

OHIO'S NEW DATING VIOLENCE PROVISION: GETTING UP TO DATE WITH U.S. DOMESTIC VIOLENCE LAW

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INTRODUCTION

Dating violence has been put on the backburner over the past few decades as legislatures busied themselves with creating protection mechanisms for victims of what society considers “domestic violence.” Such progress was essential and has been life-changing for those who fit the traditional idea of a domestic violence victim: battered wives, young mothers abused by their child’s father, and children abused by their parent or guardian. Such individuals are usually within the scope of a domestic violence protection order’s definitions of protected individuals. However, for those individuals who were unable to obtain a domestic violence civil protection order (DVCPO), the lack of protection put them and those around them in danger. Although “dating relationships” are now included in Ohio’s DVCPO statute, the term is contested throughout the nation and interpretations vary. The expansion of DVCPOs beyond “family or household members” would be hugely beneficial to unwed victims who do not share a child with or live with their offender and Ohio courts should interpret the provision to include a wide range of petitioners.

It is a misconception that dating violence is less severe than other forms of domestic violence and therefore not worthy of the same protection.¹ The argument is that without being married or having children together, nothing is preventing the victim from leaving. Dating violence is not just an immature lover’s quarrel to be resolved by “ghosting” the perpetrator or simply breaking off the relationship. Dating violence is an office romance that turns into workplace harassment, where the victim must choose between keeping a job and escaping the risk of assault. Dating violence is sexual assault by a former dating partner who became angry

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1. Myrna S. Raeder, *People v. Simpson: Perspectives on the Implications for the Criminal Justice System: The Admissibility of Prior Acts of Domestic Violence: Simpson and Beyond*, 69 S. CAL. L. REV. 1463 n.1 (1996) (“simply referring to other descriptors describing violence within an intimate relationship is equally subject to devaluation, and violence against women encompasses too many other forms of wrongdoing.”).

over the victim's new relationship. Dating violence is threats to "out" a significant other in a same-sex relationship where the victim has not come out yet. Most importantly, dating violence is domestic violence.

Until 2018, Ohio failed to provide formal legal protection for victims of dating violence.

The 132nd General Assembly decided to add "dating relationship" to the DVCPO statute, section 3113.31 of the Ohio Revised Code, during the 2017-2018 Regular Session.² In light of the fact that every state except Georgia currently provides DVCPOs to victims of dating violence,³ Ohio is late to the game and the scope of the new provision still has its limitations. However, the legislature's acknowledgment of the issue brings hope for further progress in the realm of modern-day domestic violence and dynamic protection for survivors.

Section 3113.31 has covered DVCPOs since 1996.⁴ Domestic violence is defined as "[a]ttempting to cause or recklessly causing bodily injury" or "[p]lacing another person by the threat of force in fear of imminent serious physical harm."⁵ Both section 3113.31 and section 2919.25, the criminal domestic violence statute, of the Ohio Revised Code have always required that the victim be a family or household member of the perpetrator. As long as the individual resides with the respondent, any relative including foster parents, aunts and uncles, or even cousins may file for a DVCPO.⁶ While the definition of "family or household member" has varied between courts and changed over time, prior to the new provision the Ohio legislature has consistently excluded intimate partners who do not "cohabitate" or are not "living as spouses." Unfortunately, the criminal domestic violence statute has not been similarly updated to include "dating relationships."⁷

Ohio's new dating violence provision allows individuals in a dating relationship to obtain a DVCPO against their partner although they do not reside

2. An analogous provision was originally intended to be enacted within the same session to provide criminal protection orders to domestic violence victims in a "dating relationship." Michael Voris, *The Domestic Violence Civil Protection Order and the Role of the Court*, 24 AKRON L. REV. 423, 425 (1990). This omission is contrary to the legislative intent of section 3113.31 because the Supreme Court of Ohio asserted that the General Assembly enacted the Act "to criminalize those activities commonly known as domestic violence." *Felton v. Felton*, 679 N.E.2d 672, 674 (Ohio 1997). The DVCPO statute was intended to be used in addition to criminal remedies. Jake Hamman, *Walk a Day in Their Shoes: Addressing Ohio's Civil Protection*, 47 U. TOL. L. REV. 795, 799-800 (2016). The lack of a parallel criminal provision has been criticized by Governor Kasich and the director of the Ohio University Survivor Advocacy Program. Jackie Borchardt, *Gov. Kasich Signs Bill Creating Domestic Violence Protection Order for Dating Partners*, CLEVELAND.COM (April 5, 2018), https://www.cleveland.com/metro/2018/04/gov_john_kasich_signs_bill_cre.html; George Shillcock, *Ohio Becomes 49th State to Offer Dating Violence Survivors Civil Protection*, THE POST (July 5, 2018, 6:56 PM), <https://www.thepostathens.com/article/2018/07/house-bill-one-ohio-dating-violence>.

3. GA. CODE ANN. §§ 19-13-1, 19-13-4 (2019).

4. OHIO REV. CODE ANN. § 3113.31 (West 2019).

5. § 3113.31(A)(1)(a)(ii) (West 2019).

6. § 3113.31(A)(3) (West 2019).

7. OHIO REV. CODE ANN. § 2919.25 (West 2019).

together. This provision, distinct from “family or household member,” represents an ongoing struggle to adequately protect victims of domestic violence and other crimes. Where before, individuals in dating relationships were turned away by the justice system, not due to the inadequacy of their harm but due to their marital, familial, or household status, individuals may now have a fair chance at finding an adequate remedy. Although the new provision has yet to be utilized in its full capacity, the current moment provides an opportunity to define the scope of the provision with discretion.

Section I will discuss dating violence and the risks it poses to victims. Section II will introduce the new provision and discuss the societal pressure and impactful events that led to its creation. Section III will analyze other states’ coverage of dating violence and the struggle to answer the question “[w]hat is a dating relationship?”⁸ Section IV will summarize courts’ use of the new provision since its inception. Finally, Section V will recommend considerations relevant to courts’ decisions of which incidents of “intimate partner violence” that include an unmarried couple without children and not residing together should be protected under Ohio’s DVCPD statute. I propose that Ohio courts should interpret the new provision to accommodate diverse victims and provide adequate protection to those who experience the same type of violence and relationship dynamic as family and household members.

I. BEFORE THE “DATING RELATIONSHIPS” PROVISION

A. *The Threat of Dating Violence*

Dating violence is a subset of intimate partner violence; the U.S. Department of Justice defines “intimate partner violence” as domestic violence against a current or former spouse or against a current or former dating partner.⁹ The U.S. Department of Justice has found that “current or former boyfriends or girlfriends committed the most domestic violence,” even more than spouses or ex-spouses.¹⁰ Further, current or former dating partners had a higher percentage of *serious* intimate partner violence than did married or divorced couples.¹¹ However, not all incidents of intimate partner violence are considered “domestic violence” under the relevant DVCPD statute.

8. *Andrews v. Rutherford*, 832 A.2d 379, 380 (N.J. Super. Ct. Ch. Div. 2003).

9. Special Report, U.S. Department of Justice, *Nonfatal Domestic Violence, 2003-2012* NCJ 244697 at 14 (Apr. 2014), <https://www.bjs.gov/content/pub/pdf/ndv0312.pdf>; see also National Center for Injury Prevention and Control, *The National Intimate Partner and Sexual Violence Survey: 2015 Data Brief – Updated Release 7* (Nov. 2018), <https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf>.

10. Jennifer L. Truman & Rachel E. Morgan, *Nonfatal Domestic Violence, 2003-2012*, U.S. DEP’T OF JUST. 1 (Apr. 2014), <https://www.bjs.gov/content/pub/pdf/ndv0312.pdf>.

11. *Id.* at 7.

