note 26, at 347-48. The passionate and possessive nature of the adolescent relationship likewise makes teens more vulnerable. *Id.* at 350.

75. Carlson, *supra* note 16, at 365.

76. Levesque, *supra* note 26, at 350.

77. Sousa, *supra* note 62, at 361.

78. Levesque, *supra* note 26, at 350.

79. Sousa, *supra* note 62, at 359.

relationship is "normal."⁸⁰ As young people develop socially, behaviors with positive consequences are more likely to be learned. With dating violence, then, victims may see positive consequences for the abuser and learn to act violently in similar situations, escalating the level of violence.⁸¹ Abusive relationships also cause teens to question how the world is supposed to work and may "shatter" their confidence in handling the situation on their own.⁸² Because teens tend to be more narcissistic than adults, they are more likely to internalize blame for their victimization.⁸³

Furthermore, teens may be more likely to develop disordered eating and continue to participate in unhealthy relationships.⁸⁴ A study by the American Medical Association found that "girls who experience dating violence are at a greater risk for other serious adolescent health concerns," such as eating disorders, drug and alcohol abuse, and pregnancy.⁸⁵

When teens do come forward, they may not be taken seriously by adults, who often refer to teen relationships as "puppy love."⁸⁶ Teens frequently go to their friends with concerns about abuse before seeking the assistance of a parent or other adult,⁸⁷ fearing that their newfound independence will be taken away or that they will be viewed as having done something wrong.⁸⁸ Indeed, statistics show that sixty-one percent of young people who report abuse tell a friend first, while less than three percent tell an authority figure.⁸⁹ Finally, young people often do not have anywhere else to turn when violence begins; it is difficult for teens to get into court or get help from social services because of their age.⁹⁰ All of this leads to psychological damage greater than that in abusive adult relationships. Thus, the available research indicates that teen dating violence must be addressed in a manner that recognizes both the similarities and differences between teen violence and adult violence.

80. Levesque, *supra* note 26, at 350; *see also* Gray & Foshee, *supra* note 45, at 128 (pointing to social learning theory as an explanation for teen dating violence).

81. Gray & Foshee, *supra* note 45, at 128.

82. Sousa, *supra* note 62, at 360.

83. *Id.*

84. SANDERS, *supra* note 1, at 134.

85. Silverman et al., *supra* note 31, at 574-76.

86. SANDERS, *supra* note 1, at 133.

87. Sousa, *supra* note 62, at 363.

88. *Id.* at 362.

89. *Id.* at 363.

90. SANDERS, *supra* note 1, at 133-34.

II. HOW STATE LAW ADDRESSES TEEN DATING VIOLENCE

Domestic violence statutes represent one way in which victims of domestic violence receive protection from abuse. Specifically, the abused may petition a court for an order of protection and request various remedies. This Part first describes that basic process. It then analyzes the preliminary obstacles teens face in this process. Finally, it focuses on the “relationship requirement” as it currently is written in domestic violence statutes.

A. Domestic Violence Statutes and the Order of Protection

The main legal recourse for all victims of domestic violence is an order of protection, an “effective yet underused weapon[] against domestic violence.”⁹¹ Though the process varies by state, a victim of domestic violence typically must petition the court for an order of protection.⁹² The court may then grant an emergency order of protection, valid for some short period of time, without notice to the abuser.⁹³ Later, a hearing takes place to determine whether the order will become permanent and remain in force for a specified period of time; the order also will contain specific requirements for the abuser (i.e. remedies).⁹⁴ A violation of the order results in criminal charges, the extent of which varies among the states.⁹⁵

In all state domestic violence statutes, a victim must establish a relationship between herself and her abuser and identify an act that has occurred between them.⁹⁶ These limitations result in under-use of domestic violence protection orders because not all victims or all types of violence are covered.⁹⁷ Though many states have expanded the relationship requirement, many states still do not include victims in dating relationships, cohabitation relationships, and same sex relationships, among others.⁹⁸

91. Judith A. Smith, *Battered Non-Wives and Unequal Protection-Order Coverage: A Call for Reform*, 23 YALE L. & POL'Y REV. 93, 95 (2005).

92. *Id.* at 100.

93. *See id.* (stating that provisional measures are often granted ex parte, without the abuser's presence).

94. *Id.* at 101. Commonly available remedies in an order of protection include requirements for the abuser to: stay away from the victim; refrain from contacting, harassing, or threatening the victim; submit to counseling or alcohol or substance abuse classes; or provide economic relief to the victim. *Id.* at 100.

95. *Id.* at 101.

96. *Id.* at 102.

97. *Id.* at 96.

98. *Id.*

Evidence shows that these orders may prevent and de-escalate some types of violence, as well as give victims a sense of control.⁹⁹ Though other legal remedies exist, such as criminal prosecutions for battery or assault and tort actions for similar misconduct, these remedies merely provide an ex post solution to the problem of domestic violence. Criminal laws punish individuals for illegal activity while incentivizing individuals to behave civilly; civil tort laws impose moral obligations on individuals while seeking to deter future bad acts. Yet, victims may want more than punishment and deterrence long after the fact—they may want to prevent and stop the abuse ex ante. Though civil harassment orders or other types of restraining orders exist, courts have noted that these orders provide “less protection and can be a financial burden for [victims].”¹⁰⁰ Domestic violence civil orders of protection also differ from other civil and criminal protection orders, because they provide remedies to the victim that would otherwise be unavailable, such as orders for the abuser to attend abuse treatment classes.¹⁰¹

B. Preliminary Considerations: Filing the Petition and Obtaining the Order Against a Minor

In order to obtain an order of protection, a victim must have a particular type of relationship with her abuser, as defined by statute. Though the existence of this relationship is vital to filing a successful petition for an order of protection, some additional requirements must be met, as well. For example, the victim must be allowed to file the petition with the court, either on her own behalf or through a parent or some other adult, and must be able to obtain the order against another minor. Though these important issues are not the focus of this Note, they should receive at least brief treatment in any discussion of the law’s applicability to teen dating violence.

State statutes usually fall into one of three categories regarding who must file a petition for an order of protection in a teen dating violence situation: (1) any victim, (2) certain individuals on behalf of minors, or (3) minors who have reached certain ages. First, the “any victim” statutes do not specify any age limitations for those who are allowed to file. For example, the New Mexico statute simply

99. *Id.* at 95.

100. *Oriola v. Thaler*, 100 Cal. Rptr. 2d 822, 829 (Cal. Ct. App. 2000).

101. *See supra* note 94.

states that a “victim of domestic abuse may petition the court.”¹⁰² Such statutes do not distinguish between adult and teen victims.

Other states allow only certain individuals to petition the court on behalf of minors. A number of states permit only a parent or guardian to file on behalf of a minor, making limited exceptions for married or emancipated minors.¹⁰³ Additionally, a few states provide that individuals in addition to family members may file on behalf of a minor, including state agencies¹⁰⁴ and employees or volunteers at domestic violence shelters.¹⁰⁵

Some progressive statutes allow teens to petition for orders of protection on their own under certain circumstances. In Washington, a minor at least sixteen years of age may file a petition in court.¹⁰⁶ New Hampshire’s domestic violence statute simply provides that a minor plaintiff “need not be accompanied by a parent or guardian to receive relief or services.”¹⁰⁷

Access to the court system varies by state. Yet regardless of whether a teenager may request relief from the court on her own or must seek assistance from an individual who has reached the age of majority, most states will allow a minor to obtain an order of protection to protect herself against abuse.¹⁰⁸ The more pertinent issue concerns whether an individual may obtain an order of protection *against* a minor. If a statute explicitly proscribes the application of the law to a minor abuser, a young victim of domestic violence cannot seek an order of protection against such an abuser in any case. Even if the statute ambiguously outlines against whom an order may be issued,

102. N.M. STAT. § 40-13-3(A) (2006); *see also* NEB. REV. STAT. § 42-924(1) (2006) (stating that “[a]ny victim of domestic abuse may file a petition and affidavit for a protection order”). With these statutes, however, it seems that a minor could not go into court on her own to obtain an order of protection because of general state laws that deem the age of majority to be eighteen.

103. *See, e.g.*, IDAHO CODE ANN. § 39-6304 (2006); TEX. FAM. CODE ANN. § 71.004 (Vernon 2006).

104. HAW. REV. STAT. § 586-3(b)(1)-(2) (2006).

105. ARK. CODE ANN. § 9-15-201(d)(2), (4) (2006).

106. WASH. REV. CODE § 26.50.020(2) (2006). The Washington statute also provides that the petitioner may seek relief without the assistance of a guardian ad litem or next friend. *Id.* § 26.50.020. Two other states allow a person sixteen or seventeen years of age to file a petition on her own behalf. MINN. STAT. § 518B.01(4)(a) (2006); OKLA. STAT. tit. 22, § 60.1(2)(A) (2006).

107. N.H. REV. STAT. ANN. § 173-B:3(II)(b) (2006).

108. In fact, some states are quite direct about this issue. *See, e.g., id.* § 173-B:3(II)(a) (“The minority of the plaintiff shall not preclude the court from issuing protective orders against a present or former intimate partner, spouse, or ex-spouse under this chapter.”). Some states seem to differentiate between minors as children and minors in relationships. *Compare* Bacon *ex rel. v. Bacon*, 567 N.W.2d 414, 417 (Iowa 1997) (stating in dicta that children under the age of eighteen are not covered under the domestic abuse law) *with Ex rel. S.D.L.*, 568 N.W.2d 41, 41-42 (Iowa 1997) (discussing a no-contact order issued against seventeen year-old for abusing his teenaged girlfriend, with whom he lived and had a child).

teens face the real possibility that the statute will be construed to prohibit application to minor abusers. Thus, statutory language that excuses domestic violence by minors may, as a policy matter, sound the death knell for progress in protecting teens from dating violence.

Some statutes make it clear that an order may be issued against a minor,¹⁰⁹ and other states provide age-specific instructions for application.¹¹⁰ At times, though, courts must step in and interpret the statute, and in those instances, courts often find that that issuance of the order of protection was valid. For example, in *State v. O'Brien*, the Washington Court of Appeals reviewing court upheld a domestic violence criminal protection order against a juvenile after determining that he met the requirements of the statute and finding no merit in his contention that the order imposed an adult penalty in a juvenile adjudication.¹¹¹ An appellate court in Illinois made a similar ruling in a case involving a fourteen-year-old boy who allegedly sexually abused his two half-sisters.¹¹² The court stated that, though there was no case law supporting the imposition of the order, one should have been granted nonetheless.¹¹³ The court cited language in the Illinois Domestic Violence Act stating that "[p]etitioner shall not be denied an order of protection because petitioner [victim] or respondent [abuser] is a minor," and found that it demonstrated the legislature's implicit intent to allow courts to issue orders of protection against minors.¹¹⁴ Thus, some state domestic violence statutes have explicitly included, and in several other states courts have interpreted such statutes to include, minors as respondents.

With this groundwork laid, this Note now turns to an additional obstacle that teenagers face when seeking to obtain an

109. See MASS. GEN. LAWS ch. 209A, § 3(a) (2006) (protection order may be issued "whether the defendant is an adult or minor").

110. See MICH. COMP. LAWS § 600.2950(11)(a)(i)-(ii) (2006) (providing different instructions for those older and younger than seventeen).

111. *State v. O'Brien*, 63 P.3d 181, 182-84 (Wash. Ct. App. 2003). Courts in Iowa and Pennsylvania have made similar rulings. See *Ex rel. S.D.L.*, 568 N.W.2d at 42-43 (upholding no-contact order against seventeen year-old and rejecting the juvenile court's decision not to sanction the seventeen year-old for his contempt citation as a resistance to punishing the boy "more like an adult" rather than a legitimate inability to carry out the order); *Varner v. Holley*, 854 A.2d 520, 522-24 (Pa. Super. Ct. 2004) (reiterating that a minor may be named as a respondent in a domestic abuse action but adding that a minor respondent must be represented by a guardian who will represent the minor's interests); *Diehl v. Drummond*, 2 Pa. D. & C.4th 376, 379 (Ct. Com. Pl. 1989) (holding that a juvenile under the age of eighteen may be named as a respondent in a Protection from Abuse Act case).

112. *Wright v. Wright*, 583 N.E.2d 97, 97-98 (Ill. App. Ct. 1991).

113. *Id.* at 98.

114. *Id.* at 99.

order of protection: the requirement that the victim and abuser have (or have had) a dating relationship.

C. The Relationship Requirement

In order to qualify for an order of protection under a domestic violence statute, the victim must have a relationship with her abuser that fits within at least one of the statutorily defined relationship categories. If a relationship does not fall into one of the categories, the victim has no protection under the statute, and she must rely on other legal or social devices for relief.

To provide a basic framework, consider the Illinois Domestic Violence Act, which states: “The following persons are protected by this Act: any person abused by a family or household member,”¹¹⁵ and it defines family or household member to include, among other categories of relationship, “persons who have or have had a dating or engagement relationship.”¹¹⁶ This “dating relationship” language will be the most likely to allow young people to seek orders of protection, because teenagers engage in dating relationships more often than they marry or have children. Importantly, state statutes have evolved significantly in this regard. Currently, thirty-six state statutes and the District of Columbia statute contain “dating relationship” or similar language in their domestic or family violence statutes.¹¹⁷ This

115. 750 ILL. COMP. STAT. 60/201(a) (2006).

116. *Id.* § 60/103(6). The Act also states that “family or household members’ include spouses, former spouses, parents, children . . .” and “persons who have or allegedly have a child in common.” *Id.*

117. ALA. CODE § 13A-6-131(a) (2006); ALASKA STAT. § 18.66.990(5)(C) (2006); ARK. CODE ANN. § 9-15-103(3)-(4) (2006); CAL. FAM. CODE § 6211(c) (West 2006); CONN. GEN. STAT. § 46b-38a(2)(F) (2006); D.C. CODE § 16-1001(5)(B) (2006); HAW. REV. STAT. § 586-1 (2006); IDAHO CODE ANN. § 39-6303(2) (2006); 750 ILL. COMP. STAT. 60/103(6) (2006); IND. CODE § 31-9-2-44.5(a)(2) (2006); IOWA CODE § 236.2(2)(e) (2006); KAN. STAT. ANN. § 60-3102(b)-(c) (2006); ME. REV. STAT. ANN. tit. 19-A, § 4002(4) (2006); MASS. GEN. LAWS ch. 209A, § 1 (2006); MICH. COMP. LAWS § 600.2950(1) (2006); MINN. STAT. § 518B.01(b)(7) (2006); MISS. CODE ANN. § 93-21-3(a), (d) (2006); MO. REV. STAT. § 455.010(5) (2006); MONT. CODE ANN. § 45-54-206(2)(b) (2006); NEB. REV. STAT. § 42-903(3) (2006); NEV. REV. STAT. § 33.018(1) (2006); N.H. REV. STAT. ANN. § 173-B:1(I) (2006); N.J. STAT. ANN. § 2C:25-19(d) (West 2006); N.M. STAT. § 40-13-2(D) (2006); N.C. GEN. STAT. § 50B-1(b)(6) (2006); N.D. CENT. CODE § 14-07.1-01(4) (2006); OKLA. STAT. tit. 22, § 60.1(1), (5) (2006); OR. REV. STAT. § 107.705(3)(e) (2006); 23 PA. CONS. STAT. § 6102 (2006); R.I. GEN. LAWS § 8-8.1-1(3) (2006); TENN. CODE ANN. § 36-3-601(11)(C) (2006); TEX. FAM. CODE ANN. § 71.004(3) (Vernon 2006); VT. STAT. ANN. tit. 15, § 1101(2) (2006); WASH. REV. CODE § 26.50.010(2) (2006); W. VA. CODE § 48-27-204(4) (2006); WIS. STAT. § 813.12(ag) (2006); WYO. STAT. ANN. § 35-21-102(a)(iv)(H) (2006). Two of these states allow sexual partners, as opposed to dating partners, to obtain orders of protection. ME. REV. STAT. ANN. tit. 19-A, § 4002(4) (2006) (“individuals who are or were sexual partners”); OR. REV. STAT. § 107.705(3)(e) (2006) (“Persons who have been involved in a sexually intimate relationship with each other within two years immediately preceding the filing by one of them of a petition. . .”). Though not counted in the above number,

marks a dramatic increase over the last ten years. In 1993, only eleven state statutes extended coverage to people involved in dating relationships¹¹⁸ and, almost five years later, that number had risen only to thirteen.¹¹⁹ The particular language used to describe this type of relationship varies from state to state, ranging from "dating relationship" to "intimate relationship" to "continuing personal relationship."¹²⁰ These rhetorical differences, however, likely do not affect a teen's status under the statute because all of the phrases are similarly defined, as will be described in Part III.

Yet some rhetorical differences in statutory language can have an important impact on whether teens fall within the parameters of the relationship requirement. The following is a description of these important differences among state statutes. Missouri and Wisconsin¹²¹ restrict the definition to adults in dating relationships, and the Washington statute requires that teens in a dating relationship be at least sixteen years old.¹²² Some states specifically include minors in their statutory definitions and others separate adult dating relationships from dating relationships between minors.¹²³ These latter statutes cover any combination of ages in a dating relationship:

the New York statute does include "any other category of individuals deemed to be a victim of domestic violence as defined by the department in regulation." N.Y. SOC. SERV. LAW § 459-a(2)(f) (McKinney 2006). This would seem to include people in dating relationships. For a similar break down of dating relationship language, see Smith, *supra* note 91, at 104 n.70.

118. Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 835 (1993). Those states were Alaska, California, Maine, Massachusetts, New Hampshire, New Mexico, North Dakota, Pennsylvania, Rhode Island, Washington, and West Virginia. *Id.* The study included Puerto Rico, which made the number for the study twelve, not eleven. *Id.*

119. Levesque, *supra* note 26, at 359 n.105. Alabama, Colorado, Illinois, and Minnesota were added to the list mentioned in the previous note, while Maine and Rhode Island were absent. *Id.*

120. *E.g.*, ARK. CODE ANN. § 9-15-103(3) (2006) ("dating relationship"); IOWA CODE § 236.2(2)(e) (2006) ("intimate relationship"); N.M. STAT. § 40-13-2(D) (2006) ("continuing personal relationship").

121. MO. REV. STAT. § 455.010(5) (2006); WIS. STAT. § 813.12(ag) (2006). Additionally, the Iowa Supreme Court has interpreted its statute to extend protection to "only those (1) persons under eighteen who are assaulted by spouses, and (2) persons under eighteen who are either emancipated or unemancipated and are assaulted by the person with whom they are simply cohabitating." Hefel *ex rel.* D.M.H. v. Thompson, 577 N.W.2d 643, 646 (Iowa 1998).

122. WASH. REV. CODE § 26.50.010(2) (2006).

123. Alaska's statute defines a "household member" in part as "adults or minors who are dating or who have dated." ALASKA STAT. § 18.66.990(5)(C) (2006); *see also* OKLA. STAT. tit. 22, § 60.1(1) (2006); TENN. CODE ANN. § 36-3-601(11)(C) (2006) ("adults or minors who are dating or who have dated or who have or had a sexual relationship"); VT. STAT. ANN. tit. 15, § 1101(2) (2006) ("minors or adults who are dating or who have dated"). The Idaho statute actually separates adult dating relationships from dating relationships between minors: " 'Domestic violence' means the physical injury . . . of a minor child by a person with whom the minor child has had or is having a dating relationship, or of an adult by a person with whom the adult has had or is having a dating relationship." IDAHO CODE ANN. § 39-6303(1) (2006).

adult abusing minor, minor abusing adult, minor abusing minor, or adult abusing adult. Some state statutes provide coverage for sexual relationships in addition to dating relationships, which provide more than one means of access for young people who do not have children and are not married.¹²⁴ Others permit relationships to qualify on an individual basis, depending upon their unique characteristics.¹²⁵ These approaches are especially important to young people who seek protection but may not be able to meet traditional intimate partner requirements. Most statutes include language that permits a past or present dating relationship to suffice under the statute, indicating that a victim may remove herself from the situation and later seek an order of protection.¹²⁶ Finally, some statutes incorporate additional requirements, such as a heterosexual relationship, a “significant” romantic relationship, or relationship occurring within the past year.¹²⁷

124. See ALASKA STAT. § 18.66.990(5)(C)-(D) (2006) (including “adults or minors” who “are engaged or who have engaged in a sexual relationship”); 23 PA. CONS. STAT. ANN. § 6102 (2006) (“current or former sexual partners”); IND. CODE § 31-9-2-44.5(a)(2)-(3) (2006) (defining a “family or household member” as one who “is dating or has dated the other person” or who “is engaged or was engaged in a sexual relationship with the other person”); VT. STAT. ANN. tit. 15, § 1101(2) (2006) (“are engaged in or have engaged in a sexual relationship”). However, the Vermont statute specifically mentions minors when referencing “dating relationship” but does not do so when referencing “sexual relationship.” tit. 15, § 1101(2). This may indicate a legislative intent to exclude minors from the latter category.

125. In addition to a provision for dating relationships, the North Dakota domestic violence statute includes “any other person with a sufficient relationship to the abusing person as determined by the court.” N.D. CENT. CODE § 14-07.1-01(4) (2006). New York’s statute is similar, stating that “family or household members” include “any other category of individuals deemed to be a victim of domestic violence as defined by the department in regulation.” N.Y. SOC. SERV. LAW § 459-a(2)(f) (McKinney 2006).

126. When statutes contain this type of language, courts may take it quite seriously. See *People v. Wilson*, 827 N.E.2d 416, 421 (Ill. 2005) (stating that defendant’s interpretation that the Illinois statute, covering persons who “have had” a dating relationship, had no time limit was correct and finding that this absence of time limit did not make the statute unconstitutionally vague). Not all states take this approach, however. For example, North Dakota’s statute reads “persons who are in a dating relationship.” N.D. CENT. CODE § 14-07.1-01(4) (2006).

127. IOWA CODE § 236.2(2)(e) (2006) (“an intimate relationship and have had contact within the past year”); MINN. STAT. § 518B.01(b)(7) (2006) (“a significant romantic or sexual relationship”); MONT. CODE ANN. § 45-5-206(2)(b) (2006) (“ongoing intimate relationship with a person of the opposite sex”); R.I. GEN. LAWS § 8-8.1-1(3) (2006) (“a substantive dating or engagement relationship within the past one year”). Courts take this language seriously, as well. See, e.g., *State v. Logan*, No. 18CR020108012, 2003 WL 22413490, at *2 (Conn. Super. Ct. Oct. 6, 2003) (noting the statutory exception for relationships that are not current or recent and stating that because the lower court did not consider any evidence regarding the duration or timing of the relationship, it could not determine the existence of a family crime).

III. HOW STATE LAW APPLIES TO TEENAGERS IN PRACTICE

Part II provided a basic overview of how states may include young people in their domestic violence statutes through the use of the term "dating relationship" or similar language. But what does "dating relationship" actually mean, how have courts applied it, and how does this inclusion or exclusion affect teens? This Part first analyzes how state legislatures and courts have defined "dating relationship" language. The responses can be divided into two categories: a descriptive approach and a factor approach. This Part then presents examples of courts' applications of these approaches. Finally, the impact on teenagers is considered.

A. What Does "Dating Relationship" Really Mean?

Many domestic violence statutes use the term "dating relationship." Unfortunately, one cannot easily determine what such language means in practice because each state has its own way of defining and applying the law. These statutes can be broken down, however, into two basic forms of definition: descriptive and factor-based. Statutes that employ the descriptive approach define either what a dating relationship is or what it is not, and some provide both a description and limiting language, offering images of what a dating relationship should and should not look like. If one element under this descriptive approach is missing, then there is no coverage. Other states have adopted a factor approach: the statute contains a list of factors for a court to consider when applying the statute in a particular situation. Under a factor approach, other elements in the balance can compensate for the absence of one or more other elements, making this approach distinct from the descriptive approach. When statutes do not define the term "dating relationship" and simply state that a dating relationship qualifies a victim to petition for an order of protection, the court must determine who qualifies.¹²⁸ The result for a victim of dating violence is similar whether the statute contains a definition or not because courts will use either a descriptive or factor approach identical to the approaches written into statutory law.

128. ALA. CODE § 13A-6-131 (2006); ALASKA STAT. § 18.66.990 (2006); CONN. GEN. STAT. § 46b-38a (2006); D.C. CODE § 16-1001 (2006); IND. CODE § 31-9-2-44.5 (2006); MONT. CODE ANN. § 45-5-206 (2006); N.J. STAT. ANN. § 2C:25-19 (West 2006); N.M. STAT. § 40-13-2 (2006); N.Y. SOC. SERV. LAW § 459-a (McKinney 2006); N.D. CENT. CODE § 14-07.1-01 (2006); 23 PA. CONS. STAT. § 6102 (2006); WYO. STAT. ANN. § 35-21-102 (2006).

1. The Descriptive Approach

A rather limited approach to defining “dating relationship” simply describes what the relationship entails, either by stating what a dating relationship is, what it is not, or both.¹²⁹ Arkansas, Illinois, Tennessee, and West Virginia each provide a description of what does not constitute a dating relationship, namely, casual and ordinary interaction between people who know each other through a business or social setting.¹³⁰ These statutes attempt to exclude relationships that are merely friendly or business-like in nature, are not very serious or not different from the type of relationship that an individual shares with many other people, and are too different from the other relationships protected under the statute (such as marital relationships, co-parent relationships, parent-child relationships, etc.).

California, Mississippi, and New Hampshire define the relationship in the positive by giving details about what the nature of the relationship should be. Examples of these states’ definitions include “frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial situations,”¹³¹ “a social relationship of a romantic or intimate nature,”¹³² and “intimate partners” as “persons currently or formerly involved in a romantic relationship, whether or not such relationship was ever sexually consummated.”¹³³ Individuals must be “intimate” or “romantic” with one another “frequently,” but the relationship need not be sexual. Yet, the language does not express any clearer meaning about what these terms might mean.

Prior to the inclusion of a statutory definition, the California courts employed a similar descriptive approach.¹³⁴ In *Oriola v. Thaler*, the court noted that the inclusion of dating relationships in its domestic violence statute meant to expand coverage to victims of

129. ARK. CODE ANN. § 9-15-103(4) (2006); CAL. FAM. CODE § 6210 (West 2006); HAW. REV. STAT. § 586-1 (2006); 750 ILL. COMP. STAT. 60/103(6) (2006); MICH. COMP. LAWS § 600.2950(30)(a) (2006); MISS. CODE ANN. § 93-21-3(d) (2006); NEB. REV. STAT. § 42-903(3) (2006); NEV. REV. STAT. § 33.018(2) (2006); N.H. REV. STAT. ANN. § 173-B:1(XV) (2006); N.C. GEN. STAT. § 50B-1(b)(6) (2006); OKLA. STAT. tit. 22, § 60.1(5) (2006); TENN. CODE ANN. § 36-3-601(11)(C) (2006); TEX. FAM. CODE ANN. § 71.0021(b) (Vernon 2006); W. VA. CODE § 48-27-204(4) (2006).

130. TENN. CODE ANN. § 36-3-601(11)(C) (2006); W. VA. CODE § 48-27-204(4) (2006). ARK. CODE ANN. § 9-15-104(3) (2006); 750 ILL. COMP. STAT. 60/103(6) (2006) (“neither a casual acquaintanceship nor ordinary fraternization between 2 individuals in a business or social context shall be deemed to constitute a dating relationship”).

131. CAL. FAM. CODE § 6210 (West 2006).

132. MISS. CODE ANN. § 93-21-3(d) (2006).

133. N.H. REV. STAT. ANN. § 173-B:1(XV) (2006).

134. *Oriola v. Thaler*, 100 Cal. Rptr. 2d 822 (Cal. Ct. App. 2000).

violence in more modern relationships.¹³⁵ However, the term did not cover "all the informal socializing relationships that could conceivably be described as 'dating.'" ¹³⁶ After examining statutory language and case law from other states,¹³⁷ the court drew a line:

[A] "dating relationship" refers to a serious courtship. It is a social relationship between two individuals who have or have had a reciprocally amorous and increasingly exclusive interest in one another, and shared expectation of the growth of that mutual interest, that has endured for such a length of time and stimulated such frequent interactions that the relationship cannot be deemed to have been casual.¹³⁸

A later California court noted that the current legislative definition "does not require 'serious courtship,' an 'increasingly exclusive interest,' 'shared expectation of growth,' or that the relationship endures for a length of time."¹³⁹

Seven states include a definition and an exclusionary statement, both of which share the basic characteristics previously discussed.¹⁴⁰ In each of these states, the statute does not protect a casual or ordinary relationship between people in a social or business context. The definitions also describe the existence of a romantic or intimate relationship, sometimes one that is continuous or one that existed over a period of time.¹⁴¹ Again, sex is not required, but it can offer evidence of the relationship.¹⁴²

Statutory interpretation by courts may be useful for fleshing out the meaning of statutory definitions, providing positive and negative examples of a proper dating relationship. For example, an Illinois court adopted the *Oriola* court's dating relationship definition when interpreting its own statute and has since affirmed that definition.¹⁴³ Illinois case law requires not only that the relationship be more than a casual and ordinary business or social fraternization,

135. *Id.* at 828-29.

136. *Id.* at 830.

137. *Id.* at 831-32.

138. *Id.* at 832-33.

139. *People v. Rucker*, 25 Cal. Rptr. 3d 62, 69 (Cal. Ct. App. 2005).

140. HAW. REV. STAT. § 586-1 (2006); MICH. COMP. LAWS § 600.2950(30)(a) (2006); NEB. REV. STAT. § 42-903(3) (2006); NEV. REV. STAT. § 33.018(2) (2006); N.C. GEN. STAT. § 50B-1(b)(6) (2006); OKLA. STAT. tit. 22, § 60.1(5) (2006); TEX. FAM. CODE ANN. § 71.0021(b) (Vernon 2006).

141. N.C. GEN. STAT. § 50B-1(b)(6) (2006) ("For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship."). Some definitions also include engagement and courtship relationships. *See* OKLA. STAT. tit. 22, § 60.1(5) (2006) (" 'Dating relationship' means a courtship or engagement relationship. ").

142. HAW. REV. STAT. § 586-1 (2006) (" 'Dating relationship' means a romantic, courtship, or engagement relationship, often but not necessarily characterized by actions of an intimate or sexual nature. . . . ").

143. *People v. Young*, 840 N.E.2d 825, 831-32 (Ill. App. Ct. 2005); *Alison C. v. Wescott*, 798 N.E.2d 813, 817 (Ill. App. Ct. 2003).

but also that the relationship be a serious courtship.¹⁴⁴ Thus, the relationship must be serious, amorous, and exclusive rather than casual; the individuals must grow more interested in one another and expect that interest to continuously grow over time; and they must interact frequently and over time.

Overall, the general descriptive approach is somewhat limited. When a statute merely provides a definition, it is harder for a victim to fall into that specific category. If one aspect of the definition is missing in the relationship, or one excluded aspect seems to be present, the victim will not be able to obtain protection under the statute. Additionally, the approach ignores other potentially relevant aspects of dating relationships. For example, imagine a situation with two teenagers who have been dating for some period of time, not for years but more than a date or two. They have not had sex but have gone to movies, the mall, and other such activities together, talked on the phone frequently, and eat lunch together at school nearly every day. They care about each other and are not interested in others, but they have not discussed the seriousness of their relationship or their future (i.e. they are not on the path to marriage at the moment). Now imagine that one of these teenagers hits the other. How would a court analyze this situation? The teenagers have not had sex, though that does not necessarily work to the victim's disadvantage depending upon the particular statute at issue. And they do see each other frequently, which is important to the definitional approach. But the relationship has not been continuous for any significant length of time and has not been particularly romantic or intimate, as those terms are commonly understood. There is no engagement, and their expectations are undefined. Under these circumstances, in a state that utilizes a descriptive approach, it is not clear that the victim will be able to obtain an order of protection, even though it seems that the victim should be able to protect herself from the abuse.

2. The Factor Approach

The better approach is the factor approach, which, by its nature as a "factor" approach, is a list of characteristics that should be considered when making a determination—but need not all be present to lead to success. A factor approach, which allows courts to

144. Even though a courtship may include the occasional flirtation, engaged college students, eighth grade "steadies," and couples on blind dates, a *serious* courtship means "an established relationship with a significant romantic focus." *Young*, 840 N.E.2d at 832. An intimate relationship is not enough, according to the Illinois court, because all intimate relationships are not within the statutory meaning of dating relationship. *Id.* at 831.

consider a variety of factors in the context of a particular situation.¹⁴⁵ Though the exact language varies, legislatures generally include the following factors: the nature of the relationship; the length of time that the relationship has existed; and the frequency (and sometimes type) of interaction between the individuals in the relationship. Some states also include the amount of time that has elapsed since the termination of the relationship, when applicable.¹⁴⁶ Each statute calls on the court to consider these factors on a case-by-case basis when it searches for the existence of a dating relationship.¹⁴⁷ The statutes vary, however, as to the amount of discretion afforded to the courts. Some statutes state that a court “may” consider the factors,¹⁴⁸ and others provide that the list of factors is not exclusive.¹⁴⁹ However, other statutes use the stricter term “shall,” indicating that the listed factors must be considered and, possibly, that all of the factors should be taken into account.¹⁵⁰

The lack of direction in descriptive statutes often leads courts to criticize the descriptive approach described above in Part III.A.1 and adopt a factor-like approach when interpreting descriptive statutes, which lack explicit definitional directions. For example, when faced with a descriptive statute, a New Jersey court chose instead to develop a factor approach like that found in statutes.¹⁵¹ The

145. ARK. CODE ANN. § 9-15-103(4)(A) (2006); IDAHO CODE ANN. § 39-6303(2) (2006); IOWA CODE § 236.2(2)(e) (2006); KAN. STAT. ANN. § 60-3102(c) (2006); MASS. GEN. LAWS ch. 209A, § 1(e) (2006); MINN STAT. § 518B.01(b) (2006); R.I. GEN. LAWS § 8-8.1-1(3) (2006); TEX. FAM. CODE ANN. § 71.0021(b) (Vernon 2006); VT. STAT. ANN. tit. 15, § 1101(2) (2006); WASH. REV. CODE § 26.50.010(3) (2006).

146. For example, the Iowa statute includes: “whether the relationship has been terminated.” IOWA CODE § 236.2(e) (2006). Iowa also considers “the nature of the relationship, characterized by either party’s expectation of sexual or romantic involvement and states that an individual “may be involved in an intimate relationship with more than one person at a time.” *Id.*

147. *See, e.g., C.O. v. M.M.*, 815 N.E.2d 582, 586 (Mass. 2004) (stating that a dating relationship was to be determined on a case-by-case basis using the factors supplied in the domestic abuse statute).

148. VT. STAT. ANN. tit. 15, § 1101(2) (2006) (“[f]actors that the court may consider”).

149. IOWA CODE § 236.2(2)(e) (2006) (“the court may consider the following nonexclusive list of factors”).

150. R.I. GEN. LAWS § 8-8.1-1(3) (2006) (“shall be determined by the court’s consideration of the following factors”). At least one court has interpreted statutorily provided factors to constitute an exclusive list. *See C.O.*, 815 N.E.2d at 586-87 (finding that “there is sufficient language in the statute to enable judges to make informed and consistent decisions” and that it is not the court’s “role to impose additional constraints on the interpretive instructions provided by the legislature”). However, the Massachusetts statute includes the commanding “shall” language. MASS. GEN. LAWS ch. 209A, § 1(e) (2006). It should be noted that this more severe factor approach is still better than a descriptive approach because though all factors must be contemplated, it is not always necessary for each element to be met, as is the case with a definitional approach.

151. *Andrews v. Rutherford*, 832 A.2d 379, 383-84 (N.J. Super. Ct. Ch. Div. 2003).

court commented that the legislature selected the term “dating relationship” as opposed to “dating,” which could have included people who had an occasional lunch date or went to the movies on one occasion.¹⁵² The other relationships covered under the statute demonstrated “continuing, frequent, and observable” qualities and were “somewhat open and notable to the public.”¹⁵³ The court finally determined that finding the existence of a dating relationship was “necessarily fact sensitive and thus warranted a ‘factor approach’ rather than a ‘definitional approach.’”¹⁵⁴ It cited six factors that, at a minimum, a court should consider:

1. Was there a minimal social interpersonal bonding of the parties over and above a mere casual fraternization?
2. How long did the alleged dating activities continue prior to the acts of domestic violence alleged?
3. What were the nature and frequency of the parties’ interaction?
4. What were the parties’ ongoing expectations with respect to the relationship, either individually or jointly?
5. Did the parties demonstrate an affirmation of their relationship before others by statement or conduct?
6. Are there any other reasons unique to the case that support or detract from a finding that a “dating relationship” existed?¹⁵⁵

A number of these factors are similar to the descriptive considerations in *Oriola* and the other descriptive statutory definitions. For example, the length of the relationship, the nature of the relationship, and the future expectations of the parties matter to the determination of a dating relationship under the New Jersey *Andrews* case, as well. Yet, the factors are not exclusive and do not have to be present in every case. Accordingly, the expectations need not be mutual and the nature of the relationship need not be serious or even romantic; rather, the relationship simply must demonstrate some minimal bonding beyond that which occurs in a casual acquaintanceship. Under this approach, the court also may evaluate other unique characteristics when applying the statute in a particular case. As the *Andrews* court noted, none of these factors are dispositive

152. *Id.* at 382.

153. *Id.*

154. *Id.* at 383-84.

155. *Id.* Other state courts also have adopted a flexible fact-centered approach. An Alabama court recently cited *Andrews* extensively and ultimately decided to adopt the criteria employed by the *Andrews* court. *Hobby v. State*, 919 So.2d 318, 323-25 (Ala. Crim. App. 2005).

and one or some of them may be more relevant than others.¹⁵⁶ Additionally, because the factors are not exclusive, other considerations are allowed.¹⁵⁷ Thus, for example, if there is no public affirmation of the relationship, not all is necessarily lost. Under a descriptive statutory definition, the lack of affirmation may be significantly more problematic.

Courts, however, do not have to enumerate a specific list of factors in order to effectuate a case-by-case analysis. For example, a Connecticut court looked to the legislative history behind "dating relationship" language to determine that each case necessitated a fact-specific inquiry, as the term "had some ambiguity that courts would have to resolve on a case-by-case, contextual basis."¹⁵⁸ Protective orders should be granted in situations that are:

[F]amilial, or quasi-familial relationships, ones that have aspects of intimacy, or repeated contact, or personal familiarity in ways that differ from mere friendship: "a relationship which is more than—certainly more than strangers or more than a causal friend, some type of personal relationship that goes beyond the run of the mill acquaintance-type situations."¹⁵⁹

Like the factors in *Andrews*, the relationship must be more than a friendship, and the nature of the relationship should contain some aspects of intimacy. Beyond this, the court is free to examine any other facts before it in order to decide whether a dating relationship is present—the court looks at the entire factual situation.

The factor approach is more desirable than the descriptive approach because it is more flexible and permissive, allowing greater consideration of relational aspects and greater examination of the situation surrounding the relationship. As a result, a larger variety of dating relationships, including teen dating relationships, will qualify for protection under these domestic violence statutes. Though many of the considerations will be the same, such as the length and amount of time spent together and the level of intimacy in the relationship, the application is different. A relationship does not *have* to be "intimate" or "romantic," nor does it have to be serious to the point of a *de facto* engagement. Relationships that are slightly more casual may still fall under the protection of domestic violence laws. The fact-intensive inquiry of the factor approach alters the court's decision. Therefore,

156. *Andrews*, 832 A.2d at 384.

157. *Id.* at 384 n.2.

158. *Odom v. Odom*, No. FA020097864S, 32 Conn. L. Rptr. 116, at *2 (Conn. Super. Ct. Apr. 30, 2002). According to one legislator, a dating relationship is a "know it when you see it-type situation[]." *Id.* Another legislator felt no need to provide a definition because a judge would define the term when applying it in a particular situation. *Id.*

159. *Id.*

descriptive approaches may not best serve the reasons for including “dating relationship” language in a statute, while factor approaches may be a better way to ensure that victims are covered under uncommon or untraditional circumstances.

Looking again at the example in Part III.A.1, the teen victim probably could get an order of protection under a factor approach. The pair spends quite a bit of time together. The nature of their relationship does seem to be a dating relationship, as they go to movies and other places together, spend their lunch-hour together, talk frequently, and do not date other people. Even though their relationship is newer, that factor may be given less weight in light of the other factors and other considerations that the court may find relevant.¹⁶⁰ In a state using a factor-based approach, then, the teen victim would have an easier time demonstrating a dating relationship.

B. Court Applications of Domestic Violence Statutes

Unfortunately, there is a dearth of reported cases in this area of the law.¹⁶¹ Few courts have had the opportunity to determine what “dating relationship” means and whether the parties in the case in fact had one. Even fewer courts have had the opportunity to apply this language to a *teen* dating relationship. Many courts review the reported cases involving a dating relationship on other grounds, such as a due process or evidentiary issues,¹⁶² and, when a defendant does not deny the existence of a dating relationship, the court presumes that one exists, thus avoiding the need for an analysis of the statutory language as applied to the parties.¹⁶³ While not numerous, the existing cases still provide useful insights into the statutory language in practice. Though speculations about the outcomes under certain

160. In fact, some courts have noted that a factor approach permits new relationships to come under domestic violence statutes. *People v. Rucker*, 25 Cal. Rptr. 3d 62, 69 (Cal. Ct. App. 2005).

161. Arguably this is an issue courts deal with on a fairly regular basis. However, a number of reasons may explain why many of those cases do not appear in the reporters, such as the limited resources of the victims and the failure to appeal adverse decisions, among others.

162. *See, e.g., People v. Johnson*, 793 N.E.2d 774, 775 (Ill. App. Ct. 2003) (“Because the sole issue raised by defendant on appeal is the constitutionality of the domestic battery statute, we will not set forth a lengthy recitation of the testimony provided at trial.”). In these cases, the facts surrounding the relationship are not discussed and the appellate court simply notes that a lower court did or did not find a dating relationship to be present.

163. *See J.F. v. B.K.*, 706 A.2d 203, 204 & n.1 (N.J. Super. Ct. App. Div. 1998) (stating that parties’ short dating relationship in high school four years before the alleged domestic violence incident was sufficient to confer jurisdiction when the defendant did not raise it as an issue); *R.G. v. T.D.*, 672 A.2d 341, 342 (Pa. Super. Ct. 1996) (“[T]he PFA petition filed by appellee referred to appellant as her ‘former boyfriend,’ and appellant made no objection. . . . Therefore, a relationship between ‘intimate partners’ has been established. . . .”).

statutory definitions can be made, an examination of the actual court application of "dating relationship" language better reveals the true impact on teens.

1. Teen Dating Situations

In a few cases, various activities such as lunch dates, movie dates, phone conversations, and evenings at a parent's house did not convince courts that the particular relationships warranted inclusion under a domestic violence statute. In *Alison C. v. Wescott*, an Illinois case, the court denied the protective order under a descriptive approach,¹⁶⁴ stating, "The parties attended the same high school, had spoken on the telephone, and went on only a single lunch date. The relationship was brief and not exclusive. Any prospect of a romantic relationship was, in short, quashed at the outset."¹⁶⁵ Additionally, in *C.O. v. M.M.*, a Massachusetts case, the court, using the factor approach, determined that a dating relationship did not exist.¹⁶⁶ The parties had been to the young girl's house and had gone to the movies; however, the girl's mother could not identify the seriousness of the relationship.¹⁶⁷ Though "discretion and flexibility are appropriate in applying the statutory definition," particularly with a factor approach, the trial judge chose to apply the legislative criteria and not other factors, such as any criminal charges against the defendant or the age of the victim of that crime.¹⁶⁸ Neither of these victims qualified for a protective order.

The statutory use of a descriptive or factor approach did not matter in these cases, because both courts refused to acknowledge the existence of a dating relationship.¹⁶⁹ Though the teen did not receive an order of protection under the descriptive approach as hypothesized, neither did the teen under the factor approach. This suggests that the factor approach, as currently developed, may also have its limitations in circumstances of teen dating violence, and that teens may have even fewer avenues for inclusion in domestic violence laws than anticipated.

164. *Alison C. v. Wescott*, 798 N.E.2d 813, 817 (Ill. App. Ct. 2003).

165. *Id.*

166. *C.O. v. M.M.*, 815 N.E.2d 582, 589 (Mass. 2004). A seventeen year-old was accused of sexually assaulting a fifteen year-old. *Id.* at 585.

167. *Id.* at 588.

168. *Id.* at 589.

169. *Alison C.*, 798 N.E.2d at 817; *C.O.*, 815 N.E.2d at 589.

2. Differences in Application in Adult Dating Situations

Courts have more often considered the question of whether a dating relationship exists between adults. The California court in *Oriola* denied an order of protection to a victim under similarly limited contact circumstances, where the parties had been out a few times, had been alone once, and had spoken mostly over the telephone and through email.¹⁷⁰ The court stated that this relationship was brief and not exclusive, and it emphasized the fact that the victim did not expect or want any romantic involvement to develop.¹⁷¹ However, in the New Jersey case of *Andrews v. Rutherford*, the evidence clearly showed that the parties considered each other to be boyfriend and girlfriend, went out several times over several months, had an affectionate and sexual relationship, and met with one set of parents.¹⁷² Thus, though “the relationship had not reached the level of a lifetime commitment, it need not have to for the purpose of establishing the minimum conduct to establish a dating relationship [under the statute].”¹⁷³ Additionally, that one party does not disclose the existence of the relationship does not preclude a court from determining that the relationship does exist.¹⁷⁴

Some courts have not required exclusivity for qualification under a domestic violence statute, demonstrating a willingness to make “dating relationship” language more pliable. For example, a court in Massachusetts declared that the Massachusetts statute “does not preclude the possibility of a complainant’s being in more than one ‘substantive dating relationship’ at any one time.”¹⁷⁵ Even though the complainant was living with one man, she was eligible for a protective order against another man under the statute. Additionally, not all courts agree that a new or short-term relationship is not a dating

170. *Oriola v. Thaler*, 100 Cal. Rptr. 2d 822, 832-33 (Cal. Ct. App. 2000). As previously noted, California now has a statutory definition that is less restrictive than the definition used by this court. CAL. FAM. CODE § 6210 (West 2006). However, some states, such as Illinois, still employ a similar definition; thus, applications of it are instructive. See *Alison C.*, 798 N.E.2d at 817.

171. *Oriola*, 100 Cal. Rptr. 2d at 833. The appellant also told the respondent soon after their first date that she did not want to have a romantic relationship with him. *Id.*

172. *Andrews v. Rutherford*, 832 A.2d 379, 384-85 (N.J. Super. Ct. Ch. Div. 2003). There was also videotape evidence that showed the parties “enjoying themselves” on a couch at a party with other couples. *Id.* at 385.

173. *Id.* at 386.

174. *Id.*

175. *Brossard v. West Roxbury Div. of the Dist. Ct. Dept.*, 629 N.E.2d 295, 296 (Mass. 1994). She was his former girlfriend, who he saw two to three times a week. *Id.* Additionally, there was an emotional relationship and a sexual relationship during a fourteen month period. *Id.*

relationship; as one court explained, "[a] pattern of abuse [may carry] over from short-term relationship to short-term relationship."¹⁷⁶

With this information in mind, compare two Massachusetts cases, one with a teenaged couple and one with an adult couple. In *C.O. v. M.M.*, the court chose to focus solely on legislative principles when applying the statute to teens but took a more expansive approach when applying it to adults in *Brossard v. West Roxbury Division of the District Court Department*, a case in which the court determined that more than one substantive relationship could exist at the same time.¹⁷⁷ One explanation for this difference could be the age of the parties—the court simply chose to treat adults and minors differently when faced with dating violence situations. However, this difference in treatment is more likely attributable to the particular criteria set forth in the statute—i.e. the failings of the factor approach. For example, consideration of all of the statutory factors may allow for more than one dating relationship to exist simultaneously. Yet, those very same factors may not permit the court to consider such things as the age of the parties (and how relationship characteristics might differ because of their age) when evaluating whether the relationship falls under the statute. Thus, a court may apply the statutory criteria to teens in the same manner that it applies them to adults—and more than one teen dating relationship may exist at the same time—but only if that teen relationship meets adult relationship standards. This case law provides further evidence that, if teens are to be included in domestic violence statutes, factor approaches are in need of reform, as well.

Overall, some courts are willing to allow less serious and less lengthy relationships to fall under their states' statutes, while others adhere to a definition requiring seriousness and long-term commitment. But all courts look for something more than a casual relationship. Thus, the similarities and differences are much like those discussed in statutory or judicial determinations of the meaning of "dating relationship." In essence, a number of courts are more understanding of the varying degrees of dating and their legislatures' intentions to include a wider array of relationships, while other courts take a narrower view of dating and construe "dating relationship"

176. *People v. Rucker*, 25 Cal. Rptr. 3d 62, 69 (Cal. Ct. App. 2005). Over a nine-month period, a couple had been intimate when Watson was in town and had communicated their affection over the phone when he was not in town. *Id.* at 70. Though both acknowledged that they were dating, Rucker alone believed that it was serious and that they may get married. *Id.* Nonetheless, the court found this to be "substantial evidence" of a dating relationship. *Id.*

177. *C.O. v. M.M.*, 815 N.E.2d 582, 589 (Mass. 2004); *Brossard*, 629 N.E.2d at 296.

language to mean something more like the relationships already protected under domestic violence statutes.

C. The Effect of Exclusion on Teens

Some progress against teen dating violence has been made: the availability of the courts to teenage petitioners, when accompanied by an adult; the age exceptions in the petitioning process; and the law's willingness to allow young people to obtain orders of protection against other young people. But this response is insufficient to protect young people in violent relationships. Simple inclusion of "dating relationship" language in a statute is not enough to protect teenagers from dating violence and, in fact, may continue to exclude teenagers from domestic violence statutes. As Part III.B.1 indicates, teens often do not qualify for protection under either approach to "dating relationship."

Yet, due to the dearth of cases, one only can speculate about the possible outcomes. When teenagers get into court, states with descriptive approaches usually require "serious" courtships and the "expectation of affection or sexual involvement." How many teen relationships fall into this category, and how many teens will admit that there is "sexual involvement"? Under a factor approach, teens may emphasize the most relevant aspects of their relationships; they can hold back potentially embarrassing details without ruining their ability to receive protection. However, as the previous Section demonstrates, even the current factor approach may not be permissive enough. Courts still retain the discretion to weigh statutory factors as they see fit and to limit those factors to the specific wording in the statute. Indeed, the statutory language is as important as the court's ultimate power to grant the order in light of the statute. Thus, it is not clear that teens will actually be able to get an order of protection when one is needed, and despite some theoretical advancement in the law, teens may in practice be excluded from domestic violence statutes, robbing them of the protection they need and deserve. As one commentator put it, "[e]xcluding minors from the coverage of domestic violence statutes effectively prohibits youth from obtaining the relief offered by truly remarkable legal developments that aim to curb the incidence of violence and to assist victims."¹⁷⁸

This failure to include teens "denies benefits and services to a group which arguably has the greatest need for such services."¹⁷⁹ As

178. Levesque, *supra* note 26, at 362.

179. *Id.* at 364.

the California court in *Oriola* explained, many instances of "domestic violence in a dating relationship must . . . be handled through the harassment order," which provides "less protection and can be a financial burden for petitioners."¹⁸⁰ Teens, therefore, are at risk for receiving less protection at a higher cost. Teens also may have to enter juvenile courts, which focus more upon rehabilitation of the perpetrator.¹⁸¹ Adult battered women often receive the benefit of witness and victim programs; if teen dating violence is recognized, young people can obtain those services, as well.¹⁸²

Adults and teens share many similarities, as well, and each age group should be eligible for protective orders. Marriage and dating relationships have much in common. There is a great degree of interaction, time spent together, and shared activities; the couples know much about each other, influence one another, and have a likelihood of conflict due to shared roles and responsibilities.¹⁸³ When violence begins in both teen and in adult relationships, the cycles of abuse, the types of victims, and the reactions and motivations are the same, and the psychological impacts are just as severe.¹⁸⁴ Dating violence is as prevalent as traditional domestic violence,¹⁸⁵ and teen dating violence is no exception. Without protection, more victims will be injured or killed and more abusers will be allowed to perpetrate violence. Policymakers often believe that the problem has been addressed when, in fact, young people have become even more vulnerable.¹⁸⁶ Young people will continue to suffer from violent relationships, and the rate of teen dating violence could even rise, unless public officials stop adopting "one-size-fits-all" policies for teens and adults, as these leave minors without "meaningful redress or access."¹⁸⁷

Excluding young people from domestic violence statutes also impacts society. When teens cannot get protection orders issued against teen abusers, those young abusers learn that the system does not punish them for their actions.¹⁸⁸ As one author put it, "[i]f largely ignored by society and the legal system, a whole new generation's acts

180. *Oriola v. Thaler*, 100 Cal. Rptr. 2d 822, 829 (Cal. Ct. App. 2000).

181. Levesque, *supra* note 26, at 364.

182. *Id.*

183. Sugarman & Hotaling, *supra* note 35, at 4.

184. Suarez, *supra* note 25, at 430.

185. Klein & Orloff, *supra* note 118, at 836-37.

186. SANDERS, *supra* note 1, at 2.

187. *Id.*

188. Suarez, *supra* note 25, at 424.

of violence will be cultivated and condoned.”¹⁸⁹ The legal system cannot continue to excuse teenage dating violence through inaction without risking the future relationships of all teenagers and of society as a whole.

IV. REFINING THE MEANING AND APPLICATION OF “DATING RELATIONSHIP”

A. A New Approach

There are four ways in which the legal system should adapt itself so as to better protect victims of teenage dating violence. First, those states that have not yet added dating relationship language to their domestic violence statutes should revise them to specifically include individuals in dating relationships. Second, state legislatures should further amend their statutes to incorporate a factor approach for the determination of the existence of a dating relationship. Third, these factors should include a consideration of the age of the parties in order to evaluate properly the nature of the dating relationship. A newly amended statute could read:

- (a) The following factors may be considered when evaluating the existence of a dating relationship:
 1. The nature of the relationship;
 2. The frequency and type of interaction;
 3. The duration of the relationship; and
 4. The amount of time since the relationship has been terminated, if applicable.
- (b) These factors shall not be exclusive and other considerations may be taken into account. Additionally, none of these factors is dispositive, and any may be weighed according to the particular situation before the court.
- (c) All of these factors shall be considered in light of the age of the parties involved, but age shall not be an impediment to the issuance of an order of protection.

189. *Id.*

Finally, courts should consider the ages of the parties when providing remedies for the victim and punishments for the perpetrators.

At the outset, state legislatures should rewrite their domestic violence statutes to cover people in dating relationships. States can accomplish this by adding dating relationships to the list of other protected relationships. Since the time that dating became an accepted practice, people now "go steady" at increasingly younger ages and marry at increasingly older ages.¹⁹⁰ Correspondingly, the period of dating time is lengthening.¹⁹¹ As a result, the dating relationship has become "an end in itself rather than just a part of the courtship process."¹⁹² Legislatures should integrate this understanding of human relationships into domestic violence statutes by including dating relationships under the purview of statutory protection. Over the last decade and a half, various authors have made similar proposals for statutory amendments to domestic violence statutes.¹⁹³ For instance, Professor Suarez proposed a model statute that would define intimate violence as violence among household or family members and among intimate partners, a definition including a person of any age who is involved in a dating or engagement relationship.¹⁹⁴ Additionally, these changes would be made to existing domestic violence statutes, incorporating dating violence, and particularly teen dating violence, into traditional domestic violence statutes to ensure that victims of all ages were treated in the same manner.¹⁹⁵

Suarez also suggested that the amended statute should list factors for courts to consider in determining whether a "dating relationship" exists, such as the duration and nature of the relationship and the amount of time that the parties spend together.¹⁹⁶ In addition to these factors, an amended statute should take account of the type of interaction and the amount of time since the termination of the relationship. Therefore, the factors provided in the proposed statute include: the nature of the relationship, the frequency and type of interaction, the duration of the relationship, and the time since the relationship has terminated, if applicable. Though some states have

190. Riggs & O'Leary, *supra* note 51, at 53-54.

191. *Id.* at 54.

192. *Id.*

193. See, e.g., Suarez, *supra* note 25, at 449 (calling for state legislatures to amend civil and penal domestic violence statutes to include people of all ages who are in dating relationships); see also Brustin, *supra* note 28, at 349-50 (making similar suggestions for statutory reform).

194. Suarez, *supra* note 25, at 449.

195. *Id.*

196. *Id.*

adopted some of these or similar changes, all states need to update their statutes to include a greater number of factors like those in the suggested statute.

Sexual relations and seriousness or an expectation of future involvement have been removed from the equation entirely under the suggested regime, though of course such characteristics could be considered by the court if they exist for the couple at issue. Because dating has become an end in itself, couples may not intend to marry but may still have a present commitment to one another.¹⁹⁷ Even courts have noticed this fact. In *Oriola*, the California court stated that “the new system of dating added new stages to courtship and multiplied the number of partners (from serious to casual) an individual was likely to have before marriage.”¹⁹⁸ Customs related to dating are constantly changing.¹⁹⁹ Additionally, young people socialize more and more through “mixed-sex group socializing,” a replacement of “one-on-one couple dating.”²⁰⁰ They also are engaging in exclusive, but not “mate-choice oriented,” relationships.²⁰¹ Thus, exclusivity in today’s dating relationships does not necessarily mean one-on-one outings, nor does it mean the expectation of future affectionate involvement. Rather, modern dating, especially among teens, can take many forms and should be recognized with an understanding of these various forms.

Such factors may, however, be considered by a court and may aid a victim in proving the existence of the relationship, which leads to the next point. The statute also should include an instruction to courts that none of the factors will be dispositive, not all of the factors need to be taken into account, some factors may be weighed more than others, and other considerations should be included in the ultimate determination. In the proposed statute, there is discretion for the court to make case-by-case evaluations in the permissive “may be considered” language in section (a) and the statements in section (b). Of course, it is possible that a court will use this discretion to prevent young people from obtaining orders of protection, even because of their age. However, the section (c) seeks to counteract this possibility.

Third, statutes should include a factor that acknowledges the age of the parties in the relationship. This age factor should be an overarching factor, one that is considered in relation to all of the other listed factors, and should be contemplated in every decision. However,

197. Riggs & O’Leary, *supra* note 51, at 53-54.

198. *Oriola v. Thaler*, 100 Cal. Rptr. 2d 822, 829 (Cal. Ct. App. 2000).

199. *Id.*

200. *Id.* at 830.

201. *Id.*

it should not be the only means for a court to determine that a dating relationship does not exist. Thus, the commanding "shall be considered" language in section (c) of the proposed statute indicates that courts must think about the age of the victim and abuser when applying these factors, but precludes the use of age as the sole reason to refuse issuance of an order of protection.

Instead of an age factor like the "nature" or "duration" factors found in section (a), courts should use the discretion that they are granted in domestic violence statutes to interpret the "nature of the relationship" language broadly. The nature of the relationship includes the activities in which the parties partake, how the parties interact with one another, and any other circumstances surrounding the type of relationship itself. These considerations naturally implicate the characteristics of the persons involved—including the age of the parties. For example, two eighty year-olds may go to lunch or dinner together, as do couples of all ages. But one or both could reside in a nursing home, where their activities would be regulated and severely limited. They may not be able to date as other adults do. Two twenty-five year-olds, however, may go to dance clubs, parties, exotic locations, and engage in more common romantic dating activities. Surely a court would factor in these circumstances when considering the nature of each couple's relationship. This same courtesy should be afforded to minors as well as to adults.

It may appear inconsistent to argue that age should not matter when it comes to the inclusion of people under domestic violence statutes but that it should matter when it comes to the application of domestic violence statutes. Courts should consider the ages of the parties, though—in essence a part of the nature of a teen dating relationship—when determining the existence of a dating relationship. A one-size-fits-all approach²⁰² to both adult and teen relationships will not work, because teen dating relationships differ from adult dating relationships and because teen dating violence differs from adult domestic violence. For example, teen dating violence most often takes place at a parent's home, in a car, or outside, and these incidences typically occur on the weekend.²⁰³ Often, groups of young people go to the movies or to the mall together. Additionally, young people have curfews and school activities at night, during the week, and on weekends. For these reasons, couples may not spend as much time "dating" as they spend doing school work or playing sports. Teens do not have the financial resources of adults, and some of them cannot

202. SANDERS, *supra* note 1, at 2.

203. Sugarman & Hotaling, *supra* note 35, at 11.

drive, which limits the places that teens can go when they want to spend time with each other. All of these things influence the basic factors and definitions for "dating" provided in many statutes. The nature of the relationship may not seem very serious, and the type of interaction may seem group-oriented and friendly, as going to the movies or mall or sitting at a parent's house may not conjure up images of romance. However, these are among the things that young people do when they are in dating relationships.

Finally, the court's consideration of age should not end with a determination that a dating relationship between the young people exists. The court also should consider age when deciding upon the remedy to be provided. For example, when two teens attend the same high school, a "stay away" order may be unworkable,²⁰⁴ instead, school officials should be involved and should provide adequate protection to the victim. Additionally, services that are available to adult women, such as counseling, should be included for teen victims in an effort to prevent those victims from engaging in abusive relationships repetitively. Remedies for the perpetrators should not be forgotten, either, because young abusers turn into adult abusers.²⁰⁵ Thus, rehabilitation could and should be employed by courts in an effort to prevent abusers from engaging in violence in their future relationships.

B. Objections to and Limitations of a New Approach

There are a number of possible objections to the inclusion of young people in domestic violence in the manner suggested by this Note. There also are a number of limitations that any legal attempt to provide protection faces. This Section attempts to deal with those concerns.

Opponents may argue that, regardless of the proposed methods for reform, teen relationships should not receive protection under domestic violence statutes at all. The most cited arguments are that teen dating violence is not that same as traditional domestic violence, is not as prevalent as traditional domestic violence, and that it does not exist at all.²⁰⁶ These contentions already have been addressed; teen dating violence is not that different from nor is it less prevalent than adult domestic abuse.²⁰⁷ Opponents also raise familial and moral objections. They state that serious teen relationships or sexual activity

204. SANDERS, *supra* note 1, at 142-43.

205. Suarez, *supra* note 25, at 424.

206. *Id.* at 450.

207. *Id.* at 430.

should not be condoned and that the family, rather than the courts, should handle these problems.²⁰⁸ However, teens will continue to date, and though these adults may raise their children as they wish, such moral objections must be subordinated when the lives of young people are at risk.²⁰⁹ As to related legal concerns, parents will be involved in the court proceedings under the current laws of nearly every state. Minors do not have the same legal rights as adults, so adults will not be left in the dark when it comes to their children.²¹⁰

Other objections include the difficulty in defining "dating relationship" and the existence of generic civil protection orders and criminal laws.²¹¹ These arguments fail to take account of the fact that courts and legislatures have found ways to define "dating relationship" and the fact that domestic violence statutes arose because of the inadequate protection offered by these other laws.²¹² Finally, opponents claim that teens require specialized services and should not be grouped with adults.²¹³ True as this statement is (indeed, these differences have been stressed throughout this Note), these differences do not justify denying teens the same basic protections afforded to adults.²¹⁴ As the proposed statute demonstrates, definitions for young people and adult victims can be codified together while still allowing courts to use their discretion and to prescribe appropriate remedies based on age.

Including dating relationships in domestic violence statutes should not mean including every teen relationship, just as it should not mean including every adult relationship. Instead, legitimate, actual relationships among young people should be protected just as adult relationships are protected, because teen dating violence exists, just as domestic violence exists. State and federal legislators seem to want to protect young people from this epidemic of violence.²¹⁵ If statutes contain "dating relationship" language, they need to be effective; if courts are confronted with young people in dating relationships, they need to know how to respond.

208. *Id.* at 450-51. This is not to say that these opponents do not want the state to protect young people from violence.

209. *Id.* at 450.

210. *Id.* at 451.

211. *Id.*

212. *Id.*

213. *Id.* at 450.

214. *Id.*

215. See *supra* notes 20-24 and accompanying text (discussing actions in Congress and in various states to promote awareness and prevention of teen dating violence).

It should be noted that even if the objections are refuted, there are limitations to any legal approach. In short, (and to quote a common cliché) you can lead a horse to water but you cannot make him drink—statutes can be amended so that orders can be granted more often, but help can be given only if and when victims ask for it. If young people cannot petition the court or if they choose not to seek legal assistance (for any number of reasons), statutory innovations may prove quite irrelevant. But for those victims who do utilize the system, accessibility will be quite meaningful and may even save lives. Those lives, those individuals, make the changes worthwhile, and maybe even necessary.

CONCLUSION

The law can do many things. It has the potential to protect and save many victims from the horrors of abuse. Yet, there are some things that the law cannot do and events that cannot be prevented. These failings should not discourage progress; rather, they should fortify the resolve to protect and save those who can be saved. Current domestic violence laws and the proposals herein likely could not have saved Lisa Santoro, a victim of a sudden and tragic violent event, because there simply are human losses that the law cannot prevent. But such laws could have protected Cheryl, who experienced emotional and physical abuse at the age of fifteen. Young people can and should be protected whenever possible, and domestic violence statutes are a vehicle to such salvation.

This Note has attempted to show the prevalence and severity of teen dating violence, its link to domestic violence, and its effect on teens. In response to this growing epidemic, states have reformed their domestic violence laws in ways that enable young people to petition for and receive orders of protection. Much of this reform centers on the inclusion of “dating relationship” language. Legislatures and courts vary in their interpretations of this language’s meaning and some approaches open the door to the recognition of a greater number of dating relationships. Though a definitional approach to “dating relationship” language covers some such relationships, a factor approach can encompass relationships of a variety of lengths, characteristics, and degrees of seriousness.

All states should adopt “dating relationship” provisions and all states should use a factor approach to determine the existence of a dating relationship. But the progress must not stop there. Dating relationships among adolescents and teens are different than dating relationships among adults. Thus, state statutes should require courts

to consider the age of the victim and her abuser when examining dating relationship factors. In the alternative, courts should use their interpretive discretion to incorporate the age of the parties into the statutorily provided "nature of the relationship" factor. With this continued reform, state domestic violence statutes become better equipped to protect teenaged victims of dating violence. Only then will domestic violence statutes move one step closer to saving the Cheryls of the world.

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