

A LACK OF CIVILITY: HOW NEW JERSEY LAW FAILS TO PROTECT WOMEN

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I. INTRODUCTION

M.R. had been living in New Jersey for six years when he met A.R. in 1985.¹ The two became romantically involved and moved to Mississippi in 1987, where they were married shortly after the birth of their first child.² They had two more children and moved back and forth between Mississippi and New Jersey several times during their marriage before settling in Mississippi in 1989.³ The marriage began to deteriorate soon thereafter and A.R. was increasingly subjected to various forms of domestic violence.⁴ The mental and physical abuse reached its apex on April 4, 2000, when M.R., unprovoked, jumped on top of A.R. as she laid in bed.⁵ M.R. proceeded to pin her down, yanking her hair and repeatedly punching her in the face, neck, and jaw.⁶ Her resistance was futile. Her cries for help only served to worsen the situation, causing A.R. to dig the barrel of his gun into her temple and threaten to blow her brains out “all over th[e] wall.”⁷

After receiving emergency care at the hospital later that night, A.R. took her children and fled to her sister’s home in New Jersey.⁸ But M.R. had previously threatened to kill the entire family,

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¹ *A.R. v. M.R.*, 799 A.2d 27, 28–29 (N.J. Super. Ct. App. Div. 2002).

² *Id.* at 29.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *A.R.*, 799 A.2d at 30.

⁸ *Id.*

including himself, if she ever tried to leave him.⁹ M.R. called the house repeatedly over the next few days in an effort to locate his family.¹⁰ A.R. was able to obtain an ex parte temporary restraining order (TRO) less than a week later as a result of the fear created by M.R.'s phone calls, thus preventing him from contacting A.R.¹¹ *A.R. v. M.R.* manifests the crucial role that a domestic violence protective order can serve in the effort to protect a woman from violence.

By contrast, *S.P. v. City of Newark* illustrates the potential limitations of the current New Jersey domestic violence laws by emphasizing their exclusive nature.¹² In *S.P.*, the plaintiff lived in a boarding house across the hall from Louis Santiago, Jr. ("Santiago")—her eventual attacker.¹³ She contacted the police after Santiago made sexual advances and grabbed her inappropriately.¹⁴ But S.P. had no ability to obtain a civil protection order, due to gaps in New Jersey law.¹⁵ The police did not make an arrest and failed to remove Santiago from the premises.¹⁶ Santiago sexually assaulted S.P. the next morning.¹⁷

The current law in New Jersey leaves a class of potential victims in danger because it does not protect those who are not involved in a specific, statutorily-defined relationship.¹⁸ The New Jersey Prevention of Domestic Violence Act of 1991 (PDVA or the Act) defines a "victim of domestic violence" as:

any person who is [eighteen] years of age or older or who is an emancipated minor and who has been subjected to domestic violence by a spouse, former spouse, *or any other person who is a present or former household member*. "Victim of domestic violence" also includes any person, regardless of age, who has been subjected to domestic violence by a person with whom the victim has a child in common, or with whom the victim anticipates having a child in common, if one of the parties is pregnant. "Victim of domestic violence" also includes any person who has been subjected to domestic violence by a person with whom the victim has

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² See *infra* Part V; *S.P. v. Newark Police Dept.*, 52 A.3d 178 (N.J. Super. Ct. App. Div. 2012).

¹³ *S.P.*, 52 A.3d at 180.

¹⁴ *Id.*

¹⁵ See N.J. STAT. ANN. §§ 2C:25-17-35 (West 2011); see also *infra* Part III.

¹⁶ *S.P.*, 52 A.3d at 181.

¹⁷ *Id.*; see *infra* Part V.

¹⁸ See §§ 2C:25-17-35.

had a dating relationship.¹⁹

Those who fall outside the scope of this definition cannot obtain a civil protection order under any circumstances.²⁰ Additionally, the judiciary must determine who constitutes a “household member,” as that term is not defined under the statute. This ambiguity can threaten potential victims, making it harder for them to immediately obtain a TRO.

Santiago’s assault was disgraceful, but it was unclear whether it was an act of domestic violence under New Jersey law because it was questionable whether the judiciary would conclude that Santiago and S.P. were “household members” under the PDVA.²¹ Such violence and the corresponding lack of protection given to the victim is representative of a chasm that exists under current New Jersey law. In accordance with legislative intent, the judiciary has justifiably interpreted the domestic violence protection laws liberally to afford sweeping protection to victims.²² Still, if the judiciary was to further expand its interpretation of “household member,” it would offer recourse to victims whom the Act was not intended to protect.²³ Specifically, the Act is intended to protect victims of domestic violence only.²⁴ Thus, the law necessarily leaves certain victims without recourse. These victims may include any woman sexually assaulted by a co-worker, classmate, acquaintance, stranger, or even a friend she has not dated. Therefore, New Jersey must enact a separate civil-remedy statute to safeguard these potential victims from domestic violence.

This Comment will examine a victim’s ability to obtain redress in New Jersey for acts of violence committed by an acquaintance or a stranger. Specifically, it will examine how New Jersey law applies to women who may not fall within the traditional definition of what constitutes a “household member” under the PDVA. Part II of this Comment takes a historical look at domestic violence. Part III explains the role of civil protective orders and their ability to safeguard potential victims. Specifically, it examines Maryland law and its use of civil protection orders. Part IV then reviews the law under the PDVA. Part V examines *S.P. v. City of Newark*, a case recently decided by the Appellate Division, to illustrate why New

¹⁹ § 2C:25-19(d) (West 2011) (emphasis added).

²⁰ See §§ 2C:25-17–35.

²¹ See *id.*

²² See *infra* Part V.A.

²³ See *infra* Part V.

²⁴ See *infra* Part II.A.

Jersey must allow potential victims to obtain protective orders outside of the domestic violence context. This section examines how courts in New Jersey have interpreted the term “household member” under the statute and the resulting implications for women such as S.P. Finally, Part VI will discuss New Jersey’s options to address the situation and change its current law. This Comment will argue that New Jersey should add a statute that allows a potential victim the ability to obtain a civil protective order under New Jersey civil law.

II. THE BACKGROUND ON DOMESTIC VIOLENCE

Domestic violence is an epidemic.²⁵ Every nine seconds in the United States, a woman is assaulted or beaten.²⁶ Domestic violence accounts for more injuries to women than car accidents, muggings, and rapes combined.²⁷ It is the leading cause of injury to women in the United States²⁸ and also “accounts for twenty percent of all non-fatal [sic] crime experienced by women in [this country].”²⁹ The cost of intimate-partner violence alone in the United States exceeds \$5.8 billion each year—\$4.1 billion of which goes to direct medical and health care services, while productivity losses account for nearly \$1.8 billion.³⁰

Domestic violence is defined as the “willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior perpetrated by an intimate partner against another.”³¹ It affects people of all ages, economic statuses, races, religions, and educational backgrounds.³² Despite such revealing statistics, domestic violence has not always figured so prominently in our collective consciousness as a societal issue. Historically, domestic violence was viewed as a private matter and not the concern of the criminal justice system or society as a whole.³³ Thus, common law courts protected a

²⁵ See *Cesare v. Cesare*, 713 A.2d 390, 391 (N.J. 1998).

²⁶ DOMESTIC VIOLENCE STATISTICS, <http://domesticviolencestatistics.org/domestic-violence-statistics/> (last visited Dec. 6, 2012).

²⁷ *Id.*

²⁸ *Id.*

²⁹ Tom Lininger, *The Sound of Silence: Holding Batterers Accountable for Silencing Their Victims*, 87 TEX. L. REV. 857, 867 (2009).

³⁰ DOMESTIC VIOLENCE STATISTICS, *supra* note 26.

³¹ *Domestic Violence Facts*, NAT’L COALITION AGAINST DOMESTIC VIOLENCE, [http://www.ncadv.org/files/DomesticViolenceFactSheet\(National\).pdf](http://www.ncadv.org/files/DomesticViolenceFactSheet(National).pdf) (last visited Feb. 6, 2012).

³² *Id.*

³³ Davis Jaros, *The Lessons of People v. Moscat: Confronting Judicial Bias in Domestic Violence Cases Interpreting Crawford v. Washington*, 42 AM. CRIM. L. REV. 995, 1000 (2005).

man's right to use domestic violence as a tool to manage his household.³⁴

Western law provided a man with the right to chastise to his wife, allowing sanctioned violence against women according to the common-law "rule of thumb."³⁵ This rule allowed a husband to beat his wife with a stick, so long as the stick was no wider than his thumb.³⁶ Thus, courts were very reluctant at common law to get involved in family matters. The rule's proponents justified it "as a natural and necessary right of control, incident to the man's role as head of the family."³⁷ This was reflective of the widely held societal view that family was its own private entity.³⁸

The North Carolina Supreme Court captured the prevailing sentiment of the times in *State v. Rhodes*: "We will not inflict upon society the greater evil of raising the curtain upon domestic privacy, to punish the lesser evil of trifling violence."³⁹ Three years later, Alabama became the first state to rule that a husband did not have the right to beat his wife.⁴⁰ The Alabama Supreme Court held that a "wife is entitled to the same protection of the law that the husband can invoke for himself."⁴¹ By the end of the nineteenth century, three states had adopted laws against domestic violence that made wife-beating a punishable offense.⁴²

The feminist movement of the 1960s brought a heightened attention to family violence, which motivated the establishment of rape crisis centers and battered women's shelters.⁴³ California founded one of the first battered women's shelters in 1964.⁴⁴ The

³⁴ *Developments in the Law: Legal Responses to Domestic Violence: III. New State and Federal Responses to Domestic Violence*, 106 HARV. L. REV. 1528, 1528 (1993) (citing *State v. Rhodes*, 61 N.C. (Phil.) 453, 456–57 (1868)).

³⁵ See James Martin Truss, Comment, *The Subjection of Women . . . Still: Unfulfilled Promises of Protection for Women Victims of Domestic Violence*, 26 ST. MARY'S L.J. 1149, 1157 (1995).

³⁶ Betsy Tsai, *The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation*, 68 FORDHAM L. REV. 1285, 1288 (2000).

³⁷ Truss, *supra* note 35, at 1157 (citing *Hand v. Hand*, 133 N.W.2d 63, 68 (Iowa 1965)).

³⁸ Tsai, *supra* note 36, at 1288.

³⁹ *Rhodes*, 61 N.C. (Phil.) 453, 459 (1868).

⁴⁰ See *Fulgham v. State*, 46 Ala. 143 (1871).

⁴¹ *Id.* at 147.

⁴² Tsai, *supra* note 36, at 1289 (citing Eve S. Buzawa & Carl G. Buzawa, *Domestic Violence: The Criminal Justice Response* 174–75 (James A. Inciardi ed., 2d ed. 1996)). Nine other states were also considering stronger laws against wife-beating. *Id.*

⁴³ *Id.* at 1290.

⁴⁴ *Id.* (citing JEFFREY FAGAN, NATIONAL INSTITUTE OF JUSTICE RESEARCH

feminist movement was an integral part of the initial realization that domestic violence had become a significant social problem. “Feminists were vocal, organized, and effective in their efforts to persuade the government that domestic violence was not acceptable.”⁴⁵

It was also during this period that the phrase “domestic violence” came to be understood as synonymous with wife abuse.⁴⁶ The term was previously used to refer to general violence such as sixties-era ghetto riots or urban terrorism.⁴⁷ Government involvement in domestic violence included the proliferation of new shelters, intervention programs, and published studies. For example, “the first batterer-intervention programs were created [in 1975],” conclusively framing the domestic violence issue as “the man’s problem.”⁴⁸ A variety of legislative and policy reforms were enacted in the 1980s, including specialized prosecution units for domestic violence, increased intervention programs, and protection orders that allowed for improved access to emergency orders.⁴⁹ Still, many viewed this legislation as “an attack on the American family, and a means of funding feminist causes.”⁵⁰

Despite this view, “states substantially expanded their laws on domestic violence during the 1970s and 1980s.”⁵¹ The reforms also

REPORT: THE CRIMINALIZATION OF DOMESTIC VIOLENCE: PROMISES AND LIMITS 6–9 (1996)).

⁴⁵ Aya Gruber, *The Feminist War on Crime*, 92 IOWA L. REV. 741, 793 (2007).

⁴⁶ Tsai, *supra* note 36, at 1290.

⁴⁷ *Id.* (citing ELIZABETH PLECK, DOMESTIC TYRANNY: THE MAKING OF SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT 194 (1987)).

⁴⁸ *Id.* (citing PLECK, *supra* note 46, at 192). According to the United States Department of Justice, eighty-five percent of domestic violence victims are women. See Callie Marie Rennison, *Bureau of Justice Statistics Crime Data Brief: Intimate Partner Violence, 1993–2001*, U.S. DEP’T OF JUSTICE (Feb. 2003), <http://bjs.ojp.usdoj.gov/content/pub/pdf/ipv01.pdf>. Although the focus of this Comment is to manifest the plight of women as victims of violence, this Comment does not deny or minimize the existence of male victims. The author intends his use of female pronouns throughout the Comment as gender inclusive and uses such terms because victims are statistically more likely to be women. For a discussion on heterosexual men as victims of domestic violence and bias in the application of domestic violence laws, see Amanda J. Schmesser, Note, *Real Men May Not Cry, But They Are Victims of Domestic Violence: Bias in the Application of Domestic Violence Laws*, 58 SYRACUSE L. REV. 171 (2007); see also *Silver v. Silver*, 903 A.2d 446 (N.J. Super. Ct. App. Div. 2006).

⁴⁹ Tsai, *supra* note 36, at 1290–91 (citing FAGAN, *supra* note 44, at 9).

⁵⁰ Bernadette Dunn Sewell, Note, *History of Abuse: Societal, Judicial, and Legislative Responses to the Problem of Wife Beating*, 23 SUFFOLK U. L. REV. 983, 999 (1989).

⁵¹ Ruth Colker, *Marriage Mimicry: The Law of Domestic Violence*, 47 WM. & MARY L. REV. 1841, 1857 (2006).

tended to occur in a piecemeal fashion, starting with protection and relief for victims in marital relationships and then extending to other people who appeared to be in a marriage-like relationship.⁵² Even after instituting laws that criminalized domestic violence, enforcement conduct remained inadequate, so legislatures instituted mandatory arrest policies for domestic violence situations.⁵³ But mandatory arrest policies do not assist women like S.P., who are not victims of “domestic” violence arising from a relationship. As demonstrated by the case of *S.P.*, the protections offered by domestic violence laws are not all-inclusive and leave some women unprotected.

Today, all states enforce their domestic violence laws through enhanced criminal penalties as well as civil protection orders.⁵⁴ States fall into four vastly different categories with respect to the protection of adult victims of domestic violence.⁵⁵ State domestic violence laws may cover: (1) only individuals in opposite-sex relationships; (2) individuals in a “dating relationship”; (3) individuals who live in the same household; or (4) individuals in same-sex relationships.⁵⁶ The focus of this Comment predominantly involves the treatment of individuals who live in the same “household” and those with a prior dating relationship.

New Jersey responded to domestic violence by enacting the PDVA, which offers broad protection to many of those who fall into the aforementioned categories.⁵⁷ The New Jersey Legislature passed the PDVA “to assure victims of domestic violence the maximum protection from abuse the law can provide.”⁵⁸ A “victim of domestic violence” includes any person “who is eighteen years of age or older or who is an emancipated minor and who has been subjected to domestic violence by a spouse, former spouse, or any other person who is a present or former household member.”⁵⁹ The statute does not define the term “household member,” although New Jersey courts have liberally construed the term.⁶⁰ Despite its liberal

⁵² *Id.*

⁵³ Jane Stoeber, *Freedom from Violence: Using The Stages of Change Model to Realize the Promise of Civil Protection Orders*, 72 OHIO ST. L.J. 303, 314 (2011).

⁵⁴ Colker, *supra* note 51, at 1857.

⁵⁵ *Id.*

⁵⁶ *Id.* at 1857–58.

⁵⁷ See N.J. STAT. ANN. § 2C:25-19(d) (West 2011).

⁵⁸ *Sperling v. Teplitsky*, 683 A.2d 244, 246 (N.J. Super. Ct. Ch. Div. 1996) (citations omitted).

⁵⁹ § 2C:25-19(d).

⁶⁰ See *Cesare v. Cesare*, 713 A.2d 390, 393 (N.J. 1998).

construction, the PDVA leaves women residing in community housing unprotected by New Jersey law.⁶¹

Domestic abuse pervades all social and economic levels, but women of lower socio-economic status are at a higher risk of becoming victims of domestic violence.⁶² Some studies even suggest that domestic violence is a major cause of poverty.⁶³ But poor women who reside in boarding houses are not necessarily protected from violence under the PDVA.⁶⁴ Despite substantial progress in legal remedies for domestic violence victims of all economic levels in New Jersey, the law does not provide victims of acquaintance and stranger violence with the same protection and remedies.⁶⁵ Therefore, New Jersey's domestic violence law is not overly inclusive, since it leaves certain victims unprotected. Although S.P. was tragically victimized, she was left vulnerable and unable to obtain a civil protection order because it was questionable whether or not she was involved in a domestic violence incident as defined by the PDVA.⁶⁶

III. CIVIL PROTECTION ORDERS

The past several decades of domestic violence law reform have focused on criminalizing domestic violence and thus remedying domestic violence problems through criminal penalties.⁶⁷ Nevertheless, by 1993, every jurisdiction in the country had enacted *civil* protection order laws pursuant to their domestic violence statutes.⁶⁸ One of the most commonly utilized remedies for domestic abuse is a civil order of protection, which is an injunctive protection order, often granted *ex parte*, that the court issues to impose restrictions on a person's future behavior.⁶⁹ The order may prohibit any contact between the parties, allow contact but forbid abusive

⁶¹ See *infra* Part V.

⁶² Elizabeth J. Thomas, *Building a Statutory Shelter for Victims of Domestic Violence: The United States Housing Act and Violence Against Women Act in Collaboration*, 16 WASH. U.J.L. & POL'Y 289, 293 (2004).

⁶³ *Id.* (citing Joan Meier, *Domestic Violence, Character, and Social Change in the Welfare Reform Debate*, 19 LAW & POL'Y 205, 206 (1997)).

⁶⁴ See *infra* Part V.

⁶⁵ See *infra* Part IV.

⁶⁶ See also *Sandoval v. Mendez*, 521 A.2d 1168 (D.C. 1987) (holding that a woman was not entitled to a civil protection order, despite that she used to live with her attacker and was beaten in her own home). The court reasoned that the parties did not share an intimate relationship and thus she had no right to a protective order. *Id.* at 1169.

⁶⁷ Stoeber, *supra* note 53, at 305.

⁶⁸ *Id.* at 306 (emphasis added).

⁶⁹ Tsai, *supra* note 36, at 1292.

behavior, or address issues such as mandated counseling, child custody, visitation, and support.⁷⁰ Given the choice between a criminal and civil remedy, victims frequently utilize the civil justice system in their efforts to prevent violence because a civil protection order is easier to obtain than a criminal protection order.⁷¹

Scholars have advocated the use of civil protection orders as a result of positive victim feedback, their proven effectiveness, and the autonomy-promoting character that is associated with enhanced safety.⁷² One study that measured the efficacy of protection orders found that when a woman applied and qualified for a protection order, she experienced a “rapid and significant decline in violence.”⁷³ Although both can be utilized to prevent future violence, a woman must rely on criminal courts for protection when the law precludes her from obtaining a civil protection order.⁷⁴ Victims of violence or sexual assault who cannot receive protection under domestic violence laws can potentially receive protection under criminal laws such as stalking or assault and battery.⁷⁵ But a civil protection order offers several basic advantages over a criminal order of protection, and, consequently, civil protection orders are now the most frequently used legal remedy to address intimate partner violence.⁷⁶

The comparative benefits offered by a civil protection order are among the reasons that New Jersey should amend its laws to adopt such orders as a remedy for those involved in non-intimate partner violence.⁷⁷ First, a permanent civil order of protection can be granted more quickly than a criminal order of protection.⁷⁸ Second, courts apply a lower standard of proof⁷⁹: in most states, a victim must only

⁷⁰ *Id.*

⁷¹ Stoever, *supra* note 53, at 308 (citing Susan Keilitz, *Improving Judicial System Responses to Domestic Violence: The Promises and Risks of Integrated Case Management and Technology Solutions*, in *Handbook of Domestic Violence Intervention Strategies* 147, 149 (Albert R. Roberts ed., 2002) (“finding that survivors are more likely to seek relief from violence solely in the civil system through protection orders, as compared to using the criminal justice system”).

⁷² *Id.* at 318–19.

⁷³ *Id.* at 319 (citing Judith McFarlane et al., *Protection Orders and Intimate Partner Violence: An 18-Month Study of 150 Black, Hispanic, and White Women*, 94 AM. J. PUB. HEALTH 613, 613–18 (2004)).

⁷⁴ See generally Judith A. Smith, *Battered Non-Wives and Unequal Protection-Order Coverage: A Call for Reform*, 23 YALE L. & POL’Y REV. 93 (2005) (contrasting domestic violence civil protection orders from other types of protection orders).

⁷⁵ *Id.* at 100.

⁷⁶ See *supra* Part III.

⁷⁷ See *infra* Part VI.

⁷⁸ Smith, *supra* note 74, at 119.

⁷⁹ See *id.*

sustain proof by a preponderance of the evidence rather than proof beyond a reasonable doubt.⁸⁰ This allows a potential victim to more easily establish that she may be in danger. Third, scholars argue that civil protection orders empower the victim.⁸¹ In criminal cases, the prosecutor will decide how to proceed, if at all.⁸² A civil protection order allows a victim her choice of remedies and control over the direction of her case.⁸³ Fourth, civil protection orders are far more comprehensive than criminal orders.⁸⁴ Fifth, police immediately enforce temporary restraining orders, whereas criminal court orders to not contact a victim can only be enforced via charges and returning to court for a hearing.⁸⁵

Civil orders can provide relief in various forms, including mandating child support or visitation, requiring an abuser to enter a drug rehabilitation program, ordering an abuser to make certain payments, or fashioning a remedy specific to the victim.⁸⁶ But an abuser who is subject to a civil protection order will not go to jail or face any criminal punishment unless he later violates the order. This may be important to those victims who may have been acquainted with their abuser or share mutual friends. But most significantly, a woman does not even have the option to utilize a civil protection order if it is unavailable under the law.

Despite the benefits that civil protection orders offer, they have been criticized. One criticism of protective orders concerns the general inadequacy of protection orders to prevent further abuse.⁸⁷ Unfortunately, orders of protection alone may not be the most effective remedy for preventing future violence in all cases. For example, in 1996, one study found that sixty percent of orders of protection were violated within one year, while another study indicated that almost fifty percent of court-issued protection orders were violated within two years.⁸⁸ In addition, a third study found that more than seventeen percent of victims killed in domestic incidents had obtained orders of protection.⁸⁹ Even law enforcement officials

⁸⁰ *Id.*

⁸¹ *Id.* at 120.

⁸² *Id.*

⁸³ *Id.* at 120.

⁸⁴ Smith, *supra* note 74, at 121.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Tsai, *supra* note 36, at 1292.

⁸⁸ *Id.* at 1292.

⁸⁹ *Id.*

admit that “protection orders do not necessarily save lives.”⁹⁰ Nevertheless, states now use civil protection orders expansively, and New Jersey should do so by allowing a woman to obtain a civil protection order in situations involving violence instigated by an acquaintance or a stranger.⁹¹

A. *Maryland’s Civil Protection Order Statute*

Several states, like Maryland, have entirely removed the relationship requirement necessary for a potential victim to obtain a civil protection order.⁹² Such states allow any person who can prove the commission of a requisite act of abuse and a need for future protection to obtain a civil protection order without proving the existence of a relationship with the abuser.⁹³ States offering these civil protective orders utilize separate statutes to provide relief for domestic violence under traditional relationship definitions as opposed to for victims of violence committed by an acquaintance or stranger.⁹⁴ Although these alternative civil protection orders may not confer all of the benefits of a domestic violence protective order, they do allow a woman to get a restraining order if she faces potential danger.⁹⁵ Under Maryland law, a petitioner may seek relief by filing a petition with the court that alleges the commission of any of the following acts against the petitioner by the respondent, if the act occurred within 30 days before the filing of the petition:

- (1) an act that causes serious bodily harm; (2) *an act that places the petitioner in fear of imminent serious bodily harm*;
- (3) assault in any degree; (4) rape or sexual offense under section 3-303 through section 3-308 of the Criminal Law Article or attempted rape or sexual offense in any degree; (5) false imprisonment; (6) harassment under section 3-803 of the Criminal Law Article; (7) stalking under section 3-802 of the Criminal Law Article;
- (8) trespass under Title 6, Subtitle 4 of the Criminal Law Article; or (9) malicious destruction of property under

⁹⁰ *Id.*

⁹¹ *See id.*

⁹² MD. CODE ANN., CTS. & JUD. PROC., § 3-1503 (2009).

⁹³ *See e.g.*, ARIZ. REV. STAT. 12-1809 (2004) (allowing “any person” to obtain an injunction against another for acts of harassment); *see also* 740 ILL. COMP. STAT. 22/201 (West 2003) (allowing victims of sex crimes to obtain orders of protection regardless of the relationship to the attacker, although not containing the same provisions as domestic violence protection orders).

⁹⁴ *See id.*

⁹⁵ *See supra* note 92.

section 6-301 of the Criminal Law Article.⁹⁶

If a Maryland judge finds that there are reasonable grounds to believe that the accused has committed, and is likely to commit in the future, an act specified in section 3-1503(a), the judge may issue a temporary peace order to protect the petitioner.⁹⁷ The temporary peace order may include the following relief:

(i) Order the respondent to refrain from committing or threatening to commit an act specified in § 3-1503(a) of this subtitle against the petitioner; (ii) Order the respondent to refrain from contacting, attempting to contact, or harassing the petitioner; (iii) Order the respondent to refrain from entering the residence of the petitioner; and (iv) Order the respondent to remain away from the place of employment, school, or temporary residence of the petitioner.⁹⁸

Consequently, such an array of statutory provisions enables Maryland citizens to seek protection from abusive relationships.⁹⁹ Where an abusive relationship exists between a victim and a neighbor, co-worker, or acquaintance, that victim may petition for interim, temporary, ex parte, or final peace orders, issued by a

⁹⁶ MD. CODE ANN., CTS. & JUD. PROC., § 3-1503 (West 2009) (emphasis added). In this section, “stalking” means a malicious course of conduct that includes approaching or pursuing another where the person intends to place or knows or reasonably should have known the conduct would place another in reasonable fear: (1) (i) of serious bodily injury; (ii) of an assault in any degree; (iii) of rape or sexual offense as defined by §§ 3-303 through 3-308 of this title or attempted rape or sexual offense in any degree; (iv) of false imprisonment; or (v) of death.

MD. CODE ANN., CRIM. LAW. § 3-802 (West 2011). In this section, “harassment” means that

[a] person may not follow another in or about a public place or maliciously engage in a course of conduct that alarms or seriously annoys the other: (1) with the intent to harass, alarm, or annoy the other; (2) after receiving a reasonable warning or request to stop by or on behalf of the other; and (3) without a legal purpose.

§ 3-803.

⁹⁷ MD. CODE ANN., CTS. & JUD. PROC., § 3-1504(a)(1). Maryland created an alternative statute to limit the relief available to victims not in a domestic violence relationship. For example, a final peace order expires after only six months versus one year for a protective order. § 3-1505(f). Additionally, a protective order can lead to an order granting exclusive use and possession of a home or personal property while a peace order cannot. § 3-1505(d)(1). These restrictions thus minimize the potential damage from the anticipated increased number of frivolous or even meritorious but less serious filings, as manifested by situations involving verbal harassment or physical violence. Such restrictions aim to limit system-wide abuse while still providing victims with the requisite protection.

⁹⁸ § 3-1504(a)(2).

⁹⁹ *See id.*

2013]

COMMENT

1053

commissioner or judge of a district court.¹⁰⁰ S.P. never met her attacker before the morning that she was raped, she had only passed him on the stairwell several days prior.¹⁰¹ If she lived in Maryland, her unfamiliarity with her attacker would not have been a factor in her ability to obtain a protective order. But she was a resident of New Jersey, and thus was unable to immediately obtain a civil protection order.

IV. THE NEW JERSEY PREVENTION OF DOMESTIC VIOLENCE ACT OF 1991¹⁰²

The Protection of Domestic Violence Act (PDVA or the Act) was designed to protect victims of domestic violence and to provide uniformity in adjudicating each claim.¹⁰³ Under this New Jersey statute:

“domestic violence” means the occurrence of one or more of the following acts inflicted upon a person protected under this act by an adult or an emancipated minor: (1) homicide; (2) assault; (3) terroristic threats; (4) kidnapping; (5) criminal restraint; (6) false imprisonment; (7) sexual assault; (8) criminal sexual contact; (9) lewdness; (10) criminal mischief; (11) burglary; (12) criminal trespass; (13) harassment; or (14) stalking.¹⁰⁴

Even when a victim proves the occurrence of a particular abusive act under the statute, the court must still inquire into the relationship between the parties to determine whether the PDVA applies to a particular victim.¹⁰⁵ As aforementioned, the PDVA limits protection to those victimized by a spouse, former spouse, or any other person who is a present or former household member.¹⁰⁶ A “victim of domestic violence” also includes victims of abuse by a person with whom the victim has had a past dating relationship.¹⁰⁷

The legislature has made several declarations regarding domestic violence:

that domestic violence is a serious crime against society; that there are thousands of persons in New Jersey who are

¹⁰⁰ Joshua Friedman and Gary Norman, *Protecting the Family Pet: The New Face of Maryland Domestic Violence Protective Orders*, 40 U. BALT. L.F. 81, 90 (2009).

¹⁰¹ S.P. v. Newark Police Dept., 52 A.3d 178, 181 (N.J. Super. Ct. App. Div. 2012).

¹⁰² N.J. STAT. ANN. §§ 2C:25-17–35 (West 2011).

¹⁰³ D.C. v. F.R., 670 A.2d 51, 55 (N.J. Super. Ct. App. Div. 1996).

¹⁰⁴ § 2C:25-19(a).

¹⁰⁵ *See id.*

¹⁰⁶ § 2C:25-19(d).

¹⁰⁷ *Id.*

regularly beaten, tortured and in some cases even killed by their spouses or cohabitants; that a significant number of women who are assaulted are pregnant; that victims of domestic violence come from all social and economic backgrounds and ethnic groups; that there is a positive correlation between spousal abuse and child abuse; and that children, even when they are not themselves physically assaulted, suffer deep and lasting emotional effects from exposure to domestic violence.¹⁰⁸

“It is therefore, the intent of the legislature to assure the victims of domestic violence the maximum protection from abuse the law can provide.”¹⁰⁹ Accordingly, the PDVA affords greater protection for potential victims of domestic violence than is generally given to victims of crimes committed by strangers.¹¹⁰

In order to achieve this goal, the PDVA authorizes courts to issue restraining orders to promote the safety of domestic violence victims.¹¹¹ To that end, the PDVA affords a plaintiff the opportunity to seek emergency ex parte relief in the form of a TRO.¹¹² A TRO is only available pursuant to a violation of the PDVA, specifically the commission of one of the fourteen abusive acts listed above.¹¹³ A TRO is typically granted by a judge of the Family Part of the Superior Court when necessary to protect the life, health, or well-being of a victim on whose behalf the relief is sought.¹¹⁴ The court rules generally require that an applicant for a TRO appear personally before a judge, but if it appears that the applicant is in danger of domestic violence, the judge has discretion to order emergency ex parte relief in the form of a TRO, as authorized by the PDVA.¹¹⁵ The emergency relief available under a TRO includes all relief available to a victim at a final hearing under the PDVA, together with any other appropriate relief, and it remains in effect until the court takes further action.¹¹⁶

Emergency relief pursuant to a TRO may include forbidding the defendant from returning to the scene of the domestic violence,

¹⁰⁸ § 2C:25-18.

¹⁰⁹ *Id.*; *State v. Volpini*, 677 A.2d 780, 785 (N.J. Super. Ct. App. Div. 1996); *Sperling v. Teplitsky*, 683 A.2d 244, 246 (N.J. Super. Ct. Ch. Div. 1996).

¹¹⁰ *S.Z. v. M.C.*, 11 A.3d 404, 406 (N.J. Super. Ct. App. Div. 2011).

¹¹¹ *State v. Dispoto*, 913 A.2d 791, 798 (N.J. 2007).

¹¹² N.J. STAT. ANN. § 2C:25-28(a) (West 2011).

¹¹³ *Id.*

¹¹⁴ § 2C:25-28(f).

¹¹⁵ § 2C:25-28(g); N.J. CT. R. 5:7A(a).

¹¹⁶ § 2C:25-28(g).

enjoining the defendant from possessing any firearm or other weapon, or any other appropriate relief.¹¹⁷ Perhaps most importantly, a judge can issue a TRO through electronic communication without the physical presence of the applicant, thus specifically aiding women who feel they are in imminent danger.¹¹⁸ A TRO “may issue if the judge is satisfied that exigent circumstances exist that are sufficient to excuse the failure of the applicant to appear personally and that sufficient grounds for granting the application have been shown.”¹¹⁹ This protection, however, is solely contingent on a woman’s involvement in an incident of “domestic violence.”¹²⁰ Thus, it is imperative to examine when a woman is considered a “household member” in New Jersey under the PDVA. *S.P. v. City of Newark*, recently decided by the Appellate Division, is particularly illustrative in analyzing the razor-thin difference between who is a “household member” and who is not.¹²¹ If a potential victim is deemed a “household member,” she can obtain a TRO under the PDVA. But if she is not, no such recourse is available to her.

V. *S.P. v. CITY OF NEWARK*: WHO IS A “HOUSEHOLD MEMBER”?

S.P. was renting a room at a boarding house located on Milford Avenue in the City of Newark, New Jersey.¹²² She had moved into that residence in early February of 2008 and her room was located directly across the hall from a man who she had not met, named Santiago.¹²³ The two shared a kitchen and a bathroom at the end of the hall.¹²⁴ In the few weeks that S.P. lived there, the two had never exchanged words or been formally introduced.¹²⁵ They had one uneventful “interaction” in which they had passed each other in the stairwell.¹²⁶ Thus, S.P. and Santiago were essentially strangers prior to February 17, 2008.¹²⁷ Their relationship was similar to that of college dorm

¹¹⁷ §§ 2C:25-21(d), 2C:39-1(r).

¹¹⁸ N.J. Ct. R. 5:7A(b)–(c).

¹¹⁹ *Id.*

¹²⁰ *See* § 2C:25-19(d).

¹²¹ *S.P. v. Newark Police Dept.*, 52 A.3d 178 (N.J. Super. Ct. App. Div. 2012).

¹²² *Id.* at 180. A boarding house is a house in which the residents rent a room, sometimes for extended periods of weeks, months, or years. *See id.* The common parts of the house, such as a bathroom and kitchen, may be shared by the residents. *See id.* Thus, a boarding house is not considered one residence, but rather several residences within a complex, which is more akin to an apartment-building setting.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

residents who live across the hall from one another, but who have not been formally introduced.

As S.P. left her room to go to the bathroom after midnight on February 17, 2008, Santiago asked her if she wanted to have a drink.¹²⁸ S.P. declined and continued towards the bathroom.¹²⁹ Santiago confronted S.P. when she left the bathroom, groping her right breast and buttocks and telling her that he wanted to have sex.¹³⁰ S.P. pushed him away and locked herself in her room.¹³¹ Undeterred, Santiago tried to open her locked door.¹³² S.P. then called the police twice in an attempt to seek protection from Santiago.¹³³ Police officers arrived after some delay, and S.P. met them at the front door to explain what happened to her, visually demonstrating to the police officers how Santiago had groped her.¹³⁴ Santiago told the officers that he did not know S.P., and he denied that they had an intimate relationship.¹³⁵ Because it was unclear whether this was a domestic violence situation, S.P. was not informed of her right to obtain a TRO under the PDVA.¹³⁶

The police officers left without making an arrest.¹³⁷ They merely ordered Santiago to stay away from S.P. and instructed S.P. to call the police if he harassed her again.¹³⁸ S.P. was resigned to return to her room with potential danger lurking just across the hall.¹³⁹ S.P. left her room to take a shower the next morning, about ten hours after the police had left.¹⁴⁰ As she attempted to exit the bathroom, she was confronted by a lurking figure in the doorway.¹⁴¹ Santiago brutally attacked S.P., raping her in the hallway.¹⁴² He then dragged her into

¹²⁸ *S.P.*, 52 A.3d at 180.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *S.P.*, 52 A.3d at 181.

¹³⁵ *Id.*

¹³⁶ N.J. STAT. ANN. § 2C:25-23 (West 2011) mandates that a law enforcement officer shall disseminate and explain to the victim the following written notice: "You have the right to go to court to get an order called a temporary restraining order, also called a TRO, which may protect you from more abuse by your attacker. The officer who handed you this card can tell you how to get a TRO."

¹³⁷ *S.P.*, 52 A.3d at 181.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

his room and continued to rape her.¹⁴³ S.P. eventually escaped and ran downstairs and out of the building.¹⁴⁴ She subsequently filed a civil lawsuit on January 8, 2010, against Santiago, the landlord of the boarding house, Essex County (County), New Jersey (State), and the City of Newark (City or Newark). She brought claims under the PDVA, arguing that the defendants were negligent, careless, and reckless in their failure to arrest and remove Santiago from the premises the night before the rape had occurred.¹⁴⁵

A critical inquiry in determining S.P.'s potential legal recourse against her landlord, the City, the County, and the State is whether Santiago and S.P. were "household members" under the PDVA. That answer informs whether or not Santiago should have been arrested pursuant to New Jersey's mandatory domestic violence arrest laws.¹⁴⁶ If S.P. and Santiago were considered "household members" under the PDVA, then in addition to the protection of a mandatory arrest, S.P. would have been able to seek a protection order, thereby potentially decreasing her exposure to violence, even in the absence of the arrest of Santiago or following any post-arrest release. The City moved for summary judgment on the grounds that the PDVA did not apply to the factual circumstances of the case.¹⁴⁷ Among its arguments, the City contended that S.P. and Santiago were not "household members" under the PDVA.¹⁴⁸ In an order dated May 27, 2011, the trial court denied the City's motion.¹⁴⁹

The trial court concluded that Santiago and S.P. were household members and thus the PDVA was applicable.¹⁵⁰ The court held that there was "constancy" in the "relationship" between S.P. and Santiago because of the "close proximity of the parties' rooms and the reality of living in a boarding house, which necessitates interaction between the parties."¹⁵¹ The court also held that S.P. and Santiago satisfied the over-night stay at each other's residence requirement because they

¹⁴³ *S.P.*, 52 A.3d at 181.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ See N.J. STAT. ANN. § 2C:25-21(a) (West 2011) (requiring that a police officer shall make an arrest if he or she "finds probable cause to believe that domestic violence has occurred" and "[t]he victim exhibits signs of injury caused by an act of domestic violence").

¹⁴⁷ *S.P.*, 52 A.3d at 181.

¹⁴⁸ *Id.* at 181-82.

¹⁴⁹ *Id.* at 182.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

lived on the same floor of a boarding house.¹⁵² The court further held that S.P. and Santiago stored items at each other's residence because they shared a bathroom and common areas.¹⁵³ The City subsequently filed a motion for leave to file an interlocutory appeal from the denial of summary judgment.¹⁵⁴ The Appellate Division, recognizing the importance of this issue, granted the motion on July 25, 2011.¹⁵⁵

The Appellate Division affirmed the trial court's holding, following the trial court's rationale in concluding that S.P. and Santiago were household members under the PDVA.¹⁵⁶ The Appellate Division focused on the parties' living arrangement and shared common areas, assuming that "[c]rossing paths and interacting would be inevitable in this type of living arrangement."¹⁵⁷ The Appellate Division was careful to warn, however, that "we do not conclude that all boarders in a rooming house are household members."¹⁵⁸ Thus, the holding was extremely narrow, limited to the specific circumstances of this case which involved two parties living across the hall from each other. Furthermore, because it was questionable whether this was a domestic violence situation, the police did not even inform S.P. of her right to obtain a TRO, as mandated under the PDVA.¹⁵⁹ A review of New Jersey precedent involving the interpretation of "household member" reveals that, although liberally construed, many potential victims will not qualify for relief under the PDVA.¹⁶⁰

"Violence-between-strangers" cases fall in the broader category of criminal acts by strangers and are not typically considered within the confines of the PDVA.¹⁶¹ S.P. and Santiago had not exchanged a single word prior to the incident, and there was no indication that the two shared a prior relationship.¹⁶² The two thus lacked the relationship criteria typically necessary for a court to find a

¹⁵² *Id.*

¹⁵³ *S.P.*, 52 A.3d at 182.

¹⁵⁴ *Id.* at 183.

¹⁵⁵ *Id.* at 180.

¹⁵⁶ *Id.* at 188. The Appellate Division's holding on the "household member" issue was not dispositive, as the court held for Newark on other grounds.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ N.J. STAT. ANN. § 2C:25-23.

¹⁶⁰ *See infra* Part V.A.

¹⁶¹ *See* *Hamilton v. Ali*, 795 A.2d 929, 934 (N.J. Super. Ct. Ch. Div. 2001) (holding, contrary to precedent, that acquaintances were "household members" as defined by the PDVA).

¹⁶² *S.P.*, 52 A.3d at 180.

“household member” relationship under New Jersey case law.¹⁶³ Although it was perhaps a stretch to consider S.P. and Santiago “household members,” the Appellate Division surprisingly relied solely on the fact that the parties lived on the same floor to find that an interaction at some point was inevitable.¹⁶⁴ The court explained that since they were the only two living on the floor, S.P. would have become naturally aware that they shared a living space, despite that she hadn’t in the several weeks since she had moved in.¹⁶⁵

Prior to the Appellate Division’s holding, all such reported New Jersey cases that found the victim was a “household member” involved violence perpetrated by someone who was, at the very least, an acquaintance of the victim.¹⁶⁶ Thus, the *S.P.* decision is an outlier. In fact, such a holding is most likely borne from the judiciary’s own sense that a strict interpretation of the law would fail to do justice for S.P. Such an intuition accentuates the need for a uniform system change via a new alternative statute so that protection does not depend on the sympathy of an individual judge. S.P. was in a highly vulnerable position, living right across the hall from a man who had just assaulted her and received only a verbal warning after she notified the police of his abuse.¹⁶⁷ But she was unable to obtain protection because it was unclear whether she was a victim of domestic violence—a determination that would have been rendered moot had New Jersey law allowed for the issuance of civil protection orders. This distinction exposes the fatal flaw in New Jersey’s current protection-order statutes, manifesting the necessity for change.

A. *The New Jersey Judiciary’s Interpretation of “household member”*

A frequently litigated issue involving the interpretation of the PDVA is whether two parties constitute “household members” under the PDVA. This interpretation is especially important to women, like S.P., who seek protection under the Act. In 1994, the legislature changed the terminology in the statute from “cohabitant” to “household member” to expand the scope of relief under the PDVA.¹⁶⁸ What follows is an analysis of cases that illustrate the fact that although New Jersey courts have liberally construed the definition of “household member,” such an interpretation still leaves

¹⁶³ See *infra* Part V.A.

¹⁶⁴ *S.P.*, 52 A.3d at 188.

¹⁶⁵ *Id.*

¹⁶⁶ See *Hamilton v. Ali*, 795 A.2d 929, 934 (N.J. Super. Ct. Ch. Div. 2001).

¹⁶⁷ *S.P.*, 52 A.3d at 181.

¹⁶⁸ N.J. STAT. ANN. § 2C:25–18 (West 2011).

many women who are in imminent danger unprotected under New Jersey's civil laws.

1. Cases finding "household-member" status without intimate relationship

Hamilton v. Ali offers a rare example of a case in which a New Jersey court held that a relationship between mere acquaintances qualified as one between "household members" and thus the case fell under the jurisdiction of the PDVA.¹⁶⁹ In *Hamilton*, the court decided whether college dorm mates were of the same "household."¹⁷⁰ The court held that the parties were household members pursuant to the PDVA, ruling that the

plaintiff and defendant each has separate sleeping quarters but must interact on a frequent basis and because the qualities and characteristics of their relationship (i.e. daily contact for one month with the potential for one academic year, each having a key to the suite entrance, and sharing the bathroom and common area) placed plaintiff in a more susceptible position for abusive and controlling behavior in the hands of the defendant.¹⁷¹

The *Hamilton* court cited *Desiato v. Abbott*, which set forth the following criteria to be applied on a case-by-case basis to determine whether there exists a "family-like setting" within the meaning of the PDVA: (1) constancy of the relationship; (2) over-night stays at each other's residence; (3) personalty items such as jewelry, clothing, and personal grooming effects stored at each other's residences; (4) shared property arrangements, such as automobile usage, access to each other's bank accounts, and one mailing address for billing and other legal purposes; and (5) familiarity with each other's siblings and parents socially in dining and/or entertainment activities together, and/or attendance together at extended family functions such as weddings.¹⁷²

Hamilton's decision that college dorm mates can qualify as household members under the PDVA supports the holding that S.P.

¹⁶⁹ *Hamilton*, 795 A.2d at 934.

¹⁷⁰ *Id.* at 933.

¹⁷¹ *Id.*

¹⁷² See *Desiato v. Abbott*, 617 A.2d 678, 680 (N.J. Super. Ct. Ch. Div. 1992). The *Hamilton* court also relied on the Appellate Division's interpretation of a durational requirement set forth in *Bryant v. Burnett*, 624 A.2d 584, 585•86 (N.J. Super. Ct. App. Div.), *cert. denied*, 134 N.J. 478 (1993). The *Bryant* court held that a three-month time period in which the parties resided together was sufficient to constitute a "household member" relationship. *Id.* at 587.

and Santiago were household members. But no New Jersey court, prior to *S.P.*, had extended the interpretation of “household member” to protect a victim from the violent actions of an acquaintance or stranger with whom the victim had not, until then, interacted. This is not surprising, considering that while the PDVA protects victims from domestic violence by intimate partners, acquaintance-based violence has historically been the province of the state’s criminal laws.¹⁷³

Applying the *Hamilton* criteria to the aforementioned facts of *S.P. v. Newark*, one could argue that the courts wrongly decided that S.P. and Santiago were “household members.” The first factor—constancy of the relationship—could not be established because the parties only crossed paths once in a three-week period.¹⁷⁴ The second factor—overnight stays at each other’s residence—did not necessarily occur.¹⁷⁵ The boarding house the two shared was a combination of several residences within a complex, akin to an apartment-building setting.¹⁷⁶ The third factor—having personalty items at each other’s residence—was certainly not present.¹⁷⁷ The fourth—shared property arrangements—did not exist.¹⁷⁸ Finally, S.P. and Santiago did not even know each other and thus had no familiarity with each other’s families, as required by the fifth factor.¹⁷⁹ Thus, it is likely that S.P. should not have qualified as a household member under these factors. In fact, the *Hamilton* court noted that the case “certainly involved more than assaultive conduct between casual friends or relative strangers.”¹⁸⁰ But S.P. and Santiago were relative strangers when Santiago assaulted S.P.¹⁸¹

Nevertheless, it was the analysis of these very factors that led the Appellate Division to affirm the trial court’s conclusion that S.P. was a household member.¹⁸² But the *S.P.* ruling is an outlier because *Hamilton* and *S.P.* are distinguishable. The shared common area is the only similarity between *Hamilton* and *S.P.* Indeed, Judge Fitzgerald of the Court of Appeals of Michigan even opined that to extend domestic violence to college roommates, a similar scenario,

¹⁷³ See *supra* Part III.

¹⁷⁴ *S.P. v. Newark Police Dept.*, 52 A.3d 178, 180 (N.J. Super. Ct. App. Div. 2012).

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Hamilton v. Ali*, 795 A.2d 929, 933 (N.J. Super. Ct. Ch. Div. 2001).

¹⁸¹ See *supra* Part V.

¹⁸² *S.P.*, 52 A.3d at 178.

would be “absurd.”¹⁸³ The “relationship” shared by S.P. and Santiago was much less significant than the relationship shared by college roommates.

In *S.Z. v. M.C.*, the Appellate Division similarly adopted a broad definition of “household member” when it reversed the trial court’s determination that the defendant, a “visitor” who resided in the plaintiff’s home for seven months, was not a “household member” under the PDVA.¹⁸⁴ The Appellate Division held that although the two men never had a traditional familial, romantic, or sexual relationship, neither their incompatible sexual orientations nor the timeframes involved defeated jurisdiction; the former male houseguest did fall within the definition of a “household member” under the Act.¹⁸⁵ The *S.Z.* court focused on the qualities and characteristics of the parties’ relationship in holding that the guest was a “household member.”¹⁸⁶ Thus, the court decided that the parties’ relationship was determinative.¹⁸⁷ As such, this case is also distinguishable from *S.P.* In *S.Z.*, the parties’ relationship went well beyond that of acquaintances.¹⁸⁸ Specifically, the parties in *S.Z.* lived under the same roof for seven months.¹⁸⁹ By contrast, Santiago and S.P. lived in the same boarding house for just three weeks and had never actually met.¹⁹⁰ Thus, *S.P.* can be distinguished from even those cases in which the court adopted the most liberal interpretation of “household member” under the PDVA. The “outlier-nature” of the *S.P.* decision further reinforces the need for New Jersey to enact a civil statute to implement the use of civil protection orders.¹⁹¹

2. Cases finding no “household member” status

New Jersey courts have liberally construed the term “household member” to offer broad protection under the PDVA.¹⁹² Still, this

¹⁸³ *In re Lovell*, 572 N.W.2d 44, 46 (Mich. App. 1997) (Fitzgerald, J., dissenting).

¹⁸⁴ *S.Z. v. M.C.*, 11 A.3d 404, 407 (N.J. Super. Ct. App. Div. 2011).

¹⁸⁵ *Id.* at 405.

¹⁸⁶ *Id.*

¹⁸⁷ *See also* D.A.G. v. P.H., No. FV-13-1862-10, 2011 WL 5864553, at *5 (N.J. Super. Ct. App. Div. Nov. 23, 2011) (affirming the trial court’s issuance of a restraining order pursuant to the PDVA, holding that even though the two brothers were raised in different homes from birth, their development of a familial relationship as adults qualified them as former “household members” and thus subjected them to the jurisdiction of the PDVA).

¹⁸⁸ *S.Z.*, 11 A.3d at 405.

¹⁸⁹ *Id.*

¹⁹⁰ *S.P. v. Newark Police Dept.*, 52 A.3d 178, 180 (N.J. Super. Ct. App. Div. 2012).

¹⁹¹ *S.P.*, 52 A.3d at 178.

¹⁹² *See supra* Part V.A.1.

interpretation does not reach all women and thus leaves many unnecessarily susceptible to harm. Despite the judiciary's liberal interpretation of the term "household member" in some cases, the Appellate Division, in *Smith v. Moore*, instructed that "there are rational limits to this very expansive definition of a victim of domestic violence."¹⁹³ These rational limits are borne out by the recognition that the PDVA does not apply to every relationship in which a common roof is shared. The *Smith* court narrowly interpreted the PDVA in analyzing an incident that arose between two former household members.¹⁹⁴ The court justified its holding as necessary to curb the increased number of domestic violence cases brought before the court.¹⁹⁵

In *Smith*, the victim and her harasser previously shared a home on the weekends in the summer of 1995—almost a year before she sought a restraining order.¹⁹⁶ The defendant appealed the final restraining order (FRO) entered pursuant to the PDVA. The order was based on a series of harassing phone calls allegedly made by the defendant from November 1995 through April 1996.¹⁹⁷ The *Smith* court concluded that the trial court judge did not have jurisdiction under the PDVA to enter a restraining order since the parties did not share the requisite domestic relationship to establish jurisdiction under the PDVA.¹⁹⁸ Indeed, New Jersey courts are only allowed to issue civil protection orders pursuant to the PDVA.¹⁹⁹

The *Smith* court, like the *Desiato* court before it, limited its application of the PDVA to "violence that occurs in a family or family-like setting."²⁰⁰ Again, this rationale does not portend a favorable result for a woman in a situation similar to the one in which S.P. found herself. Courts extend PDVA protection to vulnerable persons who are placed "in a more susceptible position for abusive and controlling behavior" by virtue of the underlying domestic relationship.²⁰¹ But S.P. had been placed in a susceptible position *solely* by virtue of her residence, not an underlying domestic

¹⁹³ *Smith v. Moore*, 689 A.2d 145, 147 (N.J. Super. Ct. App. Div. 1997); *see also* *Jutchenko v. Jutchenko*, 660 A.2d 1267 (N.J. Super. Ct. App. Div. 1995).

¹⁹⁴ *Smith*, 689 A.2d at 147.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ N.J. STAT. ANN. § 2C:33-4(a).

¹⁹⁸ *Smith*, 689 A.2d at 146.

¹⁹⁹ N.J. STAT. ANN. § 2C:25-17-35 (West 2011).

²⁰⁰ *Smith*, 689 A.2d at 146.

²⁰¹ *Hamilton v. Ali*, 795 A.2d 929, 934 (N.J. Super. Ct. Ch. Div. 2001).

relationship.²⁰² Thus, a narrow interpretation of the PDVA may have grave consequences for women in a situation similar to S.P. The plaintiff in *Smith* sought a civil protection order to prevent the defendant from going to her house. This request certainly seemed understandable given the facts, but the court correctly held that the PDVA does not afford a potential victim such protection.²⁰³

3. Women susceptible to imminent violence

Coleman v. Roman provides an instructive analysis on how New Jersey courts decide whether parties are household members under the PDVA.²⁰⁴ The *Coleman* court examines the subtle differences in approaches taken in prior decisions.²⁰⁵

Jutchenko looks forward in time, and focuses on whether the former relationship “provides a special opportunity” for domestic violence, thus triggering the need for protection and prevention in the future. *Tribuzio* to some extent looks backward, and focuses on whether the domestic violence was related to and arose out of the past domestic relationship. The approaches are complementary. Either kind of case can implicate the Act’s remedial goals. Put another way, a court must inquire whether the parties have been so entangled, emotionally or physically—or *they will be in the future*—that the court should invoke the Act to protect the plaintiff and prevent future violence.²⁰⁶

The court explicitly recognizes that the PDVA should protect a woman at risk for potential future violence based on a “continuing, entangled relationship.”²⁰⁷ S.P.’s attacker all but assured her that the two would be physically entangled in the future.²⁰⁸ But the *Coleman* court makes this assertion under the predicate of a former relationship shared between parties.²⁰⁹ There is no common-sense rationale to recognize a distinction between one who is susceptible to danger based on a former relationship as opposed to one who is susceptible based on a living arrangement. Surely the legislature

²⁰² See *supra* Part V.

²⁰³ N.J. STAT. ANN. § 2C:25-17–35.

²⁰⁴ *Coleman v. Romano*, 908 A.2d 254 (N.J. Super. Ct. Ch. Div. 2006).

²⁰⁵ See *Jutchenko v. Jutchenko*, 660 A.2d 1267 (N.J. Super. Ct. App. Div. 1995) (finding that the trial court lacked jurisdiction to decide the matter under the PDVA since the two parties had not resided in the same household for twenty years); see also *Tribuzio v. Roder*, 813 A.2d 1210 (N.J. Super. Ct. App. Div. 2003).

²⁰⁶ *Coleman*, 908 A.2d at 259.

²⁰⁷ *Id.*

²⁰⁸ *S.P. v. Newark Police Dept.*, 52 A.3d 178, 180 (N.J. Super. Ct. App. Div. 2012).

²⁰⁹ *Coleman*, 908 A.2d at 259.

could not think that those in the latter circumstance are any less worthy of protection under New Jersey law. It may be true that such protection is not warranted pursuant to an Act that protects against domestic violence. But it seems illogical and unjust to not afford a woman who is in imminent danger protection via an alternative statute.²¹⁰

B. Other Jurisdictions Interpret “household member” Similarly

An examination of other states’ interpretations of “household member” reveals that S.P. would likely not be considered a household member in any jurisdiction pursuant to other domestic violence laws. In comparison with other jurisdictions, New Jersey affords protection to a relatively wide range of victims under its PDVA, although even under its law, victims of acquaintance and stranger violence may not obtain a civil protection order due to the relationship requirement. What follows is an examination of domestic violence cases in different states across the country, including an analysis of the *S.P.* facts under the various case holdings. Specifically, this Comment will compare New Jersey’s precedent with cases decided in California, Minnesota, Iowa, and Kentucky.

In the particularly illustrative California case of *O’Kane v. Irvine*, an appellate court reversed the trial court’s imposition of a domestic violence restraining order under similar circumstances to those in *S.P.*²¹¹ There, as in *S.P.*, the defendant leased a bedroom in a house cohabitated by the plaintiff.²¹² The plaintiff and defendant shared common areas including the bathroom, kitchen, and living room.²¹³ Additionally, the parties did not have a prior relationship before entering into their individual leasing agreements.²¹⁴ After a few weeks of living in the same house, the two got into an altercation, and the police were called, but they made no arrest.²¹⁵ The plaintiff subsequently obtained a TRO by alleging that the defendant had hit her.²¹⁶

²¹⁰ See *infra* Part VI. An alternative statute for non-intimate partner violence has become a necessity for potential victims such as S.P. An alternative statute is necessary because at its most liberal interpretation, the term “household member” does not afford many potential victims protection under the PDVA.

²¹¹ *O’Kane v. Irving*, 54 Cal. Rptr. 2d 549, 552 (Cal. Ct. App. 1996).

²¹² *Id.* at 550.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

California domestic violence law protects “cohabitants.”²¹⁷ The California statute defines a “cohabitant” as “a person who regularly resides in the household.”²¹⁸ The California courts define “household” as “a collection of persons, whether related or not, who live together as a group or unit of permanent or domestic character, with one head, under one roof, or within a common curtilage, who direct their attention toward a common goal consisting of their mutual interests.”²¹⁹ But the court concluded that California’s domestic violence laws were inapplicable to two parties living in separate rooms and sharing common areas.²²⁰ Because the parties were not previously acquainted, were connected “wholly by happenstance,” and did not live together as a group with a common goal, the court reversed the TRO as outside the jurisdiction of the domestic violence law.²²¹ Similarly, S.P. and Santiago were not previously acquainted and formed their “relationship” solely by happenstance. This holding illustrates the ambiguity of determining who qualifies as a “household member.”

A Minnesota case, *Elmasry v. Verdin*, also involved facts that were similar to those in *S.P.* The case involved two parties who lived together in a duplex.²²² The respondent paid rent to the petitioner on a month-to-month basis.²²³ The petitioner considered their shared relationship as one between “housemates” since they were not romantically involved.²²⁴ The unit did not contain any locked or secured rooms.²²⁵ Soon after moving in, the respondent’s actions and behavior became increasingly aggressive and verbally abusive, causing the petitioner to call the police.²²⁶ The trial court felt that the dispute was a landlord-tenant matter and not one of domestic violence.²²⁷ But the appellate court reversed, holding that because the parties shared common living areas of the duplex, they were “residing together,” and therefore met the definition of “household members” under Minnesota’s domestic violence act.²²⁸

²¹⁷ CAL. FAM. CODE § 6209 (West 2011).

²¹⁸ *Id.*

²¹⁹ *O’Kane*, 54 Cal. Rptr. 2d at 552.

²²⁰ *Id.*

²²¹ *Id.*

²²² *Elmasry v. Verdin*, 727 N.W.2d 163, 164 (Minn. Ct. App. 2007).

²²³ *Id.* at 164.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Elmasry*, 727 N.W.2d at 166.

The *Elmasry* decision would seem to include, under Minnesota domestic violence law, the type of relationship that S.P. and Santiago shared. But the real significance of *Elmasry* is that the court suggested that had the appellant and respondent lived in separate, self-contained units, with secured and locked areas, the trial court “might have been correct in concluding that respondent was merely appellant’s tenant and that the two did not reside together.”²²⁹ This characterization describes the living situation in *S.P.* and that of apartment complexes and hotels.

The Iowa Supreme Court has adopted a framework to determine whether a couple is cohabiting for the purposes of criminal law enforcement of domestic abuse assault.²³⁰ Iowa courts consider six factors in making such a determination: (1) sexual relations between the parties while sharing the same living quarters; (2) sharing of income or expenses; (3) joint use or ownership of property; (4) whether the parties hold themselves out as husband and wife; (5) the continuity of the relationship; and (6) the length of the relationship.²³¹

In *State v. Kellogg*, an unmarried man and woman had ended their intimate relationship but remained roommates, living together in separate bedrooms.²³² Kellogg was charged with domestic abuse assault after he kicked his former companion with spurred boots and hit her, leaving her with “bruises, scabs, black eyes, and swelling.”²³³ But since the judge had given an overly broad jury instruction under which “mere roommates” could obtain statutory protection, the Iowa Supreme Court reversed and remanded for a new trial, thus leaving his victim with no protection under the domestic violence law.²³⁴ By contrast, Santiago and S.P. were separated by a hallway and did not have access to each other’s apartments.

Lastly, in *Barnett v. Wiley*, the Kentucky Supreme Court quoted with approval a treatise explaining that the purpose of its domestic violence statute was to “protect victims from harm caused by the person whose intimate physical relationship to the victim increases the danger of harm, either because the parties live in physical proximity or because the relationship is one whose intimacy may

²²⁹ *Id.* at 166.

²³⁰ *State v. Kellogg*, 542 N.W.2d 514 (Iowa 1996).

²³¹ *Colker*, *supra* note 51, at 1857 (citing *Kellogg*, 542 N.W.2d at 518).

²³² *Kellogg*, 542 N.W.2d at 515.

²³³ *Id.*

²³⁴ *Id.*

disable the victim from seeking protection.”²³⁵ This interpretation would seem to offer a victim in S.P.’s situation the possibility of receiving protection under the PDVA. Nevertheless, New Jersey does not typically afford that status where there is a lack of a prior relationship.²³⁶ Therefore, despite the seemingly inclusive definition put forth in *Barnett*, a civil protection order will often be unavailable to a party solely on the basis of living in the same boarding house as her potential attacker, unless the court equates a boarding house with a household.²³⁷

To the extent the New Jersey Appellate Division looks to other states for guidance in interpreting the “household member” requirement, the preceding cases suggest that many potential victims may not be deemed a “household member” entitled to protection under the PDVA, even given the recent holding in *S.P.* Domestic violence statutes are not construed broadly enough to protect women who may not be involved in a traditional relationship with a defendant, even under the “household member” criteria. The question thus remains: How can New Jersey protect women who do not fall within the jurisdiction of the PDVA from imminent harm?

VI. WHAT ACTION SHOULD THE NEW JERSEY LEGISLATURE TAKE? A CALL FOR REFORM

If the legislature fails to change the status quo, civil protective orders will remain under-inclusive because they are available only for incidents that count as “domestic violence,” or violence between specific categories of people not including strangers, and even excluding many acquaintances.²³⁸ New Jersey law governing civil protection orders is inadequate. A woman must be given the opportunity to use an alternative-remedy statute such as a civil protection order as a sword, rather than a shield. New Jersey has two options to improve its law. It can either expand the PDVA’s definition of “household member” or draft an alternative remedy statute to protect women from non-intimate violence.

²³⁵ *Barnett v. Wiley*, 103 S.W.3d 17, 19 (Ky. 2003) (quoting 15 Louise E. Graham & James E. Keller, KENTUCKY PRACTICE: DOMESTIC RELATIONS LAW § 5.1, at 107 (2d ed. 1997)).

²³⁶ *See Coleman v. Romano*, 908 A.2d 254, 259 (N.J. Super. Ct. Ch. Div. 2006).

²³⁷ *See Hamilton v. Ali*, 795 A.2d 929, 934 (N.J. Super. Ct. Ch. Div. 2001) (holding, contrary to precedent, that acquaintances were “household members” as defined by the PDVA).

²³⁸ *See supra* Part III.

A. *Expand the Definition of “household member” Under the PDVA*

The first option for the legislature is to amend the language of “household member” to make it more expansive and thus include women who share a roof with their abuser. This definition would include situations in which two parties share a “common-area.” Such an interpretation would inevitably include boarding house, apartment, and condominium-building dwellers living in separate apartments, and perhaps even hotel guests in separate rooms. Even laundry rooms, exercise rooms, storage areas, pools, and locker rooms represent examples of spatial areas that have the potential to bring residents under a common roof into contact with each other. Occupants of these shared facilities would be protected under an amendment to the PDVA, because they represent areas in which victims of prior violence by an acquaintance or stranger may be particularly vulnerable to repeated attack.

One significant problem with this approach is in the area of New Jersey’s mandatory domestic violence arrest law. The legislature has traditionally afforded police officers discretion on whether to make an arrest upon responding to a call.²³⁹ In contrast, the PDVA requires that the police make an arrest in certain cases involving domestic violence as interpreted under the PDVA.²⁴⁰ Therefore, under an expanded definition of “household member,” officers would be mandated to arrest in response to domestic violence calls in a substantially increased number of situations. Consequently, an expanded definition of “household member” under the PDVA could potentially lead to increased litigation.

Another adverse effect that could arise if the legislature adopted this approach would be an increase in frivolous restraining order case filings. If a broader category of potential plaintiffs could seek relief, there might be a need to mitigate the harm from an abuse of the system. It would be nearly impossible to draft a definition that protects the especially vulnerable without protecting those that the statute is not intended to protect. The primary challenge would involve defining the living arrangements to which the amended statute would apply. For example, would the expanded definition of “household member” apply to persons living in the same apartment complex, with perhaps a shared parking lot and mailbox area, but not the same apartment building? What about a townhouse community that shares common areas such as a gym? It is likely that

²³⁹ See N.J. STAT. ANN. §59:3-2(a) (West 2011).

²⁴⁰ N.J. STAT. ANN. § 2C:25-21 (West 2011).

the legislature left the interpretation of “household member” to the courts to avoid these questions that better lend themselves to a case-by-case analysis.

B. An Alternative-Remedy Statute to Protect Women from Acquaintance and Stranger Violence

The New Jersey Legislature should add an alternative-remedy statute to the law that is modeled after similar statutes enacted by other states and that affords women the option of obtaining a restraining order in situations involving violence perpetrated by an acquaintance or a stranger.²⁴¹ The historic nature of marriage was the impetus for the construction of domestic violence law in its initial form.²⁴² In light of the changed circumstances involving different relationships and varied living situations, it is incumbent upon the legislature to take action that recognizes the reality that there are many victims of violence currently in need of, but unable to obtain, civil protection orders. New Jersey domestic violence law has evolved to reflect changing relationships, thereby offering protection to an increased and broad range of people. But the most consequential, and the most effective, change to New Jersey law would be the addition of an alternative civil protective order option to the domestic violence civil restraining order and criminal law options already in place.

The legislature specifically stated that “the official response to domestic violence shall communicate the attitude that violent behavior will not be excused or tolerated.”²⁴³ An alternative-remedy statute that applies to non-intimate partner violence can further that objective and act in combination with the PDVA to accomplish the stated goal. As aforementioned, civil protection orders are now the most frequently used legal remedy to address intimate partner violence.²⁴⁴ Civil protection orders should thus be available to a broader range of potential victims, including women living under the same roof as someone who has assaulted or harassed them. An alternative civil protection order statute would potentially allow *any* woman to obtain a protection order against someone who presents

²⁴¹ See MD. CODE ANN., CTS. & JUD. PROC., § 3-1503 (2009). For example, Maryland has removed its relationship requirement entirely. *Id.* It allows any woman to obtain a civil protection order without proving the existence of a prior relationship. *Id.* A woman merely needs to be subject to an act that places her in fear of imminent serious bodily harm to have a civil protection order issued. *Id.*

²⁴² Tsai, *supra* note 36, at 1289.

²⁴³ N.J. STAT. ANN. § 2C:25-18 (West 2011).

²⁴⁴ See *supra* Part III.

2013]

COMMENT

1071

an imminent danger to her safety.

It is counterintuitive to allow such violence to be excused and, by extension, tolerated when the addition of a civil protection order law would sufficiently address this problem. The purpose of protective orders is to prevent violence or stop it from escalating.²⁴⁵ The distinction between women in S.P.'s situation and women who are protected under the PDVA is razor-thin, and a criminal order of protection is often insufficient to a potential victim's needs. But in New Jersey, the law allows a woman to obtain a civil protection order only where she is a victim of domestic violence.²⁴⁶ New Jersey's legislative scheme is outdated. The addition of an alternative civil protection order statute would merely provide protection where it is needed. If New Jersey had adopted Maryland's law, S.P. would have been able to immediately obtain a civil protection order after her first encounter with Santiago because his actions placed her in fear of imminent bodily harm.²⁴⁷

Maryland does not require a "relationship" pre-requisite for a petitioner to seek relief through a civil protection order.²⁴⁸ Instead, Maryland allows a woman to seek relief by filing a petition with the court that alleges a petitioner was guilty of an act that places the petitioner in fear of imminent serious bodily harm, stalking, or harassment.²⁴⁹ If New Jersey had a similar law in place, S.P. would have had an opportunity to seek relief prior to her attack.

The proposed statute would authorize the immediate issuance of an ex parte protective order where the PDVA does not apply, most likely because the victim lacks a prior relationship with the offender. It would allow a court to issue a TRO upon an allegation that a person had committed an offense such as harassment, stalking, assault, sexual assault, or terroristic threats. Therefore, the statute would allow a casual acquaintance or a co-worker to obtain a TRO, which is currently unavailable under the PDVA. Therefore, New Jersey should permit a petitioner who suffers from such offenses as protected by the PDVA to petition the court for an order that the defendant: (1) refrain from abusing or harassing the plaintiff; (2) refrain from contacting the plaintiff; (3) remain away from the plaintiff's household, workplace, or school; and (4) pay the plaintiff monetary compensation for the losses suffered as a direct result of

²⁴⁵ Smith, *supra* note 74, at 139–40.

²⁴⁶ N.J. STAT. ANN. §§ 2C:25-17–35 (West 2011).

²⁴⁷ See MD. CODE ANN., CTS. & JUD. PROC., § 3-1503 (2009).

²⁴⁸ *Id.*

²⁴⁹ *Id.*

the defendant's actions.

The proposed statute would also allow the court to enter such temporary relief orders without notice, as it deems necessary to protect the plaintiff. The durational aspect of the protection afforded by temporary relief is important. The legislature should institute a time limit of six months for such an order. A significant time limit may conceivably minimize the potential damage from the anticipated increase in frivolous filings, as manifested by differing situations that may arise such as verbal harassment or physical violence. Also, in many cases of stranger and acquaintance abuse, the likelihood of chance interaction will abate after a few years due to intervening factors. For instance, people often move, change jobs, or change schools. The goal of the legislature should be to limit potential system-wide abuse, while still providing victims with the requisite protection. New Jersey must follow Maryland's lead and reform its civil protection order laws to provide broader protection to potential victims of sexual assault by those who may not be considered "household members" under the PDVA. It can do so by no longer limiting the ability of victims to obtain restraining orders solely to those who are victims of domestic violence.

Despite the inevitable criticism of a newly adopted alternative remedy statute, its potential benefits far outweigh any shortcoming of such a law. Critics can, for example, rightly argue that a protection order does not guarantee a woman's safety, because the law could not guarantee that victims will remain safe from harm once a civil protective order is granted. If an abuser wants to harm his victim, or even kill her, a protective order or a short jail sentence will probably not stop him.²⁵⁰ But the possibility that a protection order will not help a potential victim should not prevent those who will benefit from a protection order from obtaining one. Critics may also argue that it would be too expensive for New Jersey to expand its protection to victims of violence in non-intimate partner relationships. But studies have shown that the use of protective orders can save New Jersey a significant amount of money in law enforcement and governing expenses.²⁵¹ One can argue that the failure to enact such a statute is imposing unnecessary costs, both financial and emotional, on New Jersey.

²⁵⁰ See Anique Droin, Comment, *Who Turned Out the Lights? How Maryland Laws Fail to Protect Victims of Domestic Violence from Third-Party Abuse*, 36 U. BALT. L. REV. 105, 106 (2006).

²⁵¹ See Stoeber, *supra* note 53, at 308. A recent study estimates that protection orders save Kentucky \$85 million per year. *Id.*

2013]

COMMENT

1073

Although the New Jersey Legislature may not be able to prevent every incident of abuse, it must fill the gaps in the law that can be filled. In *S.P.*, such a law would have left no doubt that *S.P.* was legally entitled to obtain a restraining order after her eventual attacker harassed her for the first time. The restraining order would have served notice to Santiago that he was to stay away from *S.P.* or face criminal charges. This may or may not have deterred Santiago in this particular instance, but it would certainly offer relief in many cases where an alternative option would not otherwise exist.

This Comment does not advocate a change of New Jersey's domestic violence statute. It is true that *S.P.* may not have been able to secure protection prior to her attack under the domestic violence laws of any other state. But other states offer an alternative civil protective order as part of their anti-harassment statutes.²⁵² New Jersey must follow the more progressive states that take this approach by adopting a similar statute to offer women like *S.P.* an alternative form of protection. As discussed, Maryland currently has a law that New Jersey should examine in order to provide its own alternative-remedy statute.

VII. CONCLUSION

Domestic violence is a pervasive social problem that harms hundreds of women in the United States on a daily basis.²⁵³ Lawmakers responded to the feminist movement of the 1960s by enacting domestic violence laws in an attempt to offer women better protection.²⁵⁴ New Jersey has one of the most liberal and expansive domestic violence laws among the states.²⁵⁵ Specifically, the judiciary has liberally interpreted the term "household member" to afford broad protection to many potential victims.²⁵⁶ But the PDVA still leaves many who are not covered under the Act unprotected.²⁵⁷ Such victims are forced to pursue remedies under oft-inadequate criminal laws. Consequently, the need for reform in New Jersey is clear.

Both acquaintances and strangers commit violent acts against women, and their actions transcend the sphere of domestic violence. The shift in the role of protective orders from instruments to prevent family violence to mechanisms to prevent stranger-induced violence

²⁵² See *supra* note 93.

²⁵³ See *supra* Part II.

²⁵⁴ *Id.*

²⁵⁵ See *supra* Part IV.

²⁵⁶ See *supra* Part V.A.

²⁵⁷ See *supra* Part V.

supports an amendment to the current law in New Jersey. Many states have implemented alternative remedy statutes to offer particularly susceptible women the opportunity to obtain civil protection orders if they are in imminent danger.²⁵⁸ These statutes represent progress in the effort to offer women protection from stranger-induced violence. But this remedy is not available to potential victims in New Jersey. Women who live in boarding houses may be particularly prone to violence, and are currently defenseless.

The legislature must add an alternative remedy statute that would allow potential victims from non-intimate partner violence to obtain civil protection orders.²⁵⁹ It can do so by creating an alternative statute to limit the relief available to victims not in a domestic violence relationship. By doing so, the legislature can minimize the potential damage from the anticipated increased number of frivolous or “less serious” filings, while still providing victims with the requisite protection. All women are entitled to be safe from violence. New Jersey should adopt a civil protection order law to offer its women protection from non-intimate partner violence.

²⁵⁸ See *supra* Part III.A.

²⁵⁹ See *supra* Part VI.