“On average, more than 1 in 3 women and 1 in 4 men in the US will experience rape, physical violence, and/or stalking by an intimate partner,” which are all forms of intimate partner violence.¹² According to the National Domestic Violence Hotline, females aged 16-24 experienced the highest rate of “intimate partner violence – almost triple the national average” and the majority of those women were abused by a former boyfriend or girlfriend.¹³ From 2012-2014, 65% of homicides of females aged 25-34 were caused by intimate partner violence.¹⁴ In Ohio, 43% of domestic violence calls in 2010 resulted in no charges or failed to meet domestic violence criteria.¹⁵

The effect this violence has on victims’ lives goes far beyond physical and emotional harm. Violent relationships between intimate partners can increase the likelihood that the victim will eventually become pregnant or contract an STI.¹⁶ Victims of intimate partner violence are likely to lose paid workdays and many even lose their jobs.¹⁷

In an educational bulletin, the National Center for Victims of Crime listed the defining features of dating violence.¹⁸ Dating violence is characterized by controlling behavior such as telling the victim what to wear, controlling the victim’s relationships with their friends, and needing to be with the victim or know where they are at all times. The bulletin lists forms of emotional abuse including name-calling, jealousy, belittling the victim, and threatening to hurt themselves or the victim among other coercive methods. Also listed were physical abuse such as shoving and sexual abuse such as unwanted touching or controlling the victim’s birth control.¹⁹

Dating violence is characterized by similar behaviors as other types of domestic violence but differs in aspects that do not lessen the danger and detriment to the victim. Because the perpetrator is not a relative or someone living with the victim, dating violence is often not apparent to the public and not recognized as

12. *Domestic Violence Statistics*, NAT’L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/resources/statistics/> (last visited Jan. 31, 2020).

13. *Id.*

14. *Intimate Partner Violence and Homicide in Ohio*, OHIO DEP’T OF HEALTH (Oct. 2016), https://odh.ohio.gov/wps/wcm/connect/gov/b098681c-5552-4f27-b14e-67bac4278b74/FS-Intimate-Partner-Violence-and-Homicide-in-Ohio-Final.pdf?MOD=AJPERES&CONVERT_TO=url&CA_CHEID=ROOTWORKSPACE.Z18_M1HGGIK0N0JO00QO9DDDDM3000-b098681c-5552-4f27-b14e-67bac4278b74-mrACNCj.

15. *Domestic Violence in Ohio*, NAT’L COAL. AGAINST DOMESTIC VIOLENCE, https://assets.speakcdn.com/assets/2497/ohio_2019.pdf (last visited Feb. 3, 2020).

16. *Id.*; see also *Dating Abuse Statistics*, LOVE IS RESPECT, https://www.loveisrespect.org/pdf/Dating_Abuse_Statistics.pdf (last visited Jan. 31, 2020).

17. *Domestic Violence*, NAT’L COAL. AGAINST DOMESTIC VIOLENCE, https://assets.speakcdn.com/assets/2497/domestic_violence2.pdf (last visited June 13, 2021).

18. *Bulletins for Teens: Dating Violence*, NAT’L CTR. FOR VICTIMS OF CRIME, <https://victimsofcrime.org/bulletins-for-teens-dating-violence/> (last visited Jan. 31, 2020).

19. *Id.*

“domestic violence.”²⁰ The most significant difference is that even when dating violence is recognized as domestic violence, society in general and even individuals close to the victim are less likely to take action to protect the victim and are more likely to simply tell the victim to leave the relationship.²¹ Such a misconception, however, is incorrect in most dating relationships because of the knowledge that an intimate partner has about their partner’s family, schedule, inner workings, and other private aspects and because of the victim’s fear of retaliation.²²

The failure to legally recognize dating violence can harm more than just the victim. The choice to leave a class of domestic violence victims unprotected increases the burden on society as it increases the amount of medical services and law enforcement expenses when the violence inevitably reoccurs.²³ The lack of protection for dating violence may even be related to the mass shooting epidemic prevalent in recent years; about 20% of mass shootings “were precipitated by a domestic dispute of some type” and intimate partners or family members were victims in more than half of the mass shootings between 2009-2014.²⁴ By recognizing and addressing domestic violence, the risks of such shootings may also be addressed when the perpetrator is counseled or reprimanded.

Historically, domestic violence in general was unaddressed and considered a private matter within family life, “exempt from legal scrutiny.”²⁵ Even marital rape went unpunished because the family was considered private and marital unity was prioritized.²⁶ This argument, if it was ever valid, is not easily applied to justify the lack of protection for dating violence. Dating is not within the constitutionally-protected sphere of privacy rights that enshrines the institution of marriage under the Due Process clause of the Fifth Amendment.²⁷ Supreme Court decisions have

20. OHIO REV. CODE ANN. § 3113.31(A)(3) (West 2019). *See generally* Ashley Reicher, *What’s Love Got to Do with It? How Current Law Overlooks the Complexities of Intimate Partner Violence on College and University Campuses*, 44 *FORDHAM URB. L. J.* 833 (July 2017); Sarah Lawson, *Expanding the Scope of Who May Petition for Domestic Violence Protective Orders in Kentucky*, 102 *KY. L. J.* 527, 528 (2014).

21. *See generally* Reicher, *supra* note 20. With traditional domestic violence, “battered woman syndrome” is a widely recognized phenomenon in which is defined as “a cluster of psychological and behavioral characteristics that abused women develop as a result of how they perceive their batterers’ violence.” Jane K. Stoeber, *Transforming Domestic Violence Representation*, 101 *KY. L. J.* 483, 506 (2013).

22. Shillcock, *supra* note 2; Orly Rachmilovitz, *Bringing Down the Bedroom Walls: Emphasizing Substance Over Form in Personalized Abuse*, 14 *WM. & MARY J. OF WOMEN & L.* 495, n.89 (2008) (citing Mary Ann Dutton, *Symposium on Domestic Violence: Understanding Women’s Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 *HOFSTRA L. REV.* 1191, 1232-35, 1239-40 (1993)).

23. Hamman, *supra* note 2, at 798.

24. Kaitlin Schroeder, *Local Experts: Domestic Violence a Common Trait Among Mass Shooters*, *DAYTON DAILY NEWS* (Apr. 9, 2018), <https://www.daytondailynews.com/news/local-experts-domestic-violence-common-trait-among-mass-shooters/cCyn06581eg1TZhArequiL/>.

25. Hamman, *supra* note 2, at 798.

26. *See Shunn v. State*, 742 P.2d 775, 778 (Wyo. 1987).

27. *Zablocki v. Redhail*, 434 U.S. 374, 384 (1978); *see also* U.S. CONST. amend. V

consistently emphasized a right to privacy within areas of family life such as “childrearing” and “family relationships” which includes marriage as “the foundation of the family in our society.”²⁸ The importance of such “privacy” has not been applied to unmarried couples that are not procreating. Dating relationships have not been viewed as a “safe haven,” so there is no Constitutional privacy argument for the lack of intervention to prevent dating violence. While private sexual “conduct” between consenting adults is part of a constitutionally protected private sphere, the relationship between those unmarried individuals who do not have kids is not protected as private, especially if they are not residing together.²⁹

Because people are marrying later in life (if at all),³⁰ dating violence will continue to increase. In order to continue providing adequate protection to victims that are not “living as spouses” and do not share a child, legal systems must adapt. Today, protection orders are the most common mechanism used by courts to provide such protection.³¹

Ohio and many other states allow for a harassment or stalking protection order that does not require proof of any special relationship between the perpetrator and the victim.³² However, obtaining a DVCPO, as opposed to a stalking protection order, is essential because of the difference in remedies. In Ohio and across the country, the protections available upon being granted an order differ greatly based on the type of order. For example, a DVCPO in California allows restitution for loss of earnings, medical care, and other out-of-pocket expenses resulting from the abuse, while a harassment protection order does not.³³

While some benefits of a DVCPO are not relevant to petitioners in a “dating relationship,” such as allocation of parental rights, the catch-all provision and general expedience of a DVCPO as compared to other remedies are essential in some dating violence situations. The catch-all provision, section 3113.31(E)(1)(h), allows the court to impose “any constitutionally defensible relief necessary” to end and prevent domestic violence.³⁴ The court has the freedom to fashion any appropriate remedy to ensure the victim’s safety, including protecting the petitioner’s identity³⁵ and preventing the respondent from interfering with the victim’s mail or phone service.³⁶ For a DVCPO, an *ex parte* hearing must be held on the same day that the petition is filed, but with a stalking CPO, an *ex parte*

28. *Obergefell v. Hodges*, 576 U.S. 644, 666 (2015) (quoting *Zablocki*, 434 U.S. 374).

29. *See generally* *Lawrence v. Texas*, 539 U.S. 558 (2003).

30. *See generally* Jessica Knouse, *Rhetoric Versus Reality: The Pro-Marriage Supreme Court and the Decline of Marriage*, 49 U. TOL. L. REV. 605 (2018).

31. Jake Hamman, *supra* note 2, at 799.

32. OHIO REV. CODE ANN. § 2903.214 (West 2019).

33. *Oriola v. Thaler*, 84 Cal. App. 4th 397, 412 (Cal. Ct. App. 2000).

34. Baldwin’s Ohio Domestic Violence Law § 12:21; OHIO REV. CODE ANN. § 3113.31(E)(1)(h) (West 2019).

35. Baldwin’s Ohio Domestic Violence Law § 12:21.

36. *Id.*

hearing may be held as late as the next day court is in session after the filing.³⁷ Further, section 3113.31 requires that a full hearing be held within seven (7) court days of the *ex parte* hearing while a full hearing for any other type of protection order is held within ten (10) days after the *ex parte* hearing.³⁸

B. A Patchwork of Protective Measures

Prior to the addition of dating relationships to section 3113.31, courts and victims took various measures to find protection from domestic violence where the parties were unmarried, did not live together, and did not share a child. Where a protection order could not be obtained, the replacement remedy often did not provide the same strength and breadth of protection.

One possible solution could be found in stalking protection orders, which do not require the parties to be “family or household member[s].”³⁹ Prior to the “dating relationships” provision, individuals could attempt to file a petition at the domestic relations court, but if they did not qualify as a “family or household member,” the court would send them to the common pleas court to petition for a menacing and stalking protection order under section 2903.214 of the Ohio Revised Code. The substantive requirements necessary to obtain a menacing by stalking protection order are that the respondent “engag[e] in a pattern of conduct” and “knowingly cause another person to believe that the offender will cause physical harm” or mental distress to the petitioner or the petitioner’s family or household member.⁴⁰

Although the relationship requirement is broader for the stalking CPO statute, individuals who experienced one isolated, but severe episode of violence or abuse were excluded from protection for lack of a “pattern of conduct.” While a “pattern” may consist of two events within the same day,⁴¹ the stalking CPO will be denied if one of the events is insufficiently severe.⁴²

A lack of protection also arises in the remedy; because DVCPOs were specifically made for a situation of vulnerability, coercion, and exploitation of the victim both physically and mentally, the remedy necessarily provides protection flexible to that situation.⁴³ While violation of a stalking protection order may also lead to criminal charges,⁴⁴ the remedy under section 3113.31 provides protection

37. OHIO REV. CODE ANN. § 2903.214(D)(1) (West 2019); Baldwin’s Ohio Domestic Violence Law § 9:6.

38. OHIO REV. CODE ANN. § 3113.31(D)(2) (West 2019).

39. See OHIO REV. CODE ANN. § 2903.214 (West 2019).

40. § 2903.211 (West 2019).

41. *K.N. v. Render*, 9th Dist. Medina No. 19CA0018-M, 2019-Ohio-3981, ¶ 16 (Sept. 30, 2019).

42. *P. S. v. High*, 9th Dist. Medina No. 18CA008-M, 2019-Ohio-437, ¶ 10 (Feb. 11, 2019).

43. See Rachmilovitz, *supra* note 22.

44. OHIO REV. CODE ANN. § 2903.214(K)(1)(a) (West 2019).

in intimate aspects of the parties' lives, such as preventing the respondent from consuming or possessing alcoholic beverages.⁴⁵

Another possible solution was found when the Tenth Appellate District Court of Ohio issued a permanent injunction where a CPO was not warranted under any existing statute.⁴⁶ In *Mattingly v. Deveaux*, the parties were in an on-and-off relationship for a few months and had reunited for a few days the following year when a confrontation occurred.⁴⁷ Despite allegations that the respondent broke into petitioner's home, stole personal items, was caught spying, and had made threats, the court concluded that a stalking protection order was not warranted because the parties had not had recent contact.⁴⁸

However, the magistrate concluded that "a permanent injunction against any communication" was appropriate.⁴⁹ On appeal, the respondent argued that such relief was not necessary when no party requested it and the parties had not been communicating at the time.⁵⁰ Because he waited until after the trial court decision to raise this error, it was waived and the injunction was affirmed.⁵¹ Though the judge did what he could, it is unclear how this injunction would be enforced. While a DVCPO allows law enforcement to react to its violation immediately by "removing the respondent from the premises, if appropriate,"⁵² such tools for efficient protection do not exist for the violation of a court order.⁵³ Rather than simply calling the police, the petitioner would have to move the court to find the respondent in contempt.⁵⁴

Neither the stalking protection order nor the injunction have the strength or enforcement mechanism necessary to adequately protect a survivor of domestic violence. According to the Ohio Supreme Court, because DVCPOs provide such enforcement power, "protection orders issued pursuant to R.C. 3113.31 are the most appropriate and efficacious method to prevent future domestic violence[.]"⁵⁵ In *Mattingly*, that would mean relief from continued fear due to the respondent's threats; due to the parties' previous intimate relationship, unlike most stranger violence, the respondent knew where the petitioner lived and expressed jealousy

45. Baldwin's Ohio Domestic Violence Law 9:5; *see also* *Maag v. Maag*, 3rd Dist. Wyandot No. 16-01-16, 2002-Ohio-1401, *16 (Mar. 28, 2002) (holding that where the court prohibits alcohol consumption or possession upon issuing a protection order there must be a sufficient nexus between the restriction and the conduct the order is intended to prevent).

46. *See Mattingly v. Deveaux*, 10th Dist. Franklin No. 03AP-793, 2004-Ohio-2506, (May 11, 2004).

47. *Id.* at ¶ 2.

48. *Id.* at ¶ 2-3.

49. *Id.* at ¶ 2.

50. *Id.* at ¶ 3.

51. *Id.* at ¶ 13.

52. OHIO REV. CODE ANN. § 3113.31(F)(3) (West 2019).

53. *Felton v. Felton*, 679 N.E.2d 672, 676 (Ohio 1997).

54. *Id.*

55. *Id.* at 677.

about her current boyfriend.⁵⁶ The uncertainty of an injunction and the limitations of a stalking protection order leave survivors with a more tentative assurance of future protection, while a DVCPO can be tailored to protect victims depending on their specific situation.

C. *A Broad Definition of “Living as a Spouse”*

The most widely used manner in which courts fashioned their decisions to provide protection to a wider range of relationships was their broad interpretation of “living as spouses.” “Person living as a spouse” is someone who has cohabitated with the respondent within five years prior to the date of the alleged domestic violence.⁵⁷ To decide whether the couple was cohabitating, courts use a test from *State v. Williams*.⁵⁸ The increasingly broad “living as spouses” provision served as a precursor to the expansion of section 3113.31 where courts interpreted the provision to include relationships conventionally considered as dating.

Prior to the dating violence amendment, Ohio’s DVCPO statute defined “domestic violence” as restricted to situations that involve violence between family or household members.⁵⁹ A “family or household member” is someone who (1) resides or has resided with the offender and (2) is related to the respondent or is “living as a spouse” with the respondent.⁶⁰ In a judicial effort to compensate for the lack of protection for victims of dating violence, courts widely interpreted the scope of section 3113.31 by including more types of relationships as “living as spouses.”⁶¹

In 1997, the Supreme Court of Ohio established a two-prong test to ensure the safety and protection of more victims of domestic violence.⁶² In *State v. Williams*, the victim and defendant were not married and did not live in a common-law marriage,⁶³ therefore, to qualify as a household or family member, they had to have been cohabitating or “living as spouses.”⁶⁴ The court noted that “studies show that the rate of violence in dating relationships is at least the same as, if not greater than, that of couples who maintain one address[,]”⁶⁵ and cited a 1985 survey which

56. *Mattingly v. Deveaux*, 10th Dist. Franklin No. 03AP-793, 2004-Ohio-2506, ¶ 2-3 (May 11, 2004).

57. OHIO REV. CODE ANN. § 3113.31(A)(3)(a)(ii)(4) (West 2019); Baldwin’s Ohio Domestic Violence Law § 10:9.

58. *See generally* *State v. Williams*, 683 N.E.2d 1126 (Ohio 1997).

59. OHIO REV. CODE ANN. § 3113.31(A) (West 2019).

60. § 3113.31(A)(3) (West 2019).

61. *See generally Williams*, 683 N.E.2d 1126; *Youngstown v. Dixon*, No. 07-MA-105, 2009 Ohio1013 Ct. App. (Mar. 3, 2009); *State v. Yaden*, 692 N.E.2d 1097 (Ohio Ct. App. 1997).

62. *See generally Williams*, 683 N.E.2d 1126.

63. A couple may be deemed to have a “common-law marriage” upon proof of “cohabitation and reputation of the marriage” between an opposite-sex couple. OHIO REV. CODE ANN. § 3105.12(A) (West 2019).

64. OHIO REV. CODE ANN. § 3113.31 (West 2019); *Williams*, 683 N.E.2d at 1128.

65. *State v. Williams*, 683 N.E.2d 1126, 128 (Ohio 1997).

found higher rates of violence in dating relationships than in marriages.⁶⁶ From these studies, the court concluded that “domestic violence arises out of the relationship itself, not the fact that the parties happen to share one address.”⁶⁷ Further, the wide-ranging definitions courts have found for “cohabitation” and “family or household member” show that the relationship is what courts view as essential, rather than living circumstances.⁶⁸

Taking into account the varied opinions on which characteristics are essential to a spousal-like relationship, the court in *Williams* found that “cohabitation” requires evidence of “(1) sharing of familial or financial responsibilities and (2) consortium.”⁶⁹ Factors establishing shared familial or financial responsibilities include “provisions for shelter, food, clothing, utilities, and/or commingled assets.”⁷⁰ Likewise, factors for consortium include “mutual respect, fidelity, affection, society, cooperation, solace, comfort, aid of each other, friendship, and conjugal relations.”⁷¹ The weight given to these factors is flexible and depends on the circumstances of the case at hand.⁷²

On the facts in *Williams*, the court found sufficient evidence that the parties were “family or household members.”⁷³ Based on testimony that the violence began in a dispute over money, the court inferred that the two commingled assets and thus “shared familial or financial responsibilities[.]”⁷⁴ Based on the victim’s testimony that she and the defendant spent most nights together and may be having a child, the court found that “[t]heir relationship thus was based upon society and conjugal relations, and therefore included consortium.”⁷⁵

After *Williams*, Ohio Appellate District Courts applied the *Williams* test to find cohabitation in a wide range of situations.⁷⁶ Even in cohabitation cases where courts did not utilize the *Williams* test, the court applied a broad definition of the term.⁷⁷ Cases that toed the line were accepted as within the scope of Ohio’s DVCPO statute.⁷⁸

66. *Id.* at 1129.

67. *Id.*

68. *Id.*

69. *Id.* at 1130.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* at 1131.

74. *Id.* at 1130.

75. *State v. Williams*, 683 N.E.2d 1126, 130 (Ohio 1997).

76. *See generally* *State v. Yaden*, 692 N.E.2d 1097 (Ohio Ct. App. 1997).

77. *Youngstown v. Dixon*, No. 07-MA-105, 2009 Ohio-1013 Ct. App. -WL 581637, at *4 (7th Dist. Mar. 3, 2009) (holding that evidence of the defendant as a “father figure” to the victim’s daughters, shared financial responsibilities, and shared residence was sufficient to find cohabitation).

78. In *State v. Kvasne*, the Eighth District noted that the facts “barely” met the elements of the *Williams* test where parties lived together on weekends. The couple shared household expenses and chores and the defendant had a key to the victim’s home. The court reversed the DVCPO denial and distinguished the facts from a case where there was insufficient evidence of shared expenses in which

However, courts still recognized the distinction between “living as spouses” and a “dating relationship.”⁷⁹ A mere “sporadic provision of money and conjugal relations” constituted a dating relationship and was insufficient evidence of cohabitation.⁸⁰ Where shared residence was not apparent, courts inferred shared residence based on items parties left at each other’s houses,⁸¹ while lack of such items was deemed indicative of a mere “dating relationship.”⁸² In general, “residence” was interpreted loosely; even lack of evidence that the respondent maintained a separate residence was sufficient.⁸³ Similarly, shared residence as short as one month was found to be indicative of cohabitation.⁸⁴ While judicial efforts to broaden the statute promoted increased protection, inconsistencies between courts provided victims with little guidance as to their options.⁸⁵

In 2014, the Supreme Court of Ohio again chose to broadly interpret the scope of “living as spouses” in *State v. McGlothan*, when it clarified that evidence of shared living expenses was not required under *Williams* when there is evidence of shared residence.⁸⁶ In *McGlothan*, a DVCPD denial was reversed where the petitioner testified that the defendant was her boyfriend, had lived with her for about a year, and kept belongings in her apartment.⁸⁷ In contrast, the parties in *Williams* “were going together[,]” but did not live together, so evidence of consortium and shared responsibilities were required there.⁸⁸

However, it is unclear what courts should be looking for regarding the parties’ relationship. Interestingly, after relying solely on the parties’ residence, the *McGlothan* court did not comment on the often-quoted statement from *Williams* that domestic violence “arises out of the relationship of the parties rather than their exact living circumstances” or to previous holdings that mere

the evidence showed that the couple dated but did not live together. *State v. Kvasne*, 862 N.E.2d 171, 175 (Ohio Ct. App. 2006).

79. *State v. Ramirez*, No. C-050981, 2006 WL 3040638 3040638 (Ohio Ct. App. Oct. 27, 2006).

80. *State v. Cobb*, 795 N.E.2d 73, 75 (Ohio Ct. App. 2003).

81. *State v. Maudlin*, No. 08-MA-92, 2010 WL 3482689, at *5 (Ohio Ct. App. Sept. 1, 2010).

82. *Ramirez*, 2006 WL 3040638, at *1; *State v. Rinehart*, No. 01CA2620, 2002 Ohio App. Ct. LEXIS 5967, at *9 (Ohio Ct. App. June 25, 2002).

83. *See State v. McGrath*, No. 93445, 2010 WL 3721970 at *3 (Ohio Ct. App. Sept. 23, 2010); *See also State v. Edwards*, No. 25137, 2010 WL 5551002 (Ohio Ct. App. Dec. 30, 2010).

84. *State v. Ward*, No. 99AP-1329, 2000 Ohio Ct. App. LEXIS 2814, at *8-9 (Ohio Ct. App. 2000).

85. Even within courts, decisions were inconsistent as to whether evidence of a sexual relationship was required for the “consortium” element of the *Williams* test. *See State v. Clay*, 910 N.E.2d 14, 20 (Ohio Ct. App. 2009); *State v. Smith*, Nos. 95932 and 95933, 2011 WL 3860572, ¶ 31 (Ohio Ct. App. Sept. 1, 2011); *State v. Flowers*, No. 196081, 2000 Ohio Ct. App. LEXIS 1118 (Ohio Ct. App. 2000).

86. *State v. McGlothan*, 4 N.E.3d 1021, 1023 (Ohio 2014).

87. *Id.*

88. *Id.* (“Thus, in order to prove cohabitation when the victim and the defendant do not share the same residence, evidence of shared financial or familial responsibilities and consortium is required.”).

“roommates” do not fall within the domestic violence statute.⁸⁹ The court reiterated the decision in *Williams* to not limit the definition of “reside” “to those who . . . share one residential address.”⁹⁰ The reasoning in *McGlothan* was that the Ohio Supreme Court interpreted the statute to include those who deserve protection “based on their relationship with the offender.”⁹¹

II. THE OHIO LEGISLATURE ADDRESSES DATING VIOLENCE

A. *Pressure to Add a Dating Violence DVCPO*

The nation’s increasing motivation to address dating violence is still present in the news today but was at the forefront of public concern in the year preceding the new provision. Universities were called out for their complicity as they scrambled to amend their policies, raise awareness, and protect their students.⁹² After the Parkland shooting in which a gunman killed 17 people at his high school, it was revealed that the offender had a history of unaddressed domestic violence against his ex-girlfriend.⁹³ Technology continues to change the face of dating violence as perpetrators can penetrate the private spaces of victims to control and harass without attracting as much attention from family and friends.⁹⁴ The nation watched in suspense as Michelle Carter, a young woman who was deemed to have caused her ex-boyfriend to commit suicide via text message, was convicted of involuntary manslaughter.⁹⁵ However, pressure did not just stem from outside events or cases in the media.

In May 2017, a victim of domestic violence, Marlina Medrano, was shot and killed along with two bystanders by her ex-boyfriend in Licking County, Ohio. The offender, already incarcerated for a domestic violence conviction, was sentenced to two more months in jail but was released by the probation department, which allegedly skipped required steps in determining whether an early release

89. *State v. Williams*, 683 N.E.2d 1126, 1129 (Ohio 1997); *see also State v. Carswell*, 871 N.E.2d 547 (Ohio 2007); *City of Cleveland v. Merritt*, 69 N.E.3d 102, 113 (Ohio Ct. App. 2016) (Stewart, J., dissenting) (“no evidence that the victim and Merritt lived together or that they shared familial or financial responsibilities, or that they were in any significant relationship from which one could conclude that they were living together as spouses. For all we know, the victim and Merritt could have been college roommates, friends, acquaintances, coworkers, or even strangers who were spending the night together.”).

90. *McGlothan*, 4 N.E.3d at 1023-24 (citing *Williams*, 683 N.E.2d at 1128).

91. *Id.* at 1024.

92. *See generally* Reicher, *supra* note 20.

93. Schroeder, *supra* note 24.

94. Hadeel Al-Alosi, *Technology-Facilitated Abuse: The New Breed of Domestic Violence*, THE CONVERSATION (Mar. 26, 2017, 10:58 PM), <http://theconversation.com/technology-facilitated-abuse-the-new-breed-of-domestic-violence-74683>.

95. Katherine Q. Seelye & Jess Bidgood, *Guilty Verdict for Young Woman Who Urged Friend to Kill Himself*, N.Y. TIMES (June 16, 2017), <https://www.nytimes.com/2017/06/16/us/suicide-texting-trial-michelle-carter-conrad-roy.html?auth=login-email&login=email>.

was appropriate.⁹⁶ One of the victims of the shooting was the city's newly-hired police chief; his family, as well as those of the other bystanders, accused probation officers and municipal court judges of recklessness with regard to the offender's release.⁹⁷ In light of the offender's history of domestic violence and the deputies' previous failure to serve him with a protection order, the incident attracted wide public outrage.⁹⁸ Marlina's death inspired the Ohio Domestic Violence Network to host a news conference in which it released statistics such as an increase from 101 deaths resulting from intimate partner violence in the prior year to 115 during the period of July 2016-July 2017.⁹⁹

B. *The New Provision*

During the 2017-2018 Regular Session, the 132nd General Assembly amended the definition and scope of domestic violence. House Bill 1 amended Ohio's DVCPO statute from providing that "domestic violence" requires proof of a household or family member relationship to providing that "domestic violence" also includes causing bodily injury or fear of imminent serious physical harm against someone in a "dating relationship."¹⁰⁰

The provision, which took effect in July 2018, provides that "dating relationship" includes "a relationship between individuals who have, or have had, a relationship of a romantic or intimate nature."¹⁰¹ It also provides that a "casual acquaintanceship or ordinary fraternization in a business or social context" can never qualify as a dating relationship.¹⁰² Following the definition of "dating relationship," the legislature provides that petitioners need to have been in a dating relationship with the respondent within twelve months prior to the alleged domestic violence to qualify as a "person with whom the respondent is or was in a dating relationship[.]"¹⁰³

96. Geoff Redick, *Majority of Claims Dismissed Over 2017 Murder of Kirkersville Police Chief*, ABC 6 (Sept. 12, 2019), <https://abc6onyourside.com/news/local/majority-of-claims-dismissed-in-lawsuits-over-2017-murder-of-kirkersville-police-chief>.

97. Michaela Sumner, *Families of Women Killed in Kirkersville Shooting File Lawsuits Against Court Officials*, NEWARK ADVOC. (May 10, 2019, 3:52 PM), <https://www.newarkadvocate.com/story/news/local/2019/05/10/families-women-killed-kirkersville-shooting-file-lawsuits/1167243001/>.

98. Glenn McEntyre, *Court Records Detail Decades of Violence by Kirkersville Gunman*, 10 WBNS (June 2, 2017, 3:19 PM), <https://www.10tv.com/article/court-records-detail-decades-violence-kirkersville-gunman>.

99. Alissa Widman Neese, *115 Deaths in a Year Paint Grim Picture of Domestic Violence in Ohio*, THE COLUMBUS DISPATCH (Oct. 4, 2017, 6:07 AM), <https://www.dispatch.com/news/20171004/115-deaths-in-year-paint-grim-picture-of-domestic-violence-in-ohio>.

100. H.B. 1, 132nd Gen. Assemb., Reg. Sess. 2017-2018 (Ohio 2018) (enacted) [hereinafter "House Bill 1"].

101. *Id.*; see also Borchardt, *supra* note 2.

102. House Bill 1, *supra* note 100.

103. *Id.*

C. Legislative Intent

In 1979, the Ohio Attorney General's Office created the Domestic Violence Act, a bill intended "to criminalize those activities commonly known as domestic violence and to authorize a court to issue protection orders designed to ensure the safety and protection of a complainant in a domestic violence case."¹⁰⁴

The Ohio Supreme Court has interpreted the domestic violence statutes in key decisions since their inception. In 1997, the court found that injunctive language in a divorce decree preventing contact between the parties does not preclude the issuance of a DVCPO.¹⁰⁵ The court reasoned that protection orders are appropriately utilized alongside other forms of protection, such as separation agreements, in light of the serious consequences of domestic violence.¹⁰⁶

In both *State v. Williams* and *State v. McGlothan*, the court commented on the legislative intent of section 3113.31. In *Williams*, the court highlighted the remedies provided specifically to domestic violence victims as evidence of the General Assembly's recognition of "the special nature of domestic violence." Such unique remedies, which include the ability to file a temporary protection order, indicate that the legislature intended to protect *relationships*, rather than assaults on strangers.¹⁰⁷ In *McGlothan*, the Ohio Supreme Court interpreted a legislative desire "to offer protections to a wide class of persons."¹⁰⁸

The legislature itself expressed similar intent regarding the new provision. In the preface to House Bill 1, the 132nd General Assembly laid out the purpose of its amendments. It stated that it intended to authorize a DVCPO to individuals in a dating relationship, to "provide access to domestic violence shelters" for victims of dating violence, and to require the Attorney General's victim's bill of rights pamphlet to inform the public that individuals in a dating relationship are able to obtain a DVCPO.¹⁰⁹

One of the primary sponsors of the bill, State Representative Emilia Sykes, stated that "[t]he reason that domestic violence is so deadly is because of the relationship . . . [t]hat person knows your inner workings, your schedule, your friends, your family, what makes you tick, and they are situated in such a way to harm you in a different way than a stranger would."¹¹⁰ Sykes promotes protection

104. Hamman, *supra* note 2, at 799.

105. *See generally* Felton v. Felton, 679 N.E.2d 672 (Ohio 1997).

106. *Id.* at 680.

107. *Williams*, 683 N.E.2d at 1129 (Ohio 1997).

108. *McGlothan*, 4 N.E.3d at 1024 (Ohio 2014) (citing *State v. Carswell*, 871 N.E.2d 547, ¶ 32 (Ohio 2007)).

109. House Bill 1, *supra* note 100. State Representative Janine Boyd of the 133rd General Assembly also stated in a blog post that the purpose of this new legislation is facilitating victims in "obtaining a civil protection order, gaining access to battered women's shelters, and being included in the Attorney General's victim's bill of rights." *DeWine Endorse Stronger State Protections for Domestic Violence Victims*, OHIO H.R. (Jan. 30, 2019), <http://www.ohiohouse.gov/janine-r-boyd/press/lawmakers-dewine-endorse-stronger-state-protections-for-domestic-violence-victims>.

110. Shillcock, *supra* note 2.

orders as an effective way to intervene in domestic violence. Such intervention, she says, is especially important in 18- to 24-year-olds who may not be living together and who experience an uncommonly high rate of domestic violence.¹¹¹

State Senator Frank Hoagland expressed his hope that the provision of DVCPOs will “make violent offenders think twice about committing these acts” and potentially save lives.¹¹² Also indicative of its protective intent, the same bill provides for measures solely meant to protect rather than to punish; for example, law enforcement officials are required to provide information about resources and shelters to survivors.¹¹³

III. DATING VIOLENCE STATUTES ACROSS THE COUNTRY

While all states, except Georgia, currently provide a statutory protection mechanism to grant victims of dating violence a DVCPO, not all statutes define “dating relationship.”¹¹⁴ Ohio’s definition requires that the relationship be “romantic or intimate” and not “a casual acquaintanceship or ordinary fraternization in a business or social context.”¹¹⁵ Another definition used in some states is “frequent, intimate associations primarily characterized by the expectation of affectional involvement” that are likewise not casual.¹¹⁶ Where statutes do not provide a definition, courts often state that “dating” or “dating relationship” should be given its plain and ordinary meaning; and most would agree that its meaning is interpreted differently by different groups of people, depending on their identity and experience.¹¹⁷ Where no definition is provided or where the definition for “dating relationship” is vague, such as simply requiring it to be “romantic,”¹¹⁸ courts often cite as many as six factors to consider, which will be discussed below.¹¹⁹ This section will outline several key interpretations from other states of the same requirements included in Ohio’s dating violence provision.

Whether the statute provides a clear definition or courts are left to create a definition does not appear to impact the evidence used to analyze the relevant factors. For example, if the court chooses to analyze whether the relationship is “romantic,” they will do so in the same way and look for the same evidence whether or not that consideration was required by the legislature.

111. Borchardt, *supra* note 2.

112. Shillcock, *supra* note 2.

113. *Id.*

114. *Id.*

115. OHIO REV. CODE ANN. § 3113.31(A)(8) (West 2019).

116. MICH. COMP. LAWS SERV. § 750.81(7) (West 2019); *see also* NEB. REV. STAT. ANN. § 28-323(8) (West 2019).

117. *See generally* Oriola v. Thaler, 84 Cal. App. 4th 397 (Cal. Ct. App. 2000); Andrews v. Rutherford, 832 A.2d 379 (N.J. Super. Ct. Ch. Div. 2003); Hobby v. State, 919 So. 2d 318, 322-23 (Ala. Crim. App. 2005).

118. N.H. REV. STAT. ANN. § 173-B:1(XV) (West 2019).

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

A. *Key Decisions from Other States*

Some of the most historically significant cases creating a judicial definition of “dating relationship” include *Oriola v. Thaler* in 2000, from California,¹²⁰ and *Andrews v. Rutherford* in 2003, from New Jersey.¹²¹ California began allowing individuals in dating relationships to file for DVCPOs in 1990 but did not yet provide a legislative definition.¹²² Although *Oriola* was overruled by California’s statutory definition of “dating relationship,” section 6210 of the California Family Code, courts still cite its reasoning as an example of what kind of evidence should no longer be required for finding a “dating relationship.”¹²³

In *Oriola*, the parties met at their gym and subsequently talked and e-mailed.¹²⁴ They socialized outside of the gym, but the petitioner realized she was “not interested in him romantically” and they agreed to be friends. When the respondent did not want the petitioner to date other people, their friendship became antagonistic and the respondent began to harass the petitioner.¹²⁵ The tension escalated when the respondent followed the petitioner into a sauna and started hitting the walls. The respondent later called and even “e-mail bomb[ed]” the petitioner’s workplace creating a “potential shutdown[.]”¹²⁶ The police report characterized the petitioner as the respondent’s “girlfriend” but was later corrected by the petitioner to be only a “platonic” relationship.¹²⁷

The relationship in *Oriola* was found to present insufficient evidence of a “dating relationship.”¹²⁸ The California court cited sources from as early as the 1920s in which dating was a precursor to courtship,¹²⁹ and found that the legislature only intended to protect *some* forms of dating.¹³⁰ The court cited the definitions of “dating relationships” in other states that say that the relationship cannot be casual and must be “romantic,”¹³¹ which may be found based on the length of relationship, frequency of interaction, and nature of the relationship.¹³² The court in *Oriola* chose to exclude roommates and other platonic relationships, distinguishing them from exclusive, continuous, romantic relationships.¹³³ In its reasoning, the court

120. *Oriola*, 84 Cal. App. 4th 397.

121. *Andrews*, 832 A.2d 379.

122. *Oriola*, 84 Cal. App. 4th at 406.

123. *Brand v. State*, 960 So. 2d 748, 751 (Ala. Crim. App. 2006); *People v. Rucker*, 126 Cal. App. 4th 1107, 1115 (Cal. Ct. App. 2005).

124. *Oriola*, 84 Cal. App. 4th at 400.

125. *Id.* at 400.

126. *Id.* at 401-02.

127. *Id.* at 402.

128. *Id.* at 412.

129. *Id.* at 407.

130. *Id.* at 408.

131. *Id.* at 411 (citing MICH. COMP. LAWS ANN. § 600.2950(30)(a) (2019), NEV. REV. STAT. § 33.018 (2019), and TENN. CODE ANN. § 36-3-601(9)(C) (2019)).

132. *Id.* (citing WASH. REV. CODE § 26.50.010 (2019)).

133. *Id.* at 408-09.

stated that the legislative intent was to protect against *domestic* violence, with “domestic” being limited to household and family affairs.¹³⁴ The definition in *Oriola* defined a “dating relationship” as “reciprocally amorous and increasingly exclusive interest in one another, and shared expectation of the growth of that mutual interest[.]”¹³⁵

Five years after *Oriola*, California distinguished their previous requirements for “dating relationships” as they interpreted a new legislative definition in *People v. Rucker*.¹³⁶ California now defines a “dating relationship” as “frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial considerations.”¹³⁷ *Rucker* demonstrates a marked change in the way courts analyze “dating relationships” from *Oriola*’s traditional definition. The court in *Rucker* found substantial evidence of a dating relationship where the respondent shot her boyfriend after they met online and had a sexual relationship over nine months.¹³⁸ The couple had “frequent, intimate associations” when the plaintiff was in town and continued to communicate while he was away.¹³⁹ The respondent believed it would possibly lead to marriage.¹⁴⁰ While the court in *Rucker* admitted that the relationship in *Oriola* should be characterized as “just friends,” the situation at hand was considered to be a “dating relationship.”¹⁴¹ Although it agreed with the ultimate decision in *Oriola*, the *Rucker* court found *Oriola*’s definition “to be unduly narrow” and contrary to legislative intent.¹⁴²

In *Andrews*, which established New Jersey’s current definition of a “dating relationship,” the parties presented many witnesses; while the defendant’s witnesses characterized the plaintiff as a “casual acquaintance,” the plaintiff’s witnesses described a more intimate relationship that involved the parties sleeping together.¹⁴³ The court interpreted this testimony as evidence that they “[held] themselves out’ as a ‘dating couple’” in front of the plaintiff’s family and friends. Evidence also included photos with the defendant’s head on the plaintiff’s shoulder.¹⁴⁴ Although the defendant’s family had testified saying she had a different boyfriend, the parties were seen hugging and kissing, going to dinner together, and even sleeping in a hotel room together on at least one occasion.¹⁴⁵

134. *Oriola v. Thaler*, 84 Cal. App. 4th 397, 408 (Cal. Ct. App. 2000).

135. *Id.* at 412.

136. *People v. Rucker*, 126 Cal. App. 4th 1107, 1116 (Cal. Ct. App. 2005).

137. *Id.*

138. *Id.* at 1117.

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Andrews v. Rutherford*, 832 A.2d 379, 384 (N.J. Super. Ct. Ch. Div. 2003).

144. *Id.* at 385.

145. *Id.* at 384-85.

The court in *Andrews* established six well-known factors used to determine whether a dating relationship exists:

1. Was there a minimal social interpersonal bonding of the parties over and above a mere casual fraternization?
2. How long did the alleged dating activities continue prior to the acts of domestic violence alleged?
3. What were the nature and frequency of the parties' interactions?
4. What were the parties' ongoing expectations with respect to the relationship, either individually or jointly?
5. Did the parties demonstrate an affirmation of their relationship before others by statement or conduct?
6. Are there any other reasons unique to the case that support or detract from a finding that a 'dating relationship' exists?¹⁴⁶

Based on the evidence of these factors, the court determined that the relationship at hand was "typical conduct of young people who are exploring the limits of each other's feelings for one another."¹⁴⁷ Similar to *Oriola*, the court in *Andrews* did not think DVCPOs should extend to all couples who were "dating;" if they did, DVCPOs would apply to people who have gone to lunch or the movies together at least once. In contrast, other protected classes of relationships include people who have a "continuing, frequent, and observable relationship."¹⁴⁸ Today, most courts utilize at least some of these factors while often considering others in their reasoning.

Two cases from Alabama, *State v. Hobdy*¹⁴⁹ and *State v. Brand*,¹⁵⁰ have cited to the *Andrews* factors to analyze relationships. Although Alabama now provides a statutory definition for a "dating relationship," the definition has yet to be utilized by Alabama courts.¹⁵¹ In *Hobdy*, a DVCPO was granted where the parties were neighbors that had been involved in a sexual relationship for over a year.¹⁵² Although there was conflicting testimony regarding the seriousness of the relationship, the parties interacted almost every weekend and the plaintiff was not engaging in sexual relations with anyone else.¹⁵³ In *Brand*, the court denied a DVCPO to a victim who was violently assaulted after the perpetrator became jealous over her interaction with another male when the parties had gone to a club together.¹⁵⁴ The parties had sex only once, two years prior, and the plaintiff

146. *Id.* at 383-84.

147. *Id.* at 387.

148. *Id.* at 382.

149. *Hobdy v. State*, 919 So. 2d 318, 324-25 (Ala. Crim. App. 2005).

150. *Brand v. State*, 960 So. 2d 748, 752 (Ala. Crim. App. 2006).

151. ALA. CODE § 30-5-2(3) (West 2019).

152. *Hobdy*, 919 So. 2d at 325.

153. *Id.*

154. *Brand*, 960 So. 2d at 749.

testified that their relationship was not romantic, so the court concluded that the parties were merely friends who were not engaged in dating activity.¹⁵⁵

B. “Romantic” and/or “Intimate”

In an effort to give words their plain and ordinary meaning, courts sometimes refer to their dictionary definition, as they did in *Andrews*, *Hobdy*, and *Brand*. “Date” is defined by Merriam-Webster’s Collegiate Dictionary as “a social engagement between two persons that often has a romantic character...a person with whom one has a . . .romantic date.”¹⁵⁶ “Relationship” is defined as “a romantic or passionate attachment.”¹⁵⁷ Both of these definitions refer to romance, but courts fail to define the term “romantic” in a concrete manner.

In DVCPO statutes, including Ohio’s, the terms “romantic” and “intimate” are often used interchangeably.¹⁵⁸ While many states require a sexual relationship, some equate a sexual relationship as adequate proof of a “dating relationship” instead of romance or intimacy.¹⁵⁹ Several states also provide factors in addition to this requirement; for example, Mississippi instructs courts to also consider the length and nature of the relationship and frequency of the interactions.¹⁶⁰ Of the cases highlighted above, none of their definitions mention “romantic” but California’s previous definition required a “reciprocally amorous”¹⁶¹ interest; today the legislative definition requires “intimate associations.”¹⁶² *Oriola* and *Rucker* did not appear to give weight to a “romantic” element.

If romance or intimacy is explicitly or implicitly required, the requirement is vague and does not do a lot of work in the analysis as the determination of a “dating relationship” is fact sensitive.¹⁶³ Such a requirement is used as a gateway to discuss factors such as those stated in *Andrews* or as an excuse for the court to decide the case as they please. For example, if there is testimony that the relationship is

155. *Id.* at 753.

156. *Brand v. State*, 960 So. 2d 748, 750 (Ala. Crim. App. 2006) (quoting *Merriam-Webster’s Collegiate Dictionary*, 317 (11th ed. 2003); *Hobdy*, 919 So. 2d at 322-23; see also *Andrews*, 832 A.2d 379, 382 n.1 (N.J. Super. Ct. Ch. Div. 2003).

157. *Brand*, 960 So. 2d at 750 (quoting *Merriam-Webster’s Collegiate Dictionary*, 317 (11th ed. 2003); *Hobdy*, 919 So. 2d at 318-23; see also *Andrews*, 832 A.2d at 382, n.1.

158. Arkansas, Kentucky, Mississippi, and Missouri statutes all define a “dating relationship” as “romantic or intimate,” with Kentucky, Mississippi, and Arkansas also providing factors. *Domestic Violence/Domestic Abuse Definitions and Relationships*, NAT’L CONF. OF ST. LEGISLATURES (June 13, 2019), <http://www.ncsl.org/research/human-services/domestic-violence-domestic-abuse-definitions-and-relationships.aspx>; OHIO REV. CODE ANN. § 3113.31 (West 2019) [hereinafter National Conference of State Legislatures].

159. Arizona and Minnesota’s definitions of a dating “relationship” encompass “romantic or sexual” while Pennsylvania provides DVCPOs for “sexual or intimate partners” rather than “dating relationships.” *Id.*

160. MISS. CODE ANN. § 93-21-3 (2019).

161. *Oriola v. Thaler*, 84 Cal. App. 4th 397, 412 (Cal. Ct. App. 2000).

162. *People v. Rucker*, 126 Cal. App. 4th 1107, 1116 (Cal. Ct. App. 2005).

163. *Andrews v. Rutherford*, 832 A.2d at 379, 383 (363 N.J. Super. Ct. Ch. Div. 252, 259 (2003)).

“romantic,” the court may conclude that the couple is “dating.” In *Brand*, the victim’s testimony that the relationship was not “romantic” was used as evidence of the parties’ expectations and whether they held themselves out as dating.¹⁶⁴ Such factors, based on a totality of the circumstances, were used to conclude that there was no “dating relationship.”¹⁶⁵ Similarly, the *Hobdy* court applied the victim’s testimony, finding in favor of a “dating relationship” based heavily on the testimony that their relationship was ongoing and romantic.¹⁶⁶ *Hobdy* clarified that, contrary to the implication in Merriam-Webster’s dictionary that dating and romance are synonymous, “romantic” does not require taking part in actual dates.¹⁶⁷

C. *The Most Common Factors*

The factors most commonly required by legislatures and analyzed by courts include the length of the relationship, frequency of interactions, and nature of the relationship.¹⁶⁸ Most states that provide factors within their statutes intend for courts to use them in their analysis of deciding whether the relationship was “romantic” or “intimate,” but not all states provide such factors; in states that do not, the factors are simply used to analyze evidence of a “dating relationship.”¹⁶⁹ States that do not provide factors in their statutes typically cite to *Andrews* or another state’s statute that does provide them, similar to what the Alabama courts did in *Hobdy* and *Brand*.¹⁷⁰

A petitioner may have only seen a respondent as little as one date or sexual encounter before abuse begins,¹⁷¹ but cases in which a petition has been granted generally include couples that have known each other for a substantial period of time. In most courts, as in *Hobdy*, a relationship lasting a year is sufficient for a “dating relationship”¹⁷² and often six-month relationships will be accepted.¹⁷³ The court in *Hobdy* also considered that the relationship was ongoing at the time of the incident, “so there was no gap in time to be considered.”¹⁷⁴

164. *Brand v. State*, 960 So. 2d 748, 754 (Ala. Crim. App. 2006).

165. *Id.*

166. *Hobdy v. State*, 919 So. 2d 318, 325 (Ala. Crim. App. 2005).

167. *Id.*

168. National Conference of State Legislatures, *supra* note 158.

169. *See generally* DEL. CODE ANN. tit. 10, § 1041 (West 2021).

170. *See Brand v. State*, 960 So. 2d 748, 748 (Ala. Crim. App. 2006); *see also Hobdy*, 919 So. 2d at 324-25.

171. *Alison C. v. Westcott*, 798 N.E.2d 813, 815 (Ill. App. Ct. 2003).

172. *Hobdy v. State*, 919 So. 2d 318, 322 (Ala. Crim. App. 2005); *Hill v. State*, No. 01-10-00926-CR, 2012 Tex. App. LEXIS 2225 (Tex. App. Mar. 22, 2012)(not designated for publication).

173. *J.P.D. v. W.S.*, No. CN12-06267, 2013 Del. Fam. Ct. LEXIS 23, at *19 (Del. Fam. Ct. Feb. 1, 2013); *Caballero v. State*, No. 03-09-00473-CR, 2010 Tex. App. LEXIS 4072 (Tex. Crim. App. May 28, 1990) (not designated for publication).

174. *Hobdy*, 919 So. 2d at 325.

In contrast, based on the reasoning in *Oriola*, it is likely that other factors, such as the nature of the relationship, may outweigh a lengthy relationship.¹⁷⁵ Similarly, in *Brand*, the parties knew each other for over two years and went to the movies and other similar social activities together, but the court found the length of their relationship to be insufficient because the parties only had sexual intercourse once, two years prior to the litigation.¹⁷⁶ In *Rucker*, the court stated that the length of a relationship will no longer carry as much weight in that court's decision of whether the requisite relationship exists. The court held that the DVCPO statute in California, which does not require a lengthy relationship, does not "preclude a relatively new dating relationship."¹⁷⁷ However, it is unclear exactly what the court meant by "relatively new" as the relationship in *Rucker* existed for nine months.¹⁷⁸

The frequency and length of a relationship may be intertwined to indicate the parties' familiarity with each other and the potential risk of dependency and control. Such factors may also weigh against each other where parties who have known each other for a long time rarely see one another or where parties interact frequently and have met recently. In *Oriola*, the parties knew each other for two years and were in contact for several months, but because their communication was sporadic and they only had four "social outings," the court found insufficient evidence of a "dating relationship."¹⁷⁹ Based on the lack of frequent interactions, the court in *Oriola* concluded that there was no "continuing and mutually committed emotional relationship."¹⁸⁰ Alternatively, where parties see each other fifteen times over several months, such frequent interaction indicates a relationship "beyond mere fraternization," which was found to be sufficient in *Andrews*.¹⁸¹ A key difference in these cases was that the court in *Oriola* required continuity in the relationship while in *Andrews* it was only a factor.¹⁸²

The frequency and nature of a relationship are rarely isolated and generally work together to show whether or not the parties are sufficiently acquainted to fall within the relevant DVCPO statute. In *Andrews*, the nature of the activities, such as visiting friends and family, was personal and the fact that they were "numerous" in frequency enhanced the court's perception of the interactions as a "level of romantic activity."¹⁸³ It was also persuasive not just that they spent the night

175. *Oriola v. Thaler*, 100 Cal. Rptr. 2d 822, 832 (Cal. Ct. App. 2000).

176. *Brand v. State*, 960 So. 2d 748, 753 (Ala. Crim. App. 2006).

177. *People v. Rucker*, 126 Cal. App. 4th 1107, 1116 (Cal. Ct. App. 2005).

178. *Id.* at 1117.

179. *Oriola*, 100 Cal. Rptr. 2d at 833.

180. *Id.*

181. *Andrews v. Rutherford*, 832 A.2d at 379, 386 (363 N.J. Super. Ct. Ch. Div. 252, 259 (2003)).

182. *Oriola v. Thaler*, 100 Cal. Rptr. 2d 822, 830 (Cal. Ct. App. 2000); *Andrews*, 832 A.2d at 386.

183. *Andrews*, 832 A.2d at 386; *see also Swanson v. Davis*, 69 A.3d 372, at *9 (Del. 2013) (finding a dating relationship where the respondent "engaged in behavior a reasonable person would consider amorous.").

together, but that they did so more than once.¹⁸⁴ In contrast, the parties' interaction was merely sexual in *Brand* and, because it only happened one time two years ago, the "remote & isolated" nature of the encounter was insufficient to be considered a "dating relationship."¹⁸⁵

The court in *Hobdy* relied on the nature and frequency of the parties' interactions when it decided not to require evidence of actual dates.¹⁸⁶ Because the parties lived next door to each other, engaged in sexual relations, and interacted "almost every weekend," it did not matter that they failed to "affirm their relationship by going out to movies, dinner, or other social gatherings."¹⁸⁷ In *Hobdy*, the frequency of activities outweighed evidence that the relationship was of a neighborly nature. In *Andrews*, the opposite occurred and testimony that the relationship was of a romantic nature outweighed the infrequency of their activities. In *Andrews*, the parties publicly affirmed their relationship during numerous activities with the petitioner's friends and family, which meant that the nature of their relationship was romantic despite evidence that they only spent the night together "on occasion."¹⁸⁸ In both cases, the factors of frequency and nature were considered in light of one another.

D. Casualness

That the relationship in question not be casual in nature is often a requirement added in addition to a set of factors¹⁸⁹ or a requirement of romance or sexual relations.¹⁹⁰ Even if it is not discussed as a factor or requirement, a relationship that does not have sufficient evidence to qualify as a "dating relationship" may be

184. *Andrews*, 832 A.2d at 386.

185. *Brand v. State*, 960 So. 2d 748, 753 (Ala. Crim. App. 2006); *see also* *Scott v. Shay*, 2007 PaPA Super. 192, ¶ 15 (2007) (holding that the definition of "sexual or intimate partners" does not include the defendant and victim of an assault conviction).

186. *Leach v. State*, No. 03-13-00784-CR, 2015 Tex. App. LEXIS 12429, at *21 (Tex. Crim. App. Dec. 9, 2015) (holding that "repeated drug use during their relationship and the lack of traditional social outings" does not negate finding of "dating relationship").

187. *Hobdy v. State*, 919 So. 2d 318, 325 (Ala. Crim. App. 2005); *see also* *J.P.D. v. W.S.*, No. CN12-06267, 2013 Del. Fam. Ct. LEXIS 23, at *19 (Feb. Del. Fam. Ct. Feb. 1, 2013) (holding that several times a week and sometimes every day is sufficient with the reasoning that casual acquaintances do not tend to see each other that often).

188. *Andrews v. Rutherford*, 832 A.2d at 379, 385-86 (363 N.J. Super. Ct. Ch. Div. 252, 259 (2003)).

189. *Domestic Violence/Domestic Abuse Definitions and Relationships*, NAT'L CONFERENCE OF STATE LEG., <https://www.ncsl.org/research/human-services/domestic-violence-domestic-abuse-definitions-and-relationships.aspx> (last visited Mar. 25, 2021) (Delaware defines "dating relationship" as "neither a casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts" and then provides that "[f]actors to consider for a substantive dating relationship may include the length of the relationship, or the type of relationship, or the frequency of interaction between the parties.").

190. *Id.* (For example, Hawaii defines "dating relationship" as "a romantic, courtship, or engagement relationship" that "does not include a casual acquaintanceship or ordinary fