

## TOWARD A UNIFORM DOMESTIC VIOLENCE CIVIL PROTECTION ORDER LAW

Ashley Hahn\*

### I. INTRODUCTION

The United States Department of Justice broadly defines domestic violence (DV) as a “pattern of abusive behavior”—including “physical, sexual, emotional, economic, or psychological actions or threats of actions”—used “by one [person] to gain or maintain power and control over another [person].”<sup>1</sup> Legal scholars, academics, advocates, and psychologists also largely embrace this broad definition of DV.<sup>2</sup> Unfortunately, however, domestic violence civil protection order (DVCPO) laws across the United States do not uniformly employ an expansive definition of DV.<sup>3</sup> Instead, many state DVCPO statutes narrowly define DV and consequently leave many survivors without needed protection.<sup>4</sup> Thus, a uniform, comprehensive

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\* J.D. Candidate, 2018, Seton Hall University School of Law; B.A., Bryn Mawr College, 2014. I would like to thank Professor Jessica Miles for her invaluable wisdom, support, and encouragement. I would also like to thank the Women’s Center of Montgomery County, Pennsylvania for welcoming me as a domestic violence victim court advocate and volunteer.

<sup>1</sup> U.S. Dep’t of Just., *Domestic Violence*, (June 16, 2017) <https://www.justice.gov/ovw/domestic-violence>.

<sup>2</sup> See Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107, 1119–20 (2009). See, e.g., Elizabeth M. Schneider, *Domestic Violence Law Reform in the Twenty-First Century: Looking Back and Looking Forward*, 42 FAM. L.Q. 353, 356 (2008) (“The core concept is the exercise of power and control, for domestic violence involves a wide range of behaviors including physical abuse, verbal abuse, threats, stalking, sexual abuse, coercion, and economic control.”); Edward S. Snyder & Laura W. Morgan, *Domestic Violence Ten Years Later*, 19 J. AM. ACAD. MATRIM. LAW. 33, 33 n.2 (2004) (“‘Domestic violence’ occurs when one intimate partner uses physical violence, threats, stalking, harassment, or emotional or financial abuse to control, manipulate, coerce, or intimidate the other partner.”); see also Tamara L. Kuennen, “No-Drop” Civil Protection Orders: Exploring the Bounds of Judicial Intervention in the Lives of Domestic Violence Victims, 16 UCLA WOMEN’S L.J. 39, 39 (2007); ELIZABETH M. SCHNEIDER ET AL., DOMESTIC VIOLENCE LAW: THEORY AND PRACTICE 44 (2d ed. 2008).

<sup>3</sup> See Johnson, *supra* note 2, at 1129; see also Jeffrey R. Baker, *Enjoining Coercion: Squaring Civil Protection Orders with the Reality of Domestic Abuse*, 11 J.L. & FAM. STUD. 35, 36 (2008).

<sup>4</sup> See Johnson, *supra* note 2, at 1138 (“With a limited view of domestic violence, anyone who has been subjected to various forms of domestic violence not covered under the CPO statutory definition of domestic violence cannot file a cause of action or obtain a remedy.”). For a discussion examining how states narrowly define DV, see *infra* Part III. A CDVPO is

DVCPO law enacted throughout the United States is needed to allow all DV survivors access to legal relief.

This Comment examines the need for state enactment of a uniform DVCPO law across the United States. Part II details the phenomenon of DV and the historical development of DV civil law. Part III discusses the current state of DVCPO law. This Part highlights the different statutory definitions of DV and the relief available in state statutes through a fifty-state survey analysis. Part IV examines the need for a uniform, expansive DVCPO law across the United States. Next, Part V asserts that Congress should encourage individual states to adopt a uniform DVCPO law through its constitutional Article I spending power. Part VI concludes that use of the spending power should be successful in light of the anticipated benefits of a national uniform DVCPO law, Congress's past success of using the spending power in the context of other national DV laws, and the need for increased funding and resources to address DV. Part VII briefly concludes.

## II. DV AND DV LAW

### A. *The Phenomenon of DV*

DV is a highly prevalent, pervasive, and significant problem in the United States. On average, three women are murdered every day by their husbands or boyfriends<sup>5</sup> and about half of all women will experience psychological aggression by an intimate partner in their lifetimes.<sup>6</sup> Although the majority of reported DV survivors are women, DV can be experienced by anyone—regardless of gender, race, age, sexual orientation, educational level, socioeconomic status, or religion.<sup>7</sup>

DV significantly affects every part of a survivor's life<sup>8</sup> on an individual, family, and community level.<sup>9</sup> DV is the leading cause of injury and death for women in the United States<sup>10</sup> and may result in a range of both acute and

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a civil restraining order that provides different forms of protection for survivors of DV, including enjoining the alleged abuser from abusing or contacting the survivor. *See generally* SCHNEIDER ET AL., *supra* note 2.

<sup>5</sup> *Domestic Violence Statistics*, <http://domesticviolencestatistics.org/domestic-violence-statistics/> (last visited Feb. 4, 2018). Additionally, every nine seconds a woman is assaulted or beaten in the United States. *Id.*

<sup>6</sup> MICHELE C. BLACK ET AL., *THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 2* (2011), [https://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf).

<sup>7</sup> U.S. Dep't of Just., *supra* note 1; Baker, *supra* note 3, at 35 (“Domestic abuse afflicts families across eras, cultures, and economic strata.”); Jason Palmer, *Domestic Violence*, 11 *GEO. J. GENDER & L.* 97, 101 (2010).

<sup>8</sup> Schneider, *supra* note 2, at 357.

<sup>9</sup> U.S. Dep't of Just., *supra* note 1.

<sup>10</sup> BLACK ET AL., *supra* note 6, at 1.

chronic mental health outcomes for survivors.<sup>11</sup> Families are also affected because DV can threaten family safety and stability and teach children that violence is acceptable.<sup>12</sup> Additionally, DV negatively impacts community safety and welfare,<sup>13</sup> contributes to other societal problems,<sup>14</sup> is a significant public health concern,<sup>15</sup> and can cost survivors and society more than \$5.8 billion every year.<sup>16</sup>

DVCPOs help to address the effects of DV by providing benefits to both survivors and to society.<sup>17</sup> As an effective legal remedy,<sup>18</sup> protection orders provide financial, physical, psychological, and safety benefits for survivors<sup>19</sup> by promoting autonomy, safety, decision-making, and

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<sup>11</sup> *Id.* DV survivors may also be prevented from obtaining education, employment, and economic independence. See Sally F. Goldfarb, Expert Paper from Meeting of the Experts on Violence Against Women, U.N. Div. for the Advancement of Women 4 (May 20, 2005), <http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/experts/goldfarb.legaldomain.pdf> (citing Sally F. Goldfarb, *Applying the Discrimination Model to Violence Against Women: Some Reflections on Theory and Practice*, 11 AM. U. J. GENDER, SOC. POL'Y, & L. 251 (2003)) [hereinafter Goldfarb1].

<sup>12</sup> DALE HARRIS ET AL., FAMILY VIOLENCE: A MODEL STATE CODE (1994), [http://www.njcfj.org/sites/default/files/modocode\\_fin\\_printable.pdf](http://www.njcfj.org/sites/default/files/modocode_fin_printable.pdf).

<sup>13</sup> *Id.*

<sup>14</sup> See Susan L. Keilitz, *Civil Protection Orders: A Viable Justice System Tool for Deterring Domestic Violence*, 9 VIOLENCE & VICTIMS 79, 82 (1994) (“[P]rotection orders are a potentially powerful, if not perfect, justice system response to domestic violence.”); Jane K. Stoever, *Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders*, 67 VAND. L. REV. 1015, 1080–81 (2014).

<sup>15</sup> MATTHEW J. BREIDING ET AL., PREVALENCE AND CHARACTERISTICS OF SEXUAL VIOLENCE, STALKING, AND INTIMATE PARTNER VIOLENCE VICTIMIZATION—NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY, UNITED STATES 1 (2014), <https://www.cdc.gov/mmwr/pdf/ss/ss6308.pdf>.

<sup>16</sup> ILEANA ARIAS ET AL., NAT'L CTR. FOR INJURY PREVENTION AND CONTROL, CTR. FOR DISEASE CONTROL AND PREVENTION, COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES 2 (2003), <http://www.cdc.gov/violenceprevention/pdf/ipvbo-0k-a.pdf>.

<sup>17</sup> See generally Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?*, 29 CARDOZO L. REV. 1487 (2008) [hereinafter Goldfarb2]. By reducing DV, DVCPOs also reduce the significant financial impact that DV can have on society. See generally T.K. LOGAN ET AL., THE KENTUCKY CIVIL PROTECTIVE ORDER STUDY: A RURAL AND URBAN MULTIPLE PERSPECTIVE STUDY OF PROTECTIVE ORDER VIOLATION CONSEQUENCES, RESPONSES, AND COSTS 144, 144, 154 (2009) (noting savings of \$30.75 in avoided costs to society and \$85 million in savings to the state due to declines in domestic abuse).

<sup>18</sup> Several studies suggest that DVCPOs are generally effective. See Carol E. Jordan, *Intimate Partner Violence and the Justice System: An Examination of the Interface*, 19 J. INTERPERSONAL VIOLENCE 1412, 1424–25 (2004) (reviewing studies of the effectiveness of DVCPOs and concluding that there are mixed results for effectiveness). See generally Carolyn N. Ko, *Civil Restraining Orders for Domestic Violence: The Unresolved Question of “Efficacy,”* 11 S. CAL. INTERDISC. L.J. 361 (2002); Judith A. Smith, *Battered Non-Wives and Unequal Protection-Order Coverage: A Call for Reform*, 23 YALE L. & POL'Y REV. 93, 123–24 (2005).

<sup>19</sup> See Stoever, *supra* note 14, at 1083. Studies show that survivors report improved

empowerment.<sup>20</sup> DVCPOs also provide advantages over the available criminal relief for DV<sup>21</sup> and can help connect survivors with different resources.<sup>22</sup> Even though DVCPOs are the most frequently used legal tools for DV survivors, only a small percentage of survivors actually file for or receive an order.<sup>23</sup> Therefore, DVCPO laws have the potential to make an even greater impact.

#### B. *Development of Civil DV Order Law*

The United States' legal system "has traditionally been unresponsive to the needs" of DV survivors, as governments were hesitant to intervene because of concerns about paternalistic intervention into, and preservation of, the private family unit.<sup>24</sup> Only recently—within the past fifty years—did the Battered Women's Movement begin to change the DV legal and social discourse to recognize DV as a public concern by linking DV to larger societal and cultural institutions.<sup>25</sup> Advocates fought for the creation of

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mental health outcomes after receiving a DVCPO, including feeling better about themselves, their safety, and the future. See generally Karla Fischer & Mary Rose, *When 'Enough is Enough': Battered Women's Decision Making Around Court Orders of Protection*, 41 CRIME & DELINQ. 414, 414, 424 (1995); see also SUSAN L. KEILITZ ET. AL., NAT'L CTR. FOR STATE COURTS, CIVIL PROTECTION ORDERS: THE BENEFITS AND LIMITATIONS FOR VICTIMS OF DOMESTIC VIOLENCE (1997) [hereinafter Keilitz2] (noting that over eighty-five percent of survivors who obtained an order felt their lives had improved since getting the order, and over eighty percent felt safer); Caroline V. Wright & Dawn M. Johnson, *Encouraging Legal Help Seeking for Victims of Intimate Partner Violence: The Therapeutic Effects of the Civil Protection Order*, 25 J. TRAUMATIC STRESS 675 (2012) [hereinafter Wright].

<sup>20</sup> See Edward W. Gondolf et. al., *Court Response to Petitions for Civil Protection Orders*, 9 J. INTERPERSONAL VIOLENCE 503, 504 (1994); Stoever, *supra* note 14, at 1021.

<sup>21</sup> See Smith, *supra* note 18, at 119–26 (noting that compared to criminal relief, DVCPOs have (i) more comprehensive, survivor-centered and survivor-influenced remedies and protection; (ii) tangible emotional benefits by empowering survivors and sending a message that DV will not be tolerated; (iii) and procedural benefits such as lower burdens of proof and increased or additional criminal penalties for violation of a DVCPO).

<sup>22</sup> See Alesha Durfee, *Victim Narratives, Legal Representation, and Domestic Violence Civil Protection Orders*, 4 FEMINIST CRIMINOLOGY 7, 8 (2009); Goldfarb2, *supra* note 17, at 1509.

<sup>23</sup> See Baker, *supra* note 3, at 38 ("Civil protection orders are perhaps the most popular and commonly used legal tool to emerge from this era."); Smith, *supra* note 18, at 95 ("Domestic violence civil protection orders are effective yet underused weapons against domestic violence.").

<sup>24</sup> See Goldfarb2, *supra* note 17, at 1494; Kuennen, *supra* note 2, at 32; Stoever, *supra* note 14, at 1040.

<sup>25</sup> Jane Aiken & Katherine Goldwasser, *The Perils of Empowerment*, 20 CORNELL J.L. & PUB. POL'Y 139, 143 (2010) (noting that the recognition of DV as a larger social problem is a "relatively recent phenomenon"); Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657 (2004) reprinted in DOMESTIC VIOLENCE LAW: THEORY AND PRACTICE 27 (2d ed. 2008) (noting a change from DV being ignored or condoned to DV being addressed as a "matter of public concern"). For more information about the historical development of DV law, see Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and*

DVCPO laws because of their potential to (1) end the public/private dichotomy that categorized DV as a private issue; (2) shape public discourse to recognize DV as a societal harm that affects everyone and can happen to anyone; and (3) directly address DV by promoting survivor safety, autonomy, and protection.<sup>26</sup> By the mid-1990s, all fifty states enacted DVCPO laws with varying forms of qualifying relationships, qualifying acts of abuse, and available relief.<sup>27</sup>

### III. DVCPO LAW: A FIFTY-STATE ANALYSIS

This Part summarizes the results of an independent, fifty-state survey analysis of DVCPO law.<sup>28</sup> DVCPOs are generally obtained through a legal process involving two or three phases: (1) emergency *ex-parte* orders that may be issued if the survivor needs immediate protection during hours when the court is not in session; (2) temporary *ex-parte* orders of protection issued without a hearing or notice to the alleged abuser; and (3) final protection orders issued after a hearing, prior to which the alleged abuser received notice and service of the complaint.<sup>29</sup> Every state permits temporary *ex-parte* protection orders and final protection orders;<sup>30</sup> however, only twenty-

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*the Court System*, 11 YALE J.L. & FEMINISM 3, 9–13 (1999); Thomas L. Hafemeister, *If All You Have is a Hammer: Society's Ineffective Response to Intimate Partner Violence*, 60 CATH. U.L. REV. 919, 925–37 (2011); Summer H. Carlisle & Shana Tabak, *Ninth Annual Review of Gender and Sexuality Law Chapter: Federal Domestic Violence Law*, 9 GEO. J. GENDER & L. 661, 664–94 (2008).

<sup>26</sup> See Aiken & Goldwasser, *supra* note 25, at 169. There are other forms of protection orders separate from the DV legal context that provide relief for similar conduct, including stalking, harassment, and sexual assault. See, e.g., CONN. GEN. STAT. § 46b-16a (West 2018) (“Issuance of civil protection order on behalf of person who has been [a survivor] of sexual abuse, assault or stalking.”).

<sup>27</sup> See Jane C. Murphy, Symposium, *Engaging with the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women*, 11 AM. U. J. GENDER SOC. POL’Y & L. 499, 502 (2003).

<sup>28</sup> This survey was completed with DVCPO state statutes as of February 1, 2018. The survey includes only an analysis of the statutory text and does not include an analysis of relevant case law.

<sup>29</sup> See Baker, *supra* note 3, at 40–42; SCHNEIDER ET. AL., *supra* note 2, at 255–56.

<sup>30</sup> See generally ALA. CODE § 30-5-7 (LexisNexis 2010); ALASKA STAT. § 18.66.110 (2017); ARIZ. REV. STAT. § 13-3602 (2017); ARK. CODE ANN. §§ 9-15-206–07 (2017); CAL. FAM. CODE §§ 6320–47 (West 2017); COLO. REV. STAT. §§ 13-14-104.5, 105 (2017); CONN. GEN. STAT. § 46b-15; DEL. CODE ANN. tit. 10, §§ 1043, 1045 (2017); FLA. STAT. § 741.30 (2017); GA. CODE ANN. § 19-13-3 (2016); HAW. REV. STAT. § 586-4, 5.5 (2017); IDAHO CODE § 39-6308 (2017); 725 ILL. COMP. STAT. 60 (2018); IND. CODE § 34-26-5-9 (2017); IOWA CODE § 236.4 (2017); KAN. STAT. ANN. § 60-3106 (2017); KY. REV. STAT. ANN. §§ 403.730, 740 (LexisNexis 2017); LA. STAT. ANN. §§ 46:2135–36 (2017); ME. STAT. tit. 19-A, § 4006 (2017); MD. CODE ANN. FAM. LAW §§ 4-505–06 (LexisNexis 2017); MASS. GEN. LAWS ch. 209A, §§ 3–4 (2017); MICH. COMP. LAWS SERV. § 600.2950 (LexisNexis 2017); MINN. STAT. § 518B.01 (2016); MISS. CODE ANN. §§ 93-21-11, 15 (2017); MO. REV. STAT. § 455.010.1 (2017); MONT. CODE ANN. §§ 40-15-201–02 (2017); NEB. REV. STAT. §§ 42-924–25 (2017); NEV. REV. STAT. ANN. § 33.020 (2017); N.H. REV. STAT. ANN. §§ 173-B:4–5 (2017); N.J.

three state statutes specifically include provisions that permit emergency DVCPOs.<sup>31</sup>

Generally, a DV survivor must meet two requirements to receive a DVCPO: the survivor must show (1) “that [he/she] shares a particular type of relationship with her abuser,” and (2) “that [he/she] suffered a particular form of abuse at his hands.”<sup>32</sup> These are respectively referred to as “act” and “relationship” requirements.<sup>33</sup>

#### A. *The Relationship Requirement*

To qualify for a DVCPO, the survivor and abuser generally must have at least one of the following relationships: family member, household member, dating relationship, or intimate partner.<sup>34</sup> States vary in which types of relationships qualify. For example, six states do not explicitly include family members related by blood<sup>35</sup> and nine states do not include family members related by marriage<sup>36</sup> as qualifying relationships. Furthermore, only three states do not include current or former spouses,<sup>37</sup> eight states do not include household members,<sup>38</sup> six states do not include

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STAT. ANN. §§ 2C:25-28-29 (2017); N.M. STAT. ANN. §§ 40-13-4-5 (2017); N.Y. FAM. LAW § 828 (Consol. 2017); N.C. GEN. STAT. § 50B-2 (2017); N.D. CENT. CODE § 14-07.1-02 (2017); OHIO REV. CODE ANN. § 3113.31 (LexisNexis 2017); OKLA. STAT. tit. 22, § 60.2-3 (2017); OR. REV. STAT. §§ 107.710, 718 (2017); 23 PA. CONS. STAT. § 6107 (2017); 15 R.I. GEN. LAWS § 15-5-19 (2017); S.C. CODE ANN. § 20-4-60 (2017); S.D. CODIFIED LAWS §25-10-6 (2017); TENN. CODE ANN. § 36-3-601 (2017); TEX. FAM. CODE § 83.001 (West 2017); UTAH CODE ANN. §§ 78B-7-403-04 (LexisNexis 2017); VT. STAT. ANN. tit. 15, § 1104 (2017); VA. CODE ANN. § 16.1-253 (2017); WASH. REV. CODE § 26.50.070 (2017); W. VA. CODE § 48-27-203 (2017); WIS. STAT. § 813.12 (2017); WYO. STAT. ANN. §§ 35-21-104-05 (2017).

<sup>31</sup> ALASKA STAT. § 18.66.110; ARIZ. REV. STAT. § 13-3624; CAL. FAM. CODE § 6250; COLO. REV. STAT. § 13-14-103; DEL. CODE ANN. tit. 10, § 1043; 725 ILL. COMP. STAT. 60/217; IOWA CODE § 236.6; KAN. STAT. ANN. § 60-3105; KY. REV. STAT. ANN. § 403.645; LA. STAT. ANN. § 46:2135; ME. STAT. tit. 19-A, § 4003; MD. CODE ANN. FAM. LAW § 4-504.1; MASS. GEN. LAWS ch. 209A, § 5; MISS. CODE ANN. § 93-21-13; N.M. STAT. ANN. § 40-13-3.2; N.C. GEN. STAT. § 50B-2; N.D. CENT. CODE § 14-07.1-08; OKLA. STAT. tit. 22, § 60.3; 23 PA. CONS. STAT. § 6110; 15 R.I. GEN. LAWS § 15-5-4; VT. STAT. ANN. tit. 15, § 1104; VA. CODE ANN. § 16.1-253.4; W. VA. CODE § 48-27-203.

<sup>32</sup> Smith, *supra* note 18, at 102.

<sup>33</sup> *Id.*

<sup>34</sup> Palmer, *supra* note 7, at 146-48.

<sup>35</sup> See generally KAN. STAT. ANN. § 60-3102; MICH. COMP. LAWS SERV. § 600.2950; N.J. STAT. ANN. § 2C:25-19; S.C. CODE ANN. § 20-4-20; UTAH CODE ANN. § 78B-7-402; WYO. STAT. ANN. § 35-21-101.

<sup>36</sup> See generally KAN. STAT. ANN. § 60-3102; MICH. COMP. LAWS SERV. § 600.2950; MINN. STAT. § 518B.01 (2016); N.C. GEN. STAT. § 50B-1; N.J. STAT. ANN. § 2C:25-19; S.C. CODE ANN. § 20-4-20; UTAH CODE ANN. § 78B-7-402; WIS. STAT. § 813.12 (2017); WYO. STAT. ANN. § 35-21-101.

<sup>37</sup> See generally KAN. STAT. ANN. § 60-3102; UTAH CODE ANN. § 78B-7-402; VT. STAT. ANN. tit. 15, § 1101 (2017).

<sup>38</sup> See generally DEL. CODE ANN. tit. 10, § 1041 (2017); KY. REV. STAT. ANN. § 403.720 (LexisNexis 2017); MISS. CODE ANN. § 93-21-3 (2017); NEV. REV. STAT. ANN. § 33.020

any form of dating or sexual relationships besides marriage,<sup>39</sup> and six states do not include having a child together<sup>40</sup> as statutory qualifying relationships. Even though most state DVCPO statutes enumerate dating relationships as qualifying relationships, the statutory definition and/or case law interpretation of the term “dating relationship” may nonetheless exclude survivors from obtaining relief. For example, Alabama’s DVCPO statute defines a “dating relationship” as:

A significant relationship of a romantic or intimate nature characterized by the expectation of affectionate or sexual involvement over a period of time and on a continuing basis during the course of the relationship . . . . A dating relationship does not include a casual or business relationship or a relationship that ended more than 12 months prior to the filing of the petition for a protection order.<sup>41</sup>

Additionally, South Carolina’s and North Carolina’s opposite-sex qualifications may deny relief to homosexual couples in dating or romantic relationships.<sup>42</sup> Conversely, Maine’s and Washington’s DVCPO statutes seem to directly include same-sex dating relationships by enumerating “domestic partners” as qualifying relationships.<sup>43</sup> Washington, however, does not include some teen dating relationships as qualifying relationships because its statute excludes relationships involving children under the age of sixteen.<sup>44</sup>

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(2017); 23 PA. CONS. STAT. § 6102 (2017); 15 R.I. GEN. LAWS § 15-5-1 (2017); S.D. CODIFIED LAWS §25-10-3.1 (2017); UTAH CODE ANN. § 78B-7-402.

<sup>39</sup> See generally FLA. STAT. § 741.28 (2017); GA. CODE ANN. § 19-13-1 (2016); KY. REV. STAT. ANN. § 403.720; OHIO REV. CODE ANN. § 3113.3 (LexisNexis 2017); S.C. CODE ANN. § 20-4-20; VA. CODE ANN. § 16.1-228 (2017).

<sup>40</sup> IDAHO CODE § 39-6306 (2017); N.H. REV. STAT. ANN. § 173-B:3 (2017); 23 PA. CONS. STAT. § 6102; TENN. CODE ANN. § 36-3-601 (2017); UTAH CODE ANN. § 78B-7-402; VT. STAT. ANN. tit. 15, § 1101.

<sup>41</sup> ALA. CODE § 30-5-2(3)(a), (c) (LexisNexis 2010).

<sup>42</sup> N.C. GEN. STAT. § 50B-1 (2017) (“For purposes of this section, the term ‘personal relationship’ means a relationship wherein the parties involved . . . (2) Are persons of opposite sex who live together or have lived together; . . . (6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship.”); S.C. CODE ANN. § 20-4-20.

<sup>43</sup> ME. STAT. tit. 19-A, § 4002 (2017); WASH. REV. CODE § 26.50.010 (2017).

<sup>44</sup> WASH. REV. CODE § 26.50.010 (noting that the following qualify for statutory relief: “persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship”).

Finally, some states broadly define the relationship requirement. For example, North Dakota invites judicial discretion to determine which relationships qualify for relief by permitting the court to grant relief to “any other person if the court determines that the relationship between that person and the alleged abuser is sufficient to warrant the issuance of a domestic violence protection order.”<sup>45</sup>

### B. *The Act Requirement*

States define the act requirement in three different ways: (1) by enumerating specific criminal offenses as qualifying acts; (2) by listing conduct not directly related to a criminal offense, such as “physical harm” and “fear of imminent serious, bodily injury” as qualifying acts; or (3) a mixed approach that includes both specific criminal code provisions and conduct not directly related to a criminal offense.<sup>46</sup> In the United States, eleven states define the act requirement as exclusively criminal offenses,<sup>47</sup> nineteen states include only conduct not directly related to criminal offenses,<sup>48</sup> and twenty-one states have the mixed approach that includes both criminal offenses and conduct not directly related to criminal offenses.<sup>49</sup>

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<sup>45</sup> N.D. CENT. CODE § 14-07.1-01 (2017).

<sup>46</sup> Some states have an additional timing requirement where the act of abuse must have occurred within a specific recent time frame before the survivor filed for a DVCPO. *See, e.g.*, OR. REV. STAT. § 107.710 (2015) (requiring that the survivor experience abuse within the past 180 days).

<sup>47</sup> ALA. CODE § 30-5-2 (LexisNexis 2010); ALASKA STAT. § 18.66.990 (2017); ARIZ. REV. STAT. § 13-3601 (2017); FLA. STAT. § 741.28 (2017); GA. CODE ANN. § 19-13-1 (2016); IOWA CODE § 236.2 (2017); LA. STAT. ANN. § 46:2132 (2017); NEV. REV. STAT. ANN. § 33.018 (2017); N.H. REV. STAT. ANN. § 173-B:3 (2017); N.J. STAT. ANN. § 2C:25-19 (2017); N.Y. FAM. LAW § 812 (Consol. 2017).

<sup>48</sup> ARK. CODE ANN. § 9-15-103 (2017); CONN. GEN. STAT. § 46b-38a (2016); IDAHO CODE § 39-6303 (2017); 725 ILL. COMP. STAT. 60/103 (2018); IND. CODE § 34-6-2-34.5 (2017); KAN. STAT. ANN. § 60-3102 (2017); KY. REV. STAT. ANN. § 403.720 (LexisNexis 2017); MASS. GEN. LAWS ch. 209A, § 1 (2017); MICH. COMP. LAWS SERV. § 600.2950 (LexisNexis 2017); MO. REV. STAT. § 455.010 (2017); NEB. REV. STAT. § 42-903 (2017); N.D. CENT. CODE § 14-07.1-01; OKLA. STAT. tit. 22, § 60.1 (2017); OR. REV. STAT. § 107.705; 15 R.I. GEN. LAWS § 15-5-1 (2017); S.C. CODE ANN. § 20-4-20 (2017); TENN. CODE ANN. § 36-3-601 (2017); W. VA. CODE § 48-27-204 (2017); WYO. STAT. ANN. § 35-21-102 (2017).

<sup>49</sup> CAL. FAM. CODE § 6203 (West 2017); COLO. REV. STAT. § 13-14-101 (2017); DEL. CODE ANN. tit. 10, § 1041 (2017); HAW. REV. STAT. § 586-4 (2017); MD. CODE ANN. FAM. LAW § 4-501 (LexisNexis 2017); ME. STAT. tit. 19-A, § 4002 (2017); MINN. STAT. § 518B.01 (2016); MISS. CODE ANN. § 93-21-3 (2017); MONT. CODE ANN. § 40-15-102 (2017); N.M. STAT. ANN. § 40-13-2 (2017); N.C. GEN. STAT. § 50B-1 (2017); OHIO REV. CODE ANN. § 3113.31 (LexisNexis 2017); 23 PA. CONS. STAT. § 6102 (2017); S.D. CODIFIED LAWS § 25-10-1 (2017); TEX. FAM. CODE §§ 71.003–021 (West 2017); UTAH CODE ANN. § 78B-7-402 (LexisNexis 2017); VT. STAT. ANN. tit. 15, § 1101 (2017); VA. CODE ANN. § 16.1-228 (2017); WASH. REV. CODE § 26.50.010; WIS. STAT. § 813.12 (2017).



Despite the varying definitions of the act requirement, more than half of the states narrowly define DV solely as physical acts centered on physical harm or injury.<sup>50</sup> A few states define DV more broadly and include forms of non-physical abuse;<sup>51</sup> for example, seventeen states include harassment.<sup>52</sup> Twenty-eight states include stalking<sup>53</sup> as a qualifying act of DV. Only five states' act requirements, however, include causing emotional or psychological harm as qualifying acts of abuse.<sup>54</sup>

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<sup>50</sup> See, e.g., VA. CODE ANN. § 16.1-228 (“Family abuse means any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by a person against such person’s family or household member.”); see also ARK. CODE ANN. § 9-15-103; CONN. GEN. STAT. § 46b-38a; FLA. STAT. § 741.28; GA. CODE ANN. § 19-13-1; IDAHO CODE § 39-6303; IND. CODE § 34-6-2-34.5; IOWA CODE § 236.2; KAN. STAT. ANN. § 60-3102; KY. REV. STAT. ANN. § 403.720; LA. STAT. ANN. § 46:2132; MD. CODE ANN. FAM. LAW § 4-501; MASS. GEN. LAWS ch. 209A, § 1; MINN. STAT. § 518B.01; MISS. CODE ANN. § 93-21-3; MONT. CODE ANN. § 40-15-102; NEB. REV. STAT. § 42-903; N.D. CENT. CODE § 14-07.1-01; OHIO REV. CODE ANN. § 3113.31; OR. REV. STAT. § 107.705; 23 PA. CONS. STAT. § 6102; 15 R.I. GEN. LAWS § 15-5-1; S.C. CODE ANN. § 20-4-20; S.D. CODIFIED LAWS §25-10-1; TENN. CODE ANN. § 36-3-601; TEX. FAM. CODE § 71.004; UTAH CODE ANN. § 78B-7-402; VT. STAT. ANN. tit. 15, § 1101; WASH. REV. CODE § 26.50.010; WIS. STAT. § 813.12; W. VA. CODE § 48-27-204; WYO. STAT. ANN. § 35-21-102. Please note that several statutes include acts only *relating* to physical violence or bodily injury and stalking.

<sup>51</sup> See generally Palmer, *supra* note 7, at 145–47.

<sup>52</sup> ALA. CODE § 30-5-2 (LexisNexis 2010); ALASKA STAT. § 18.66.990 (2017); ARIZ. REV. STAT. § 13-3601 (2017); CAL. FAM. CODE § 6203; COLO. REV. STAT. § 13-14-101; HAW. REV. STAT. § 586-4; 725 ILL. COMP. STAT. 60/103; ME. STAT. tit. 19-A, § 4002; MO. REV. STAT. § 455.010.1; NEV. REV. STAT. ANN. § 33.018 (2017); N.H. REV. STAT. ANN. § 173-B:3 (2017); N.J. STAT. ANN. § 2C:25-19 (2017); N.M. STAT. ANN. § 40-13-2; N.Y. FAM. LAW § 812 (Consol. 2017); N.C. GEN. STAT. § 50B-1; OKLA. STAT. tit. 22, § 60.1; W. VA. CODE § 48-27-204.

<sup>53</sup> ALA. CODE § 30-5-2; ALASKA STAT. § 18.66.990; ARIZ. REV. STAT. § 13-3601; CAL. FAM. CODE § 6203; COLO. REV. STAT. § 13-14-101; CONN. GEN. STAT. § 46b-138a; FLA. STAT. § 741.28; GA. CODE ANN. § 19-13-1; IND. CODE § 34-6-2-34.5; KY. REV. STAT. ANN. § 403.720; MD. CODE ANN. FAM. LAW § 4-501; ME. STAT. tit. 19-A, § 4002; MISS. CODE ANN. § 93-21-3; MO. REV. STAT. § 455.010.1; NEV. REV. STAT. ANN. § 33.018; N.J. STAT. ANN. § 2C:25-19; N.M. STAT. ANN. § 40-13-2; N.Y. FAM. LAW § 812; OHIO REV. CODE ANN. § 3113.31; OKLA. STAT. tit. 22, § 60.1; S.D. CODIFIED LAWS §25-10-3.1; 15 R.I. GEN. LAWS § 15-5-1; TENN. CODE ANN. § 36-3-601; VT. STAT. ANN. tit. 15, § 1101; VA. CODE ANN. § 16.1-228; WASH. REV. CODE § 26.50.010; W. VA. CODE § 48-27-204; WIS. STAT. § 813.12.

<sup>54</sup> DEL. CODE ANN. tit. 10, § 1041; HAW. REV. STAT. § 586-4; MICH. COMP. LAWS SERV. § 600.2950 (LexisNexis 2017); N.M. STAT. ANN. § 40-13-2; N.C. GEN. STAT. § 50B-1 (2017). Hawaii’s act requirement includes “extreme psychological abuse” as a qualifying act of DV and defines “extreme psychological abuse” as “intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs, consistently or continually bothers the individual, and that serve no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer extreme emotional distress.” HAW. REV. STAT. § 586-4.

### C. Relief Options

DVCPO statutes provide varying forms of relief that fall into four main categories: (1) injunctive relief; (2) monetary relief; (3) family and support related relief; and (4) additional relief.<sup>55</sup>

#### 1. Injunctive Relief

Injunctive relief may include prohibiting the abuser from threatening, abusing, contacting, harassing or being near the survivor; evicting and excluding the abuser from the survivor's residence; and prohibiting the abuser from engaging in other actions such as possessing a firearm or harming a pet.<sup>56</sup> Every state prohibits "domestic violence."<sup>57</sup>

Many states offer the opportunity to receive injunctive relief for conduct that on its own would not qualify as an act of DV under the statutory act requirement. For example, even though only seventeen states directly include harassment as a qualifying act of DV,<sup>58</sup> twenty-four states allow relief from harassment.<sup>59</sup> Similarly, five states include an injunction against

<sup>55</sup> See Johnson, *supra* note 2, at 1111 (identifying three relief categories: injunctive, monetary, and family).

<sup>56</sup> *Id.* (explaining forms of injunctive relief).

<sup>57</sup> Forty-three state statutes provide specific relief against DV or domestic abuse. See ALA. CODE § 30-5-7; ALASKA STAT. § 18.66.100; ARIZ. REV. STAT. § 13-3602; ARK. CODE ANN. § 9-15-205 (2017); DEL. CODE ANN. tit. 10, § 1045; FLA. STAT. § 741.30; GA. CODE ANN. § 19-13-4; HAW. REV. STAT. § 586-4; IDAHO CODE § 39-6306 (2017); 725 ILL. COMP. STAT. 60/214; IND. CODE § 34-26-5-9; IOWA CODE § 236.5 (2017); KAN. STAT. ANN. § 60-3107 (2017); KY. REV. STAT. ANN. § 403.740; LA. STAT. ANN. § 46:2136 (2017); ME. STAT. tit. 19-A, § 4007; MD. CODE ANN. FAM. LAW § 4-506; MASS. GEN. LAWS ch. 209A, § 3 (2017); MINN. STAT. § 518B.01 (2016); MISS. CODE ANN. § 93-21-15; MO. REV. STAT. § 455.050; MONT. CODE ANN. § 40-15-201 (2017); N.H. REV. STAT. ANN. § 173-B:5; N.J. STAT. ANN. § 2C:25-29; N.M. STAT. ANN. § 40-13-5; N.Y. FAM. LAW § 842; N.C. GEN. STAT. § 50B-3; OHIO REV. CODE ANN. § 3113.31; OKLA. STAT. tit. 22, § 60.4; OR. REV. STAT. § 107.718 (2015); 23 PA. CONS. STAT. § 6108 (2017); 15 R.I. GEN. LAWS § 15-5-3; S.C. CODE ANN. § 20-4-60 (2017); S.D. CODIFIED LAWS § 25-10-5; TENN. CODE ANN. § 36-3-606; TEX. FAM. CODE §§ 785.021–027 (West 2017); UTAH CODE ANN. § 78B-7-404 (LexisNexis 2017); VT. STAT. ANN. tit. 15, § 1103; VA. CODE ANN. § 16.1-279.1; WASH. REV. CODE § 26.50.060; W. VA. CODE §§ 48-27-502–03; WIS. STAT. § 813.12; WYO. STAT. ANN. § 35-21-105 (2017). Seven states do not provide specific relief for DV or abuse, but do provide injunctive relief prohibiting specific acts that result in physical harm. See, e.g., COLO. REV. STAT. § 13-14-105 (including the following forms of injunctive relief: prohibiting the abuser from causing bodily injury, sexually assaulting, harassing, touching, intimidating, or stalking the survivor); see also CAL. FAM. CODE §§ 6340–47; CONN. GEN. STAT. § 46b-15; MICH. COMP. LAWS SERV. § 600.2950; N.D. CENT. CODE 14-07.1-02 (2017); NEB. REV. STAT. § 42-924 (2017); NEV. REV. STAT. ANN. § 33.030; N.H. REV. STAT. ANN. § 173-B:5.

<sup>58</sup> See *supra* note 53.

<sup>59</sup> ALA. CODE § 30-5-7; ALASKA STAT. § 18.66.100; ARIZ. REV. STAT. § 13-3602; ARK. CODE ANN. § 9-15-205; CAL. FAM. CODE §§ 6340–47; COLO. REV. STAT. § 13-14-105; CONN. GEN. STAT. § 46b-15; GA. CODE ANN. § 19-13-4; IDAHO CODE § 39-6306; 725 ILL. COMP. STAT. 60/214; IND. CODE § 34-26-5-9; LA. STAT. ANN. § 46:2136; ME. STAT. tit. 19-A, § 4007; MD. CODE ANN. FAM. LAW § 4-506; MONT. CODE ANN. § 40-15-201; NEV. REV. STAT. ANN.

“disturbing the peace” of the survivor,<sup>60</sup> and eighteen states include an injunction against annoying or molesting the survivor as available forms of relief.<sup>61</sup> Perhaps in light of the correlation between DV and animal abuse,<sup>62</sup> twenty-seven states include prohibitions against harming an animal or pet as a form of available injunctive relief.<sup>63</sup> Only one state does not explicitly offer excluding the abuser from the survivor’s residence as a form of available relief.<sup>64</sup> Additionally, thirteen state DVCPO statutes do not explicitly provide for an injunction against contacting the survivor.<sup>65</sup>

## 2. Monetary Relief

Monetary relief may include requiring the abuser to pay for the cost of property damaged or medical bills incurred and any court costs and fees as result of the abuse.<sup>66</sup> The most common form of monetary relief included in state DVCPO statutes is a provision awarding attorney fees.<sup>67</sup> Conversely,

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§ 33.030; N.Y. FAM. LAW § 842; N.C. GEN. STAT. § 50B-3; N.D. CENT. CODE § 14-07.1-02; OKLA. STAT. tit. 22, § 60.4; 23 PA. CONS. STAT. § 6108; TEX. FAM. CODE § 785.027; WASH. REV. CODE § 26.50.060; W. VA. CODE §§ 48-27-502-03.

<sup>60</sup> CAL. FAM. CODE §§ 6340-47; IDAHO CODE § 39-6306; MO. REV. STAT. § 455.050; MONT. CODE ANN. § 40-15-201; NEB. REV. STAT. § 42-924.

<sup>61</sup> ALA. CODE § 30-5-7; ARK. CODE ANN. § 9-15-205; CAL. FAM. CODE §§ 6340-47; COLO. REV. STAT. § 13-14-105; CONN. GEN. STAT. § 46b-15; IDAHO CODE § 39-6306; IND. CODE § 34-26-5-2; KAN. STAT. ANN. § 60-3107; ME. STAT. tit. 19-A, § 4007; MICH. COMP. LAWS SERV. § 600.2950; MO. REV. STAT. § 455.050; MONT. CODE ANN. § 40-15-201; NEB. REV. STAT. § 42-924; N.D. CENT. CODE 14-07.1-02; OR. REV. STAT. § 107.718; 15 R.I. GEN. LAWS § 15-5-3; S.C. CODE ANN. § 20-4-60; TEX. FAM. CODE § 785.027.

<sup>62</sup> The Animal Legal Defense Fund states that “abusers of animals are five times as likely to harm humans” and “nearly half of the [survivors] who stay in violent households do so because they are afraid for their animals.” Animal Legal Defense Fund, *Animal Cruelty and Domestic Violence*, <http://aldf.org/resources/when-your-companion-animal-has-been-harmed/animal-cruelty-and-domestic-violence/> (last visited Apr. 24, 2018).

<sup>63</sup> ARIZ. REV. STAT. § 13-3602; ARK. CODE ANN. § 9-15-205; CAL. FAM. CODE § 6203; COLO. REV. STAT. § 13-14-100; CONN. GEN. STAT. § 46b-15; FLA. STAT. § 741.30 (2017); HAW. REV. STAT. § 586-1 (2017); 725 ILL. COMP. STAT. 60/214; IND. CODE § 34-26-5-2; IOWA CODE § 236.1 (2017); LA. STAT. ANN. § 46:2132; ME. STAT. tit. 19-A, § 4001; MICH. COMP. LAWS SERV. § 400.501; MINN. STAT. § 518B.01 (2016); NEV. REV. STAT. ANN. § 33.017; N.H. REV. STAT. ANN. § 173-B:1 (2017); N.J. STAT. ANN. § 2C:25-18 (2017); N.Y. FAM. LAW § 842; N.C. GEN. STAT. § 50B-1; OHIO REV. CODE ANN. § 3113.31 (LexisNexis 2017); OR. REV. STAT. § 107.718; S.C. CODE ANN. § 20-4-10; TENN. CODE ANN. § 36-3-601 (2017); TEX. FAM. CODE § 785.027; VA. CODE ANN. § 16.1-2791.1 (2017); W. VA. CODE § 48-27-101; WIS. STAT. § 813.01 (2017).

<sup>64</sup> See generally OKLA. STAT. tit. 22, § 60.4.

<sup>65</sup> See generally CONN. GEN. STAT. § 46b-15; GA. CODE ANN. § 19-13-4 (2016); 725 ILL. COMP. STAT. 60/214; IOWA CODE § 236.5; KAN. STAT. ANN. § 60-3107; LA. STAT. ANN. § 46:2136; MICH. COMP. LAWS SERV. § 600.2950; N.C. GEN. STAT. § 50B-1; N.Y. FAM. LAW § 842; OHIO REV. CODE ANN. § 3113.31; OKLA. STAT. tit. 22, § 60.4; S.D. CODIFIED LAWS § 25-10-5 (2017).

<sup>66</sup> Johnson, *supra* note 2, at 1111 (explaining forms of monetary relief).

<sup>67</sup> Twenty-three states have these provisions. See ALA. CODE § 30-5-7; ARIZ. REV. STAT. § 13-3602; ARK. CODE ANN. § 9-15-205; CAL. FAM. CODE §§ 6340-47; DEL. CODE ANN. tit.

only the New Jersey DV statute directly enumerates punitive damages and pain and suffering as available relief provisions.<sup>68</sup> Three state DVCPO statutes, however, include broad provisions that allow for general “restitution relief,” therefore providing opportunities for survivors to recover costs associated with the abuse.<sup>69</sup> Finally, eighteen state statutes do not provide monetary compensation for abuse-related costs, including neither court costs nor attorney fees.<sup>70</sup>

### 3. Family and Support Related Relief

Family and support related relief may include temporary child custody and visitation provisions; child or spousal support; and pet custody awards.<sup>71</sup> The most common form of statutory family-related relief is temporary child custody provisions.<sup>72</sup> Twelve states do not include child support<sup>73</sup> and seventeen states do not include spousal support<sup>74</sup> as forms of statutory available relief. Twenty-four states enumerate pet custody as a form of

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10, § 1045 (2017); GA. CODE ANN. § 19-13-4; IDAHO CODE § 39-6306 (2017); 725 ILL. COMP. STAT. 60/214; IND. CODE § 34-26-5-9; IOWA CODE § 236.5; KAN. STAT. ANN. § 60-3107; LA. STAT. ANN. § 46:2136; ME. STAT. tit. 19-A, § 4007; MASS. GEN. LAWS ch. 209A, § 3 (2017); MISS. CODE ANN. § 93-21-15 (2017); N.H. REV. STAT. ANN. § 173-B:5; N.J. STAT. ANN. § 2C:25-29; N.Y. FAM. LAW § 842; N.C. GEN. STAT. § 50B-3; 23 PA. CONS. STAT. § 6108 (2017); S.C. CODE ANN. § 20-4-60; VA. CODE ANN. § 16.1-279.1; WASH. REV. CODE § 26.50.060 (2017).

<sup>68</sup> N.J. STAT. ANN. § 2C:25-29 (2017).

<sup>69</sup> CAL. FAM. CODE §§ 6340–47; MINN. STAT. § 518B.01 (2016); W. VA. CODE §§ 48-27-502–03 (2017).

<sup>70</sup> COLO. REV. STAT. § 13-14-105 (2017); FLA. STAT. § 741.30 (2017); HAW. REV. STAT. § 586-4 (2017); KY. REV. STAT. ANN. § 403.740 (LexisNexis 2017); MICH. COMP. LAWS SERV. § 600.2950; MONT. CODE ANN. § 40-15-201 (2017); NEB. REV. STAT. § 42-924 (2017); N.D. CENT. CODE 14-07.1-02 (2017); OHIO REV. CODE ANN. § 3113.3; OKLA. STAT. tit. 22, § 60.4; OR. REV. STAT. § 107.718 (2015); 15 R.I. GEN. LAWS § 15-5-3 (2017); S.D. CODIFIED LAWS § 25-10-5; TENN. CODE ANN. § 36-3-606 (2017); TEX. FAM. CODE § 785.027 (West 2017); UTAH CODE ANN. § 78B-7-404 (LexisNexis 2017); VT. STAT. ANN. tit. 15, § 1103 (2017); WIS. STAT. § 813.12 (2017).

<sup>71</sup> Johnson, *supra* note 2, at 1111 (explaining forms of family-related relief).

<sup>72</sup> Only seven states do not directly include child custody adjudication provisions as forms of available relief. *See generally* ARIZ. REV. STAT. § 13-3602; FLA. STAT. § 741.30; MICH. COMP. LAWS SERV. § 600.2950; MONT. CODE ANN. § 40-15-201; OKLA. STAT. tit. 22, § 60.4; UTAH CODE ANN. § 78B-7-404; WIS. STAT. § 813.12.

<sup>73</sup> ARIZ. REV. STAT. § 13-3602; COLO. REV. STAT. § 13-14-105; HAW. REV. STAT. § 586-4; IDAHO CODE § 39-6306 (2017); MICH. COMP. LAWS SERV. § 600.2950; MONT. CODE ANN. § 40-15-201; NEB. REV. STAT. § 42-924; N.D. CENT. CODE 14-07.1-02; OKLA. STAT. tit. 22, § 60.4; OR. REV. STAT. § 107.718; UTAH CODE ANN. § 78B-7-404; WASH. REV. CODE § 26.50.010 (2017); WIS. STAT. § 813.12.

<sup>74</sup> ARIZ. REV. STAT. § 13-3602; COLO. REV. STAT. § 13-14-105; CONN. GEN. STAT. § 46b-15 (2017); HAW. REV. STAT. § 586-4; IDAHO CODE § 39-6306; KY. REV. STAT. ANN. § 403.740; MICH. COMP. LAWS SERV. § 600.2950; MONT. CODE ANN. § 40-15-201; NEB. REV. STAT. § 42-924; N.Y. FAM. LAW § 842 (Consol. 2017); OKLA. STAT. tit. 22, § 60.4; OR. REV. STAT. § 107.718; 15 R.I. GEN. LAWS § 15-15-13; UTAH CODE ANN. § 78B-7-404; VA. CODE ANN. § 16.1-279.1 (2017); WASH. REV. CODE § 26.50.060; WIS. STAT. § 813.12.

available DVCPO relief.<sup>75</sup> Five state DVCPO laws, however, do not provide any form of family relief.<sup>76</sup>

#### 4. Additional Relief and Duration

Additional relief provisions can include parenting skills classes, batterer treatment programs, substance abuse testing and treatment programs, Global Positioning System (GPS) tracking, and a general provision granting additional necessary relief.<sup>77</sup> The most common form of additional relief available is requiring the abuser to complete DV counseling or a batterer intervention program.<sup>78</sup> Least common is allowing GPS tracking of DV abusers<sup>79</sup> and requiring the abuser to undergo a medical or psychological examination.<sup>80</sup> Additionally, twenty-six states permit the courts to award survivors possession of property.<sup>81</sup> Many state DVCPO

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<sup>75</sup> ALASKA STAT. § 18.66.100 (2017); ARIZ. REV. STAT. § 13-3602; ARK. CODE ANN. § 9-15-205 (2017); CAL. FAM. CODE §§ 6340–6347 (West 2017); COLO. REV. STAT. § 13-14-105; 725 ILL. COMP. STAT. 60/214 (2018); IND. CODE § 34-26-5-9 (2017); IOWA CODE § 236.5 (2017); LA. STAT. ANN. § 46:2136 (2017); ME. STAT. tit. 19-A, § 4007 (2017); MD. CODE ANN. FAM. LAW § 4-506 (LexisNexis 2017); MINN. STAT. § 518B.01 (2016); NEV. REV. STAT. ANN. § 33.030 (2017); N.H. REV. STAT. ANN. § 173-B:5 (2017); N.J. STAT. ANN. § 2C:25-29 (2017); N.C. GEN. STAT. § 50B-3 (2017); OHIO REV. CODE ANN. § 3113.31; S.C. CODE ANN. § 20-4-60 (2017); TENN. CODE ANN. § 36-3-606; TEX. FAM. CODE § 71.027; VT. STAT. ANN. tit. 15, § 1103; VA. CODE ANN. § 16.1-279.1; WASH. REV. CODE § 26.50.060; W. VA. CODE §§ 48-27-502–03 (2017).

<sup>76</sup> MICH. COMP. LAWS SERV. § 600.2950; MONT. CODE ANN. § 40-15-201; OKLA. STAT. tit. 22, § 60.4; UTAH CODE ANN. § 78B-7-404; WIS. STAT. § 813.12.

<sup>77</sup> Stoever, *supra* note 14, at 1044 (explaining different forms of additional relief).

<sup>78</sup> Sixteen states do not directly include a provision for counseling or treatment. ALA. CODE § 30-5-7 (LexisNexis 2010); ARK. CODE ANN. § 9-15-205; COLO. REV. STAT. § 13-14-105; CONN. GEN. STAT. § 46b-15; IND. CODE § 34-26-5-9; KAN. STAT. ANN. § 60-3107 (2017); LA. STAT. ANN. § 46:2136; MICH. COMP. LAWS SERV. § 600.2950; NEB. REV. STAT. § 42-924; NEV. REV. STAT. ANN. § 33.030; N.Y. FAM. LAW § 842; 23 PA. CONS. STAT. § 610 (2017); 15 R.I. GEN. LAWS § 15-15-13; UTAH CODE ANN. § 78B-7-404; VT. STAT. ANN. tit. 15, § 1103; WIS. STAT. § 813.12.

<sup>79</sup> Only five state DVCPO statutes provide this form of relief. IND. CODE § 34-26-5-9; KY. REV. STAT. ANN. § 403.740; LA. STAT. ANN. § 46:2136; MASS. GEN. LAWS ch. 209A, § 3 (2017); WASH. REV. CODE § 26.50.060.

<sup>80</sup> Only three states expressly permit required medical or psychiatric evaluations as a form of relief. *See* KY. REV. STAT. ANN. § 403.740; N.J. STAT. ANN. § 2C:25-29; LA. STAT. ANN. § 46:2136.

<sup>81</sup> *See* ALA. CODE § 30-5-7; ALASKA STAT. § 18.66.100 (2017); CAL. FAM. CODE §§ 6340–47 (West 2017); CONN. GEN. STAT. § 46b-15; DEL. CODE ANN. tit. 10, § 1045 (2017); GA. CODE ANN. § 19-13-4 (2016); 725 ILL. COMP. STAT. 60/214 (2018); IND. CODE § 34-26-5-9; KAN. STAT. ANN. § 60-3107; LA. STAT. ANN. § 46:2136; ME. STAT. tit. 19-A, § 4007 (2017); MD. CODE ANN. FAM. LAW § 4-506 (LexisNexis 2017); MINN. STAT. § 518B.01 (2016); MONT. CODE ANN. § 40-15-201; MO. REV. STAT. § 455.050 (2017); N.H. REV. STAT. ANN. § 173-B:5 (2017); N.J. STAT. ANN. § 2C:25-29; N.C. GEN. STAT. § 50B-3 (2017); N.D. CENT. CODE § 14-07.1-02 (2017); OHIO REV. CODE ANN. § 3113.31 (LexisNexis 2017); 23 PA. CONS. STAT. § 6108; S.C. CODE ANN. § 20-4-60 (2017); TEX. FAM. CODE § 785.027 (West 2017); VA. CODE ANN. § 16.1-279.1 (2017); WASH. REV. CODE § 26.50.060; W. VA. CODE §§

statutes include a general additional relief provision that permits the court to order any relief necessary to protect the survivor from DV.<sup>82</sup> Finally, state statutory duration provisions dramatically vary—ranging from 180 days<sup>83</sup> to indefinite orders of protection.<sup>84</sup>

#### IV. PROPOSED NATIONAL UNIFORM, EXPANSIVE DVCPO LAW

As the most utilized remedy for DV survivors, DVCPOs should be available to all survivors who need protection and should be responsive to individual needs.<sup>85</sup> Allowing all DV survivors access to a wide range of relief options will greatly benefit both survivors<sup>86</sup> and our communities.<sup>87</sup> But, with varying statutory definitions of DV and available relief, the “nation’s CPO laws largely fail to provide a remedy” for many survivors of DV.<sup>88</sup> Thus, to better address DV, we must “remove the barriers that prevent

48-27-502–03 (2017).

<sup>82</sup> Twelve states do not include a general, additional relief provision. *See* GA. CODE ANN. § 19-13-4; IOWA CODE § 236.5 (2017); LA. STAT. ANN. § 46:2136; MASS. GEN. LAWS ch. 209A, § 3; MICH. COMP. LAWS SERV. § 600.2950; MISS. CODE ANN. § 93-21-15 (2017); MO. REV. STAT. § 455.050; N.H. REV. STAT. ANN. § 173-B:5; N.D. CENT. CODE § 14-07.1-02; 15 R.I. GEN. LAWS § 15-15-13; TENN. CODE ANN. § 36-3-606 (2017); VT. STAT. ANN. tit. 15, § 1103.

<sup>83</sup> UTAH CODE ANN. § 78B-7-404.

<sup>84</sup> Fourteen states allow potentially indefinite DVCPO. *See* ALA. CODE § 30-5-7; ALASKA STAT. § 18.66.100; COLO. REV. STAT. § 13-14-105; FLA. STAT. § 741.30 (2017); HAW. REV. STAT. § 586-4 (2017); MICH. COMP. LAWS SERV. § 600.2950; MISS. CODE ANN. § 93-21-15; MONT. CODE ANN. § 40-15-201; N.J. STAT. ANN. § 2C:25-29; N.M. STAT. ANN. § 40-13-1 (2017); N.D. CENT. CODE § 14-07.1-02; OR. REV. STAT. § 107.718 (2015); VT. STAT. ANN. tit. 15, § 1103; WASH. REV. CODE § 26.50.060. Some states provide different durations for different protection order provisions. For example, Alaska provides a potentially indefinite order for the injunction against abuse, but a one-year maximum duration for all other provisions. ALASKA STAT. § 18.66.100.

<sup>85</sup> Jane K. Stoeber, *Freedom from Violence: Using the Stages of Change Model to Realize the Promise of Civil Protection Orders*, 72 OHIO ST. L. J. 303, 321 (2011) [hereinafter Stoeber2] (“Because the protection order is the remedy most utilized and available to [survivors], and in light of its potential effectiveness, it is important that this remedy be available to survivors who need to seek help from the court over time and that courts respond to individual survivors’ needs.”).

<sup>86</sup> Expanding legal options can help survivors disrupt the power and control dynamic in their relationships and promote survivor empowerment. *See* Johnson, *supra* note 2, at 1151–64. Additionally, without a DVCPO, some DV survivors can be “denied other forms of legal relief affecting their family status, immigration status, and welfare status, among other effects.” *See* Johnson, *supra* note 2, at 1152–53.

<sup>87</sup> *See* Dana Harrington Conner, *Symposium Article: VAWA 20-Where Do We Go from Here? Protection Order Duration: Proof, Procedural Issues, and Policy Considerations*, 24 TEMP. POL. & CIV. RTS. L. REV. 343, 369 (2015) (“Affording relief to the greatest number of individuals who are in need of, and desire, civil protection promotes the overall health and welfare of our community.”).

<sup>88</sup> *See generally* Johnson, *supra* note 2, at 1115; *see supra* Part III for an analysis of different state DVCPO relationship requirements, act requirements, and relief options. *See also* Baker, *supra* note 3, at 34 (“Defining ‘abuse’ is central to civil protection regimes

[survivors] who desire the full protection of this remedy from getting these orders.”<sup>89</sup> Ultimately, “our best hope to do so requires strong public policy against domestic violence . . . and begins with appropriate legislation to that end.”<sup>90</sup> This Part argues for a uniform, inclusive, and expansive DVCPO law across the United States that provides individualized relief to every survivor experiencing any form of DV.

A. *A Uniform, Expansive DVCPO Law Will Better Protect DV Survivors*

The current fragmented system of DVCPO laws leaves some DV survivors without any form of relief and some survivors without the specific relief that they desperately need. When the legal system does not provide access to nuanced, individualized protection, “the legal system fails survivors and may even place them in increased danger.”<sup>91</sup> Conversely, by providing the opportunity to receive expansive and individualized relief, more survivors may both seek and obtain orders of protection.<sup>92</sup> A uniform, expansive DVCPO law across the United States is needed to eliminate disparate state treatment of DV and better protect all survivors.

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because a court may not issue a protection order without finding that abuse has occurred or is likely to occur.”).

<sup>89</sup> Murphy, *supra* note 27, at 514.

<sup>90</sup> HARRIS ET AL., *supra* note 12, at v; *see also* Keilitz, *supra* note 14, at 79.

<sup>91</sup> Stoever2, *supra* note 85, at 376; *see also* Deborah M. Weissman, *Gender-Based Violence as Judicial Anomaly: Between “The Truly National and the Truly Local*, 42 B.C. L. REV. 1081, 1135 (2001) (“Most immediately, [survivors] denied effective protection from violence are placed in a dangerous situation.”). Many scholars assert that an individualized response requires civil protection order laws to provide and award relief in a way that does not force a survivor to unwillingly separate from the abuser. *See* Goldfarb2, *supra* note 17, at 1489 (“Until domestic violence law recognizes and accommodates the desire of many [DV survivors] to remain in their relationships, it cannot be considered truly successful.”); Tamara L. Kuennen, *Love Matters*, 56 ARIZ. L. REV. 978, 1010–14 (2014) (hereinafter Kuennen2) (noting that the law should provide protection within the context of love, rather than separation); Elizabeth M. Schneider, *Particularity and Generality: Challenges of Feminist Theory and Practice in Work on Woman-Abuse*, 67 N.Y.U. L. REV. 520, 557–58 (1992) [hereinafter Schneider2].

<sup>92</sup> Studies show that only a small minority of survivors actually seek protection orders. *See* Jordan, *supra* note 18, at 1426. Additionally, survivors “choose not to engage the state because, once they do, their opinion as to what would be the best outcome for them is often ignored.” Margaret E. Johnson, *Changing Course in the Anti-Domestic Violence Movement: From Safety to Security*, 60 VILL. L. REV. 145, 1165 (2015) [hereinafter Johnson2]. Therefore, survivors may be “more willing to seek an order if we can tailor it to fit [their] need[s].” Goldfarb2, *supra* note 17, at 1525.

### 1. Defining “Domestic”: A Broad Definition of Domestic Relationships

Many states fail to provide relief for DV survivors by conditioning relief upon narrow definitions of qualifying DV relationships.<sup>93</sup> Historically, many states provided relief only for survivors in a legal marital relationship.<sup>94</sup> Today, many states now define relationships among a “marriage-mimicry model” and provide relief only to past or present marital relationships, intimate relationships, or relationships where the victim and abuser share a household.<sup>95</sup> Unfortunately, this model leaves many DV survivors without protection.<sup>96</sup>

Different statutory definitions of qualifying relationships also result in dramatically different results for similarly situated DV survivors across the United States.<sup>97</sup> For example, in Massachusetts, a survivor who shares a child in common with his/her abuser meets the relationship requirement to receive a DVCPO, even if he/she did not have a dating relationship or family relationship with the abuser.<sup>98</sup> Just a few miles away in New Hampshire, however, the same survivor may not be able to obtain a DVCPO. New Hampshire’s statute does not explicitly provide relief for survivors who share a child in common; rather, the survivor and abuser must have been or currently be family members, household members, or in a dating

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<sup>93</sup> See SCHNEIDER ET AL., *supra* note 2, at 227; Smith, *supra* note 18, at 96 (“While many states have expanded their definitions of the types of relationships that qualify for protection, too many states still deny protection to [survivor]s in dating relationships, cohabitation relationships, same-sex relationships, and other domestic relationships.”). See also *supra* Part III for an overview of state statutory relationship definitions.

<sup>94</sup> See Ruth Colker, *Marriage Mimicry: The Law of Domestic Violence*, 47 WM. & MARY L. REV. 1841, 1845, 1881 (2006). Upon recognition that DV occurred outside of the traditional marital unit, states began to expand the types of qualifying relationships. See Justine A. Dunlap, *Soft Misogyny: The Subtle Perversion of Domestic Violence “Reform,”* 46 SETON HALL L. REV. 775, 783 (2016).

<sup>95</sup> See Colker, *supra* note 94, at 1849–50.

<sup>96</sup> See Colker, *supra* note 94, at 1881 (“[T]he following people have been left under-protected under their state domestic violence law: (1) [persons] who have gone on a few dates with their abuser but did not enter long-term relationships; (2) [persons] who have maintained separate residences from their abusers; (3) [persons] who have been abused by [persons] who are married to [someone else]; (4) [persons] who sublet a room in a boarding house or an apartment with an abuser; (5) pregnant women who do not live with the abusers who are the fathers of the potential child[ren]; and (6) [persons] in various family situations that do not include marriage or blood ties, such as a widow of the defendant’s brother, stepmother, maternal grandfather, former stepdaughter, former girlfriend, and various college students.”).

<sup>97</sup> See Conner, *supra* note 87, at 344 (“[I]n some jurisdictions a select group of domestic abuse [survivor]s receive a maximum level of protection at the expense of a larger class of survivors who are in need of safeguards, regardless of how brief. In other jurisdictions, a greater number of individuals receive minimum protections only.”).

<sup>98</sup> MASS. GEN. LAWS ch. 209A, § 1 (2017).



relationship.<sup>99</sup>

Even though some advocates limit the definition of DV to intimate partners,<sup>100</sup> it is important to have expansive definitions to include all “domestic relationships.” Without expanding the definition of DV beyond intimate partner relationships, many survivors will be unable to obtain legal relief. Therefore, a uniform DVCPO law that broadly defines qualifying domestic relationships is needed to better protect DV survivors. Qualifying relationships should include those currently recognized by state statutes: current and former sexual, romantic, marital, or dating partners; family relationships by marriage or blood; household members; persons who share a child in common or are pregnant; and other relationships that the court deems should be included as “domestic violence” relationships.<sup>101</sup>

## 2. Defining “Violence”: An Expansive Act Requirement

Currently about half of state statutes fail to provide relief for some DV survivors by conditioning relief upon a finding of physical violence or crimes related to physical harm.<sup>102</sup> DV, however, is more than just physical violence;<sup>103</sup> rather, it is a pattern of behavior used by the abuser to exert power and control over the survivor.<sup>104</sup> Statutes that define DV as solely physical violence consequently neither acknowledge nor provide relief for survivors experiencing only non-physical forms of DV.<sup>105</sup>

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<sup>99</sup> N.H. REV. STAT. ANN. § 173-B:1 (2017).

<sup>100</sup> See, e.g., Snyder & Morgan, *supra* note 2, at 2 n.2 (“‘Domestic violence’ occurs when one intimate partner uses physical violence, threats, stalking, harassment, or emotional or financial abuse to control, manipulate, coerce, or intimidate the other partner.”).

<sup>101</sup> See *supra* Part III.A for an overview of the different state relationship requirements.

<sup>102</sup> See *supra* note 50. See also Johnson, *supra* note 2, at 1129 (“[T]he vast majority of jurisdictions’ CPO laws do not remedy domestic violence unless it is physically abusive or a criminal act.”).

<sup>103</sup> See Baker, *supra* note 3, at 44 (“Physical violence is a symptom, not the disease, of domestic abuse. The disease is a dangerous, coercive imbalance of power and control within the intimate relationship.”); see also Baker, *supra* note 3, at 65 (“An abuser may seek to control his partner through emotional, psychological, social, financial, cultural, and personal means that are not physically violent and that are not illegal.”).

<sup>104</sup> Other areas of law broadly define DV. See Johnson, *supra* note 2, at 1156 (“Immigration, welfare, tort, and divorce laws recognize domestic violence that is broader than only severe physical violence and crimes. Many of these laws recognize that domestic violence is usually situated in a relationship permeated with oppressive power and the exercise of control.”). Some states recognize the need to include an expansive definition of DV. See, e.g., COLO. REV. STAT. § 13-14-100 (2017) (“The general assembly further finds and declares that domestic abuse is not limited to physical threats of violence and harm but also includes mental and emotional abuse, financial control, document control, property control, and other types of control that make a [survivor] more likely to return to an abuser due to fear of retaliation or inability to meet basic needs.”).

<sup>105</sup> See Baker, *supra* note 3, at 44–45 (“The focus on physical violence misses the greater dynamic present in abusive, intimate relationships.”).

By limiting the qualifying abuse to acts that cause physical harm, many states place survivors in more danger because they have to wait for an experience of physical abuse before they are able to access a civil protection order.<sup>106</sup> Conversely, by providing protection to DV survivors who have not experienced physical abuse, a DVCPO order may ultimately decrease non-physical abuse<sup>107</sup> and potentially prevent physical abuse from occurring by changing the control dynamic in the relationship and stopping the escalation of abuse.<sup>108</sup> A more inclusive definition of abuse may therefore result in enormous safety benefits by allowing more survivors to both successfully file for and receive the protection they need.<sup>109</sup> Additionally, a broad definition of abuse more accurately reflects and embodies the experiences of DV survivors by acknowledging all forms of DV.<sup>110</sup> Therefore, a uniform law that broadly defines DV<sup>111</sup> to include psychological or emotional abuse, stalking, harassment, and financial abuse<sup>112</sup> is needed to better protect DV

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<sup>106</sup> Baker, *supra* note 3, at 65 (“[Survivor]s of domestic abuse must await violence before availing themselves of the law.”). Additionally, a narrow definition of abuse focused on physical violence, may result in judge-made standards that award relief only to the most serious cases of physical injury or harm. See Johnson, *supra* note 2, at 1114.

<sup>107</sup> See Johnson, *supra* note 2, at 1113.

<sup>108</sup> See Baker, *supra* note 3, at 58 (“By providing a cause of action for abuse [survivors] who have not yet, or not recently, been [survivors] of physical violence, these [survivors] might break the cycle of escalating violence and seek liberation before a coercive, abusive relationship becomes inevitably violent.”); Johnson, *supra* note 2, at 1113 (“Because CPOs are potentially effective in decreasing nonphysical abuse, CPOs can also potentially change the dangerous power dynamics of a relationship before physical abuse is inflicted.”).

<sup>109</sup> See Johnson, *supra* note 2, at 1140.

<sup>110</sup> See Schneider2, *supra* note 91, at 538 (noting that a broad definition is more inclusive and accurate to the survivor’s experiences).

<sup>111</sup> See Johnson2, *supra* note 92; Smith, *supra* note 18, at 150 (“Each state should expand its civil protection order laws to ensure that all [survivors] and all types of domestic violence are covered.”); Goldfarb2, *supra* note 17, at 1530–40 (asserting that harassment, threats, stalking, property crimes, financial abuse, sexual violence, and emotional/psychological abuse should be included in the definition of DV.); see also BREIDING ET AL., *supra* note 15 (noting that survivors of emotional abuse should be able to obtain relief through DVCPO law because emotional abuse can intensify the damaging impact of other forms of DV, emotional abuse has just as significant—if not more—of an impact than physical abuse, and emotional abuse is often a precursor to physical and sexual forms of violence). One proposed method for broadly defining DV that includes all forms of DV is to premise the definition on a gender-neutral concept of coercive control. See Kristy Candela, Note, *Protecting the Invisible Victim: Incorporating Coercive Control in Domestic Violence Statutes*, 54 FAM. CT. REV. 112, 118 (2016) (“Coercive control is a kind of ‘catch all’ for nonphysical abuse, encompassing multiple types of abuse, such as emotional, psychological, and economic.”).

<sup>112</sup> Many states may not currently provide protection for non-physical forms of abuse because of “the fear of fictitious or trivial claims, distrust of proof offered, and the difficulty of setting up any satisfactory boundaries.” See RESTATEMENT (SECOND) OF TORTS § 46 cmt. b (1965); Leonard Karp & Laura C. Belleau, *The Federalization of Family Law: Family Law and Domestic Violence: The Legacy of the Violence Against Women Act*, 16 J. AM. ACAD. MATRIM. LAW. 173 (1999). Although a discussion of this issue is beyond the scope of this Comment, the “floodgate” concerns may be partially assuaged by providing judges with

survivors.<sup>113</sup>

### 3. Relief Provisions: Expansive Forms of Available Relief

Many DV survivors are not awarded the relief that they believe they need.<sup>114</sup> This may be due in part to disparities in DVCPO laws across the United States where many states provide limited options for legal relief.<sup>115</sup> For example, in Massachusetts DV survivors may receive many forms of relief, including: eviction of the abuser from the shared residence; restitution for damages related to the abuse such as medical expenses, lost wages, and damaged property; attorney's fees related to the abuse; and any other additional relief necessary to protect the survivor.<sup>116</sup> Conversely, that relief is not statutorily available in New Hampshire.<sup>117</sup> A uniform DVCPO law across the United States that permits expansive options for relief is therefore needed to allow survivors to receive individualized and comprehensive protection.<sup>118</sup>

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appropriate training so that they can better identify and understand different forms of DV. See Abigail Hall, *Ending Intimate Partner Homicide: A Call for Reform of Kansas Protective Order Statutes*, 63 KAN. L. REV. 1087, 1110 (2015) (“With proper training, judges will obtain the tools to understand [DV] and identify the abuse when it exists. Judges will know and appreciate that just because a [survivor] does not leave an abusive relationship does not mean that the abuse is nonexistent or benign. Judges will understand that there are many ways to abuse someone, and no form of abuse is consistently less powerful than any other. This knowledge will provide the judges the ability to better identify abusive relationships and work to offer all possible legal protections.”); Sarah A. Herman, Comment, *A Difference in Perceptions: The Final Report of the North Dakota Commission on Gender Fairness in the Courts, Submitted to the North Dakota Supreme Court by the North Dakota Commission on Gender Fairness in the Courts, October 10, 1996*, 72 N.D. L. REV. 1113, 1247 (1996) (“The topic of domestic violence and protection orders—including information about the abuse dynamic, the dangers of misplaced emphasis on [survivor] actions, failure to respect [survivor] concerns, and the prevention of domestic violence—should be addressed in education programs for judges, prosecutors and other attorneys, court personnel, and law enforcement officers.”).

<sup>113</sup> See Johnson, *supra* note 2, at 1115 (“A broader approach will allow the CPO laws to better assist [survivors] seeking to change abusive relationships.”)

<sup>114</sup> See, e.g., Gondolf, *supra* note 20, at 510–11 (noting that in the study conducted, only 12% of requests for financial support, 52% of requests for child custody, 53% of requests for child visitation, and 52% of no contact requests were granted).

<sup>115</sup> See *supra* Part III.C for an analysis of different types of relief offered by state DVCPO laws.

<sup>116</sup> MASS. GEN. LAWS ch. 209A, § 3 (2017).

<sup>117</sup> N.H. REV. STAT. ANN. § 173-B:5 (2017). Additionally, the New Hampshire DVCPO statute does not include a general provision allowing courts to award additional necessary relief. *Id.*

<sup>118</sup> Johnson, *supra* note 2, at 1154.

Additionally, the nature of the self-driven DVCPO legal process warrants expansive, individualized relief.<sup>119</sup> Broad and flexible relief meets the goals and design of DVCPO legislation and the DV legal movement.<sup>120</sup> Expansive and individualized options for relief foster survivor autonomy, decision-making, empowerment, and control—which are key aims of DVCPO laws.<sup>121</sup> A nuanced and flexible approach is necessary to address the complex, unique circumstances of DV relationships.<sup>122</sup> Survivor empowerment and autonomy through the DVCPO process can shift the power balance in the relationship,<sup>123</sup> decrease violence,<sup>124</sup> and help survivors regain that which has been taken by or lost to their abusers.<sup>125</sup> Broad relief

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<sup>119</sup> In DVCPO proceedings, the survivor is the “prosecuting party” who seeks a “specific remedy, tailored to [his/her] unique needs and circumstances.” Wright, *supra* note 19, at 679. Therefore, “[b]ecause protection orders are civil, private rights of action, [survivors] who file protection orders must by definition be afforded greater autonomy and decision-making.” Kuennen, *supra* note 2, at 88.

<sup>120</sup> See Laurie S. Kohn, *What’s So Funny About Peace, Love, and Understanding? Restorative Justice as a New Paradigm for Domestic Violence Intervention*, 40 SETON HALL L. REV. 517, 553 (2010) (“Advocates and legislators support protection order statutes in order to provide survivors with . . . broader and more flexible relief.”); Kuennen, *supra* note 2, at 87 (noting that the reformers and advocates designed the system with the awareness that survivors need “individualized relief tailored to their particular needs” in direct contrast to the relief available in criminal cases); Elizabeth L. MacDowell, *Domestic Violence and the Politics of Self-Help*, 22 WM. & MARY J. WOMEN & L. 203, 214 (2016) (“Activists wanted [DV survivors] to have more access, agency and control over remedies for domestic violence than those available through criminal responses.”).

<sup>121</sup> See Wright, *supra* note 19, at 679 (“The aim of justice interventions for [DV], including the implementation of protective orders, are to ensure safety and empower [survivors] to gain some control in managing conflict.”); see also Einat Peled, Zvi Eisikovits, Guy Enosh, & Zeev Wintok, *Choice and Empowerment for Battered Women Who Stay: Toward a Constructivist Model*, 45 SOC. WORK 9, 19 (2000) (“Having a sense of the availability of multiple options is empowering in and of itself and fosters the experience of choice.”); see, e.g., ALA. CODE § 30-5-1 (LexisNexis 2010) (The purposes of the DVCPO law include: “[t]o assure [survivors] of domestic violence the maximum protection from abuse that the law can provide” and “[t]o create a flexible and speedy remedy. . .”).

<sup>122</sup> See Conner, *supra* note 87, at 369 (“[Domestic] violence affects a diverse group of individuals. Each survivor is unique and mandates a personalized approach to protection. . . . In an effort to provide better protections for those who choose to engage with the civil protection system, a broad range of options must be made available that reflect the unique circumstances of battered persons. . . . Pre-conceptions about what is best for all survivors of domestic violence present safety risks, conflict with survivor autonomy, and run contrary to the civil system of protection.”); Schneider, *supra* note 2, at 363 (“[W]e need legal solutions that are sufficiently nuanced to recognize the violence as well as the human connections.”).

<sup>123</sup> Stoever2, *supra* note 85, at 320.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* (“When [survivors] are able to self-direct, self-define, exercise agency, and exert autonomy—as the civil protection order process should encourage them to do—they can shift the power in the relationship, reconstruct or exit relationships, and decrease violence in their lives.”); see also Baker, *supra* note 3, at 57 (“Instead, civil protection regimes generate relief to violence [survivors] by affording them a lever to demand or regain power, or to be liberated from coercive oppression, by communicating defiance, by seizing a power greater than the

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options may also better protect survivors by making them “less vulnerable to violence and its consequences,”<sup>126</sup> and by enhancing DVCPO enforcement.<sup>127</sup> Therefore, there should be a uniform DVCPO law that provides all forms of relief currently available in state statutes,<sup>128</sup> including: indefinite orders of protection;<sup>129</sup> housing relief;<sup>130</sup> temporary child custody

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abuser’s in the law, and by exposing her oppression publicly.”). DVCPO laws should therefore “support, rather than undermine, [survivors’] role as autonomous decision-makers” by providing expansive, individualized, nuanced relief. Goldfarb2, *supra* note 17, at 1489 (noting that the legal system should seek to restore and reinforce those qualities lost as a result of the abuse, while avoiding measures that revictimize the survivor).

<sup>126</sup> Goldfarb, *supra* note 11, at 15 (“Laws that ensure [DV survivors] access to employment, housing, health care, economic security, and other resources will strengthen [DV survivors’] position[s] in society and thereby render them less vulnerable to violence and its consequences.”).

<sup>127</sup> More specific relief awards better protect victims because defendants understand what conduct is not permitted and law enforcement officers understand what to enforce. See Keilitz, *supra* note 14, at 80; see also Barbara Hart, *State Codes on Domestic Violence: Analysis, Commentary, and Recommendations*, reprinted in DOMESTIC VIOLENCE LAW: THEORY AND PRACTICE 224 (2d ed. 2008) (“For orders to be effective, they must be comprehensive; crafted to the particular safety needs of the [survivor] in each case.”).

<sup>128</sup> See *supra* Part III.C for an overview of available statutory relief.

<sup>129</sup> DVCPO laws should provide an option for indefinite orders of protection because indefinite orders can “increase survivors’ safety and autonomy while saving them from having to reengage with an abusive partner to extend the order.” Stoever, *supra* note 14, at 1022.

<sup>130</sup> DVCPO laws should also provide housing relief, where survivors are able to exclude the abusers from their residences or receive financial contributions from the abusers to find alternate housing if the survivors choose to leave the shared residences. See Johnson2, *supra* note 92, at 196.

provisions;<sup>131</sup> financial support and maintenance;<sup>132</sup> monetary damages;<sup>133</sup> and a general additional relief provision.<sup>134</sup>

B. *DV Is a National Concern That Warrants a National Response*

As a “pervasive and serious social problem”<sup>135</sup> and a “national

<sup>131</sup> Custody provisions help reduce the possibility of abuse or conflict over custody issues and can empower survivors to become independent of the abusers. See Keilitz, *supra* note 14, at 81 (noting that custody provisions offer greater protection for both the female abuse survivor and her children and reduce opportunities for abuse or conflict over custody disputes); Carolyn N. Ko, *Civil Restraining Orders for Domestic Violence: The Unresolved Question of “Efficacy,”* 11 S. CAL. INTERDIS. L.J. 361, 387 (2002) (“The custody issue needs to be addressed to reduce the continued abuse of [parents.]”); Nina W. Tarr, *Promoting Justice Through Interdisciplinary Teaching, Practice, and Scholarship Civil Orders for Protection: Freedom or Entrapment?*, 11 WASH. U. J.L. & POL’Y 157, 171 (2003) (“Many batterers recognize that an easy way to maintain control of a [survivor] is to frighten [him/her] with the threat of losing [his/her] children.”). Custody provisions can also provide survivors with more time to seek a final order of custody or support. See Conner, *supra* note 88, at 368 (“This duration provides the protected person with time to develop a safety plan, seek legal advice, and decide whether to seek a more permanent order from the court on matters of custody, visitation, support, divorce, and property division.”). Finally, DVCPO custody provisions may be more effective than custody orders obtained through custody or divorce actions because violation of the DVCPO triggers an immediate law enforcement response.

<sup>131</sup> See Weissman, *supra* note 91, at 1135–36.

<sup>132</sup> Financial support and maintenance should be statutorily available forms of relief in order to enable financially dependent or economically disadvantaged survivors to receive necessary monetary support. See Stoever2, *supra* note 85, at 371. Additionally, many survivors “frequently need immediate financial relief to enable them to leave an abusive household, meet basic survival needs, and create a home apart from an abusive partner . . .” *Id.*

<sup>133</sup> Monetary damages should be available, including—but not limited to—damages for destruction of property, lost wages, and medical expenses in order to hold the abuser responsible for the costs of his abuse. See Johnson, *supra* note 2, at 1155 (“[M]onetary damages should be available for the injuries to which [survivors] are subjected from their abuse. Such monetary damages are not only important for the resulting harm from physical injuries and the emotional and psychological abuse, but also can be tailored to address the harm from economic abuse . . .”).

<sup>134</sup> *Id.* at 1155–56 (“It is also important to provide a range of CPO remedies so that they can be context specific. DVCPO laws will offer the greatest benefit, therefore, if they provide a remedy that includes a catch-all phrase, such as ‘any other relief that would address the domestic violence,’ that permits the [survivor] to seek a remedy crafted to [his/her] particular situation, [his/her] knowledge of the abuse, and [his/her] understanding of the best way to address it.”).

<sup>135</sup> Patricia Tjaden & Nancy Thoennes, NAT’L INST. OF JUST., U.S. DEP’T OF JUST., EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE 55 (2000), <https://www.ncjrs.gov/pdffiles1/nij/181867.pdf>; see also William G. Bassler, *The Federalization of Domestic Violence: An Exercise of Cooperative Federalism or a Misallocation of Federal Judicial Resources?*, 48 RUTGERS L. REV. 1139, 1159 (1996) (“The enormity of domestic violence as a social problem requires a response at all levels of government—national, state, and local.”); Ron Cooper, *Lack of State Accountability in Acts of Domestic Violence: Understanding the Contrast Between the U.S. and International Approaches*, 29 ARIZ. J. INT’L & COMP. L. 657, 689 (2012) (“Whatever the difficulty, the U.S. government needs to take the next step in domestic violence advocacy . . .”); David M. Fine,

epidemic,”<sup>136</sup> DV “mandate[s] national intervention.”<sup>137</sup> National legal recognition of DV through a uniform DVCPO law can transform how DV is addressed because the national legal system can be a vehicle for social change.<sup>138</sup> As a “nation of laws” the citizenry is committed to the law in such a way that the legal system is a powerful force in society.<sup>139</sup> The law’s “symbolic function in setting standards of right and wrong, as well as the power to incarcerate, impose other remedies, and allocate resources, make the legal arena a crucial site for initiatives to improve a country’s response to [DV].”<sup>140</sup>

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*The Violence Against Women Act of 1994: The Proper Federal Role in Policing Domestic Violence*, 84 CORNELL L. REV. 252, 300 (1998) (“Domestic violence is a problem of national proportion.”); Goldfarb, *supra* note 11, at 3 (“The law should do all it can to designate [DV] as a serious public concern that requires a commitment of public attention and resources.”).

<sup>136</sup> Kerri E. Maloney, *Gender Motivated Violence and the Commerce Clause: The Civil Rights Provision of the Violence Against Women Act After Lopez*, 96 COLUM. L. REV. 1876, 1878 (1996).

<sup>137</sup> *Id.* at 1878; Rep. of the Group of Experts on Violence Against Women, U.N. Div. for the Advancement of Women, (May 2005), <http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/FINALREPORT.goodpractices.pdf> (“[DV] must be addressed on multiple levels and in multiple sectors of society simultaneously, taking direction from local people on how women’s rights may be promoted in a given context.”) In 2015, President Barack Obama recognized the severity of DV and the necessity of a larger response by stating, “we recommit to doing everything in our power to uphold the basic human right to be free from violence and abuse” and “we all have a responsibility to try to end this grave problem.” Proclamation No. 60263, 80 Fed. Reg. 60027, 60263 (Oct. 5, 2015).

<sup>138</sup> See Goldfarb2, *supra* note 17, at 1535 (“In addition to their effect on [survivors] and perpetrators, protection orders can also have an impact on society as a whole. Law has enormous capacity to change social norms.”); Elizabeth M. Schneider et al., *Battered Women & Feminist Lawmaking: Author Meets Readers*, 10 J. L. POL’Y 313, 343 (2002) [hereinafter Schneider3] (“Obviously, law is an important and sometimes necessary instrument in the sense that it can facilitate the translation of a social problem into a subject of public concern and even public responsibility that provides citizens with an entitlement to public care, concern, protection or support.”); see also Aiken, *supra* note 25, at 150 (“[The Battered Women’s Movement advocates] saw recognition in the law as a way of accomplishing multiple objectives at once including bringing domestic violence into the national spotlight, conveying a message of support to [survivors], and making clear that battering was simply unacceptable.”).

<sup>139</sup> See Schneider3, *supra* note 138, at 349–50 (“We do not have anything else to appeal as a source of our commonality or our national identity. We have this phrase—it is a sexist phrase, but it is still useful—‘We are a nation of laws, not men.’”); see also Goldfarb, *supra* note 11, at 3 (“Legal practices should increase public awareness that [DV] is unacceptable and should contribute to a sense of public responsibility for solving the problem.”).

<sup>140</sup> Goldfarb, *supra* note 11, at 2. A national response provides many important benefits, including the ability to “address common solutions to widely shared problems” and “speak with greater moral authority” than responses through only state and local governments. Ann L. Estin, *Sharing Governance: Family Law in Congress and the States*, 18 CORNELL J. L. & PUB. POL’Y 267, 333 (2009) (“Because Congress is a national forum, it represents a wider cross-section of values and interests than most state legislatures. Because it acts for the nation, Congress is in a unique position to determine and implement common solutions.”).

A national response is needed to challenge and correct the pervasive misconception of DV as a distant, private matter.<sup>141</sup> In *United States v. Morrison*, the United States Supreme Court held that the federal civil rights remedy for gender-motivated violence in the Violence Against Women Act [VAWA] was an unconstitutional use of Congress's Article III Commerce Clause Power.<sup>142</sup> The Court famously stated, "[t]he Constitution requires a distinction between what is truly national and what is truly local."<sup>143</sup> In this way, the *Morrison* decision "served to divest violence against women of its systemic character, and belies a common view that claims of gender-based violence are more anecdotal than structural, more idiosyncratic than institutional."<sup>144</sup>

The misconception of DV as a solely private, family problem continues to perpetrate every level of our society and legal system. In state courts, the legal culture "is infused with the belief that problems of [DV are] inappropriate for judicial resolution."<sup>145</sup> Also, many state judges do not understand the complexity of DV.<sup>146</sup> They base decisions on common public misperceptions and ultimately perpetuate a "widely held anti-victim bias."<sup>147</sup> Unfortunately, DV survivors suffer as a result of this legal culture.<sup>148</sup> For

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<sup>141</sup> See Palmer, *supra* note 7 at 103 (noting that a local response to DV "contributes to the misperception of domestic violence as isolated instances.").

<sup>142</sup> *United States v. Morrison*, 529 U.S. 598, 601 (2000); U.S. CONST. art. III, § 8, cl. 3.

<sup>143</sup> *Morrison*, 59 U.S. at 617–18.

<sup>144</sup> Weissman, *supra* note 91, at 1085.

<sup>145</sup> *Id.* at 1093; see also *id.* at 1085 ("[T]he state courts shun these cases by curtailing the hearing process, thereby reducing them to quasi-judicial controversies, or consigning them outside of the legal system altogether."). Judicial attitudes about the significance of DV are related to views of family law in general. See Palmer, *supra* note 7, at 158 ("Family court is held in such low esteem among the judicial community that judges rarely choose to be assigned there; instead, many sit on the family court bench after being promised that they will be promoted to general civil or criminal divisions after one term.").

<sup>146</sup> See Kuennen, *supra* note 2, at 45 ("In addition, the psychological dynamics of domestic violence are complex, and judges are not provided with sufficient time, information or training to be able to adequately address them. Judges become frustrated with [survivors] who appear to want to stay in abusive relationships, with batterers who appear to flout court orders, and with the problem of domestic violence generally. Finally, judges may assume that [DV survivors], by definition, are unable to make rational decisions with regard to what is in their best interest. These factors may inappropriately skew judicial decision-making."); Palmer, *supra* note 7, at 158–59 ("For example, there is evidence that some judges misconstrue domestic violence as an isolated, private matter—one relating to 'personality flaws, relationships gone bad, anger and jealousy'—as opposed to a cyclical, dangerous relationship worthy of a thoughtful, long-term judicial remedy. Without judicial education, some judges also fail to see the complex financial, social, cultural and political issues outside of a given relationship that may encourage a [DV survivor] to stay with an abusive partner, or that may make it incredibly difficult for her to leave.").

<sup>147</sup> Epstein, *supra* note 25, at 6.

<sup>148</sup> Weissman, *supra* note 91, at 1115 ("Domestic violence cases suffer as a result of the courts' general dislike for matters involving personal problems."); see also Weissman, *supra* note 91, at 1111 ("The historic belief that domestic violence matters have no legitimate place



example, “[t]he beliefs that domestic violence issues are less important, private, and not the courts’ concerns are often related to and expressed as biases of judges, affecting the outcome of each case.”<sup>149</sup> Some survivors report very disturbing behavior and commentary from state judges, including one judge stating, “if you go back one more time I’ll hit you myself.”<sup>150</sup> Further action is needed to “correct the inferior treatment of domestic violence” and reestablish a commitment to addressing and preventing DV.<sup>151</sup> By recognizing DV as a public issue, a national response may encourage increased action to directly address it in a way that will better protect and support DV survivors.<sup>152</sup>

Finally, the federal government has historically recognized the importance of a national response to DV by directly enacting legislation to combat it.<sup>153</sup> In 1984 Congress enacted the Family Violence Prevention and Service Act (FVPSA)<sup>154</sup> and in 1994 Congress enacted VAWA.<sup>155</sup> VAWA

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in the courts is centrally implicated in the failure of the legal system to address them.”).

<sup>149</sup> Weissman, *supra* note 91, at 1118.

<sup>150</sup> Herman, *supra* note 112, at 1208. Another judge stated, “you’re taking away the three most important things in his life: his home, children, and wife. Are you sure you want to do this?” *Id.* at 1208. Finally, another judge stated to a survivor, “[s]omeday you will realize this is all your fault.” *Id.*

<sup>151</sup> Stoever, *supra* note 14, at 1087.

<sup>152</sup> See Goldfarb2, *supra* note 17, at 1507 (“Laws that provide for broad coverage and comprehensive relief offer the most benefits to domestic violence [survivors]”); see also Cooper, *supra* note 135, at 686 (“Viewing domestic violence as a public issue that threatens the health and safety of millions of Americans each year could lead to legislative changes aimed at providing the necessary support and outreach [survivors] need.”). Additionally, some DV survivors want the legal system to be a public forum and a loudspeaker that will catch the attention of the abusers. See Fischer & Rose, *supra* note 19, at 420 (“[S]ome [survivors] emphasize the need to have the law act, in one form or another, as a ‘loudspeaker’. The law was deliberately chosen because it was the only form of communication to which the abuser would listen, guaranteeing that the message would be heard.”). Survivors want and need a systemic legal response that “holds the perpetrators accountable.” Keilitz, *supra* note 14, at 80 (“These orders invoke the court’s authority to advise the perpetrator that domestic violence is unacceptable and to provide sanctions for further abuse or threats of violence.”). In this way, a strong, integrated message through a uniform, expansive DVCPO law can better meet the needs of survivors and intensify the current positive effects of DVCPO laws.

<sup>153</sup> ADRIENNE L. FERNANDES-ALCANTARA, CONG. RESEARCH SERV., R42838, FAMILY VIOLENCE PREVENTION AND SERVICES ACT (FVPSA): BACKGROUND AND FUNDING 1 (2015), <https://fas.org/sgp/crs/misc/R42838.pdf>.

<sup>154</sup> See Family Violence Prevention and Services Act, 42 U.S.C. §§ 10401–21 (2012). FVPSA provides funding for: (1) the creation and maintenance of a national DV hotline and DV service database; (2) direct services to survivors and families by funding different organizations and services—including legal advocacy; and (3) prevention campaigns and strategies. For more information about FVPSA, see generally *Family Violence Prevention and Services Act*, NATIONAL NETWORK TO END DOMESTIC VIOLENCE, <http://nnedv.org/policy/issues/fvpsa.html> (last visited Apr. 24, 2018).

<sup>155</sup> See Violence Against Women Act, 42 U.S.C. §§ 13925–14045 (2012). VAWA is considered the “first comprehensive legislation effort to create a national response to the epidemic of violence against women.” Robin R. Runge, *The Evolution of a National*

and FVPSA “demonstrate the importance of a national response that provides consistent legal protections and substantial targeted funding for legal and social services.”<sup>156</sup> VAWA and FVPSA improved institutional and societal attitudes toward DV,<sup>157</sup> by relocating DV from a local to a national forum and acknowledging DV as a national problem.<sup>158</sup>

As President Barack Obama recognized, however, “though we have made great progress in bringing awareness to and providing protections against domestic violence, much work remains to be done.”<sup>159</sup> The continued prevalence and severity of DV in the United States “reflects as much a failure of our Nation’s collective willingness to confront the problem as it does the failure of the Nation’s law and regulations. Both our resolve and our laws must change if [DV survivors] are to lead free and equal lives.”<sup>160</sup> Without a national recommitment to DV, the problems in DV law will continue.<sup>161</sup>

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*Response to Violence Against Women*, 24 HASTINGS WOMEN’S L.J. 429 (2013). Since its creation, VAWA has been continuously reauthorized to fund a variety of state legal, educational, and service programs that address DV. Goldfarb, *supra* note 11, at 13 (“The statute authorized the appropriation of 1.62 billion dollars in federal funds to support a broad range of programs, including training of police, prosecutors, and judges; support of battered women’s shelters and rape prevention programs; creation of a national toll-free domestic violence telephone hotline; and establishment of a national database to improve local, state and federal law enforcement agencies’ ability to record and share information on domestic violence and stalking offenses.”). VAWA even provides funding to provide legal assistance in civil protection order proceedings and efforts to improve civil protection order effectiveness. See Murphy, *supra* note 2727, at 503. For more information about the history and specific provisions of VAWA, see generally Runge, *supra*.

<sup>156</sup> Runge, *supra* note 155, at 454.

<sup>157</sup> Caitlin Valiulis, *Fifteenth Annual Gender and Sexuality Law: Annual Review Article: Domestic Violence*, 15 GEO. J. GENDER & L. 123, 149 (2014) (“Institutional attitudes have progressed, in large part because of federal legislation such as VAWA.”).

<sup>158</sup> See Weissman, *supra* note 91, at 1106 (“By providing a federal remedy, VAWA unhinged gender-based violence from its historic private and local domain, and marked a reconceptualization of domestic violence as a pressing public and national social problem.”). Specifically, “VAWA’s provisions tell [survivors] that the nation takes their plight seriously, allow them some control over detention hearings, and provide them with civil remedies that acknowledge and partly compensate them for the harm they have suffered.” *Id.*

<sup>159</sup> Proclamation No. 60263, 80 Fed. Reg. 60027, 60263 (Oct. 5, 2015); see also Kuennen, *supra* note 2, at 39 (“[T]he American legal system continues to struggle with the development of appropriate legal responses to the problems of domestic violence.”).

<sup>160</sup> Runge, *supra* note 155, at 429 (citing S. REP. NO. 103-138, at 37 (1993)); see also Kohn, *supra* note 120, at 530 (“Because our current justice system interventions provide inconsistent levels of effectiveness and [survivor] satisfaction, it is time to reevaluate our system. . . . The prevalence of domestic violence demands that more radical changes to the judicial system be made.”).

<sup>161</sup> Bassler, *supra* note 135, at 1167 (“Until there is an attitudinal change in our cultural acceptance of violence, legal efforts will always remain inadequate.”).

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The United States legal system therefore needs a national “rededication to the civil justice response” to DV.<sup>162</sup> DVCPO laws have “great potential,” when there are “procedural and substantive law changes and additional commitment[s] and effort by the legislative, judicial, and community advocacy systems.”<sup>163</sup> With these changes, “the promise of the protection order can be a reality.”<sup>164</sup> Therefore, a uniform and expansive DVCPO law across the United States is needed to better address and prevent DV.

#### V. IMPLEMENTING A UNIFORM DVCPO LAW ACROSS THE UNITED STATES

Congress likely can successfully encourage state implementation of a uniform DVCPO law by conditioning additional federal funding on state enactment of the uniform law. First, this method is constitutional because Congress may “hold out incentives to the states as a method of influencing a state’s policy choices”<sup>165</sup> under Congress’s Article I Spending Power. Second, this method conforms to federalism principles as a form of cooperative federalism. Finally, this method is likely to successfully achieve a national, uniform DVCPO law because of the demonstrated need for increased DV services and programs funding.

##### A. *Congress Can Influence State Policy Choices Through Its Spending Power*

The Constitution grants Congress the power to “lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States.”<sup>166</sup> In *New York v. United States*, the United States Supreme Court held that “[u]nder Congress’s spending power, Congress may attach conditions on the receipt of federal funds.”<sup>167</sup> As stated in *South Dakota v. Dole*, use of Congress’s spending power is subject to the following limitations:

The first of these limitations is derived from the language of the Constitution itself: the exercise of the spending power must be in

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<sup>162</sup> Stoever2, *supra* note 85, at 318 (noting the need of a national rededication to addressing DV because of: “(1) its pervasive utilization by survivors; (2) its proven effectiveness relative to other interventions; and (3) its autonomy-promoting character that correlates with enhanced safety.”).

<sup>163</sup> Stoever2, *supra* note 85, at 377.

<sup>164</sup> Stoever2, *supra* note 85, at 377.

<sup>165</sup> *New York v. United States*, 505 U.S. 144 (1992) (“Congress does not lack the ability to encourage a state to regulate in a particular way, and Congress may hold out incentives to the states as a method of influencing a state’s policy choices.”).

<sup>166</sup> U.S. CONST. art. I, § 8, cl. 1.

<sup>167</sup> *New York*, 505 U.S. at 167.

pursuit of the general welfare. In considering whether a particular expenditure is intended to serve general public purposes, courts should defer substantially to the judgment of Congress. Second, if Congress desires to condition the states' receipt of federal funds, it must do so unambiguously, enabling the states to exercise their choice knowingly, cognizant of the consequences of their participation. Third, conditions on federal grants might be illegitimate if they are unrelated to the federal interest in particular national projects or programs. Finally, other constitutional provisions may provide an independent bar to the conditional grant of federal funds.<sup>168</sup>

Under the *Dole* standard, Congress should be able to encourage state adoption of a uniform DVCPO law by conditioning the procurement of additional funding on state enactment of the uniform law. The first requirement of the *Dole* standard is met because encouraging state adoption of a uniform DVCPO law is in pursuit of the general welfare. DV is a highly prevalent phenomenon across the United States with devastating effects for survivors, families, and communities.<sup>169</sup> A uniform, expansive DVCPO law can increase survivors' access to protection,<sup>170</sup> reduce or eliminate future instances of DV,<sup>171</sup> and can begin to change the larger social discourse about DV by sending a message that DV is unacceptable.<sup>172</sup> Congressional effort to encourage state adoption of an expansive uniform DVCPO law is therefore "in pursuit of the general welfare"<sup>173</sup> because expansive civil protection order laws can directly improve survivor and community safety.

For similar reasons the third requirement is also met. The third requirement demands a relation between the funding conditions and the federal interests in the national initiative.<sup>174</sup> By allowing for increased survivor safety and protection, an expansive DVCPO law directly furthers federal interests in the safety and protection of DV survivors and society.<sup>175</sup> Therefore, by conditioning funding on enactment of a uniform DVCPO law, there is a direct relationship between federal interests and the law's funding

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<sup>168</sup> *South Dakota v. Dole*, 483 U.S. 203, 205 (1987).

<sup>169</sup> See *supra* notes 8–16 and accompanying text for a discussion of the high prevalence of DV and the ways DV affects survivors, families, and communities.

<sup>170</sup> See *supra* note 127; see, e.g., Judith A. Smith, *Battered Non-Wives and Unequal Protection-Order Coverage: A Call for Reform*, 23 YALE L. & POL'Y REV. 93, 150 (2005) ("Each state should expand its civil protection order laws to ensure that all [survivors] and all types of domestic violence are covered.").

<sup>171</sup> See *supra* text accompanying notes 124–127.

<sup>172</sup> See *supra* text accompanying notes 138–152.

<sup>173</sup> *Dole*, 483 U.S. at 205.

<sup>174</sup> *Id.*

<sup>175</sup> See *supra* text accompanying note 152.

conditions. Finally, the second requirement of the *Dole* standard will be met as long as the funding conditions are clearly and unambiguously stated in the national legislation in such a way as to allow states to make informed decisions.<sup>176</sup> Therefore, under the *Dole* standard, the use of Congress's spending power to encourage the states to enact a uniform DVCPO law is likely constitutional.

B. *Use of the Spending Power Comports with Federalism Principles and Current Law*

National lawmaking in the area of DV may raise federalism concerns. The Supreme Court and many academics readily affirm the view that DV and family law are issues for state jurisprudence.<sup>177</sup> Family law “requires a level of political engagement and a sense of community identity that lie beyond the reach of national politics.”<sup>178</sup> States may also be better lawmaking forums because they can serve as laboratories of legal experimentation, where new laws can be made without the risk of negatively impacting the entire nation.<sup>179</sup> Unfortunately, however, “states now have spent many years experimenting with different approaches”<sup>180</sup> to DVCPO

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<sup>176</sup> *Dole*, 483 U.S. at 205.

<sup>177</sup> *United States v. Morrison*, 529 U.S. 598, 601 (2000) (“The Constitution requires a distinction between what is truly national and what is truly local, and there is no better example of the police power, which the Founders undeniably left reposed in the States and denied the central government, than the suppression of violent crime and vindication of its [survivors]. Congress therefore may not regulate noneconomic, violent criminal conduct based solely on the conduct’s aggregate effect on interstate commerce.”); *In re Burrus*, 136 U.S. 586, 586 (1890) (“The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States.”); see also Anne C. Dailey, *Federalism and Families*, 143 U. PA. L. REV. 1787, 1821 (1995) (“From the earliest days of the Republic until the recent past, family law has unquestionably belonged to the states.”). *Contra* Kristin A. Collins, *Federalism’s Fallacy: The Early Tradition of Federal Family Law and the Invention of States’ Rights*, 26 CARDOZO L. REV. 1763, 1861 (2005) (“[T]here has never been a point in American history when the states exercised exclusive authority over family law and policy.”); Jill E. Hasday, *Federalism and the Family Reconstructed*, 45 UCLA L. REV. 1297, 1298 (1998) (“[E]xclusive localism in family law simply mis-describes American history and concludes that family law’s actual historical record gives no weight to the claim that tradition should count as a reason for exclusive federal noninvolvement.”). See also *supra* notes 153–159 for a discussion of VAWA and FVPSA—two national legislative responses to DV.

<sup>178</sup> Dailey, *supra* note 177, at 1871. Therefore, “[b]y situating communitarian politics at the state level . . . localism ensures that the civic participation, political dialogue, and shared values essential to family law will develop within the states’ smaller, relatively more accessible political locales.” *Id.* at 1871–72.

<sup>179</sup> *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (“It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”).

<sup>180</sup> Kuennen, *supra* note 2, at 40.

laws and there remains a significant and often unaddressed problem with DV across the United States.<sup>181</sup> The remaining high prevalence and significant effects of DV demand “more radical changes to the judicial system. . . .”<sup>182</sup>

Use of Congress’s spending power to encourage specific state policy decisions does not raise the same federalism concerns as direct congressional enactment.<sup>183</sup> Rather, the spending power “exemplifies cooperative federalism” by utilizing the federal government’s greater financial resources to establish a “nation-wide standard” while “aiding functions carried out under state law” and preserving state discretion.<sup>184</sup> The spending power “provides states with additional help or resources to fulfill their traditional responsibilities”<sup>185</sup> and each individual state retains the ultimate decision-making power.<sup>186</sup> For example, under the proposed scheme, each state will decide whether to enact the uniform DVCPO law and receive additional funding. In this way, the federal government does not strip states of their decision-making power; instead, use of the spending power reinforces “state initiative” and “state authority.”<sup>187</sup>

The Child Support Enforcement Act (CSEA) similarly uses Congress’s spending power<sup>188</sup> and includes provisions very similar to what is proposed here. Specifically, “in exchange for financial and other incentives, CSEA largely determines state procedures for establishing paternity” by “requiring states to conform to highly specific guidelines on the content of child support orders.”<sup>189</sup> Similarly, Congress should condition additional federal funding

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<sup>181</sup> See *supra* Part IV for a discussion of continued problems in state DVCPO legal systems.

<sup>182</sup> Kohn, *supra* note 120, at 530.

<sup>183</sup> See Robert E. Cowen, *The Thirteenth Annual Chief Justice Joseph Weintraub Lecture: Federalization of State Law Questions: Upheaval Ahead*, 47 RUTGERS L. REV. 1371, 1385 (1995).

<sup>184</sup> *Id.*

<sup>185</sup> Estin, *supra* note 140, at 334.

<sup>186</sup> Bassler, *supra* note 135, at 1185 (citing Morton Grodzins, *The Federal System, in GOALS FOR AMERICANS, THE REPORT OF THE PRESIDENT’S COMMISSION ON NATIONAL GOALS* 265–66 (1965)) (“[F]ederal grant programs exemplify the concept of co-operative federalism by utilizing the greater wealth-gathering abilities of the central government and establishing nation-wide standards, yet [aiding] functions carried out under state law, with considerable state and local discretion.”).

<sup>187</sup> Dailey, *supra* note 177, at 1886 (“Reinforcing state initiative through its spending power is one way in which the federal government may reinforce state authority.”).

<sup>188</sup> Dailey, *supra* note 177, at 1885 (“The Child Support Enforcement Act is one example of federal legislation that seeks to promote state responsibility in the area of family regulation . . . . Because the federal law induces the states to take responsibility for child support standards and enforcement, it can be viewed as reinforcing rather than undermining state authority.”).

<sup>189</sup> Hasday, *supra* note 177, at 1380. Congress also has successfully established national standards for child abuse and neglect cases by conditioning funding on states having specific laws. See Michele W. Easterling, *For Better or Worst: The Federalization of Domestic*

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on state adoption of a specific, expansive, DVCPO law.

The federal government already supports state DV laws and services through its spending power with funding provisions in VAWA and FVPSA.<sup>190</sup> If Congress already uses its spending power to support DV services and to create national child abuse and support standards, Congress should use its spending power to encourage state adoption of a uniform, expansive DVCPO law.

C. *States Are Likely to Adopt a Uniform DVCPO Law in Exchange for Increased Federal Funding*

Congress may encourage state adoption of a uniform DVCPO law by conditioning additional VAWA or FVPSA funding on state adoption of the uniform law. These additional funds may be derived from the money that these programs save. For example, VAWA reportedly saved \$14.8 billion in averted social costs in its first six years.<sup>191</sup> DVCPO laws also save money. For example, the DVCPO law in Kentucky saved the state approximately \$85 million in one year.<sup>192</sup> Therefore, the money saved by implementing a more expansive DV law across the United States may help offset the additional costs of creating additional federal funding.

Another possible method to generate additional funding is to raise the cap of the Victims of Crime Act (VOCA).<sup>193</sup> VOCA funds several programs that help crime survivors through a fund “derived entirely from fines and penalties paid by offenders at the federal level, and *not taxpayer revenue*.”<sup>194</sup> By increasing federal criminal fines or by utilizing more of the \$6 billion in the fund by raising the current cap on VOCA fund disbursement, Congress can allocate VOCA funding for this DV initiative.<sup>195</sup>

The spending power is likely to be successful if the proposed federal funds “bring real resources to the table to help states carry out their important functions.”<sup>196</sup> States are currently struggling to successfully adjudicate DVCPO cases with “congested court dockets, inadequate resources,

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*Violence*, 98 W. VA. L. REV 933, 952 (1996).

<sup>190</sup> See *supra* notes 156–59. VAWA is even celebrated for its “cooperative federalism.” See Bassler, *supra* note 135, at 1190.

<sup>191</sup> National Network to End Domestic Violence, *Reauthorization of the Violence Against Women Act (VAWA)*, [http://nnev.org/downloads/Policy/VAWA\\_Reauthorization\\_Fact\\_Sheet.pdf](http://nnev.org/downloads/Policy/VAWA_Reauthorization_Fact_Sheet.pdf).

<sup>192</sup> *Id.*

<sup>193</sup> Nat'l Alliance to End Sexual Violence, *Victims of Crime Act*, (2018), <http://naesv.bigplanet.net/legislation-we-follow/victims-of-crime-act> (last visited Apr. 24, 2018).

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> Estin, *supra* note 140, at 335.

unrepresented litigants, and challenging subject matter . . . .”<sup>197</sup> Because of these problems, “protection order statutes have been left compromised and improperly enforced.”<sup>198</sup> Significant funding increases are needed to address these problems.<sup>199</sup> Because of this demonstrated need for additional funding to address DV, states will likely enact a uniform DVCPO law in order to receive additional federal funding. Therefore, by creating additional federal funding under VAWA, FVPSA, or VOCA and conditioning the receipt of funding on state enactment of a uniform, expansive DVCPO law, Congress is likely to successfully encourage states to implement a uniform DVCPO law.<sup>200</sup>

## VI. CONCLUSION

DV remains a significant and pervasive problem across the United States with dramatic effects on the individual, family, community, state, and national level. Civil protection orders have great, unrealized potential to directly minimize DV and alleviate its devastating effects. Through inclusive and expansive definitions of DV as well as a broad range of comprehensive relief provisions, DVCPO laws can provide more appropriate, necessary, and individualized relief that better protects survivors of all types of DV. With dramatically different DVCPO statutes across the United States, uniform laws are needed. The DVCPO’s potential for significant, positive impact will be further fostered by direct federal encouragement. Thus, Congress should use its Article I spending power to condition additional federal funding (through VOCA, VAWA, or FVSPA) on state adoption of uniform DVCPO law. It is time for the national government to work more with the states to support and encourage

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<sup>197</sup> Peter Johnsen & Elia Robertson, *Protecting, Restoring, Improving: Incorporating Therapeutic Jurisprudence and Restorative Justice Concepts into Civil Domestic Violence Cases*, 164 U. PA. L. REV. 1557, 1565 (2016).

<sup>198</sup> *Id.* at 1569.

<sup>199</sup> See Goldfarb2, *supra* note 17, at 1550 (“Ideally, if our society is serious about addressing the pervasive and devastating problem of domestic violence, significantly increased funding should be provided to assist [DV survivors].”); Stoeber2, *supra* note 85, at 356 (“More resources are needed at every level, in terms of attorneys and advocates engaged in civil advocacy with domestic violence survivors, community resources, health interventions, shelters, and transitional housing. Notwithstanding recognition that services by advocates and attorneys and the availability of safe shelters are essential to escaping violence, funding for these services has been severely cut in recent years, forcing shelters to close, organizations to lay off advocates and attorneys, and agencies to scale back services and turn away survivors in crisis.”).

<sup>200</sup> Michele W. Easterling furthers a similar argument for achieving a national uniform DV criminal law. See Michele W. Easterling, *For Better or Worst: The Federalization of Domestic Violence*, 98 W. VA. L. REV. 933, 951 (1996) (“Congress should use the available monetary resources to insure [sic] implementation of their [sic] ideal laws in the states, under state jurisdiction.”).



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progressive state DV laws and services. It is time for a heightened national response to DV. Through a uniform, inclusive, and expansive DVCPO law that is recognized and encouraged by all levels of our government, we will be better able to protect all survivors of DV, our families, and our communities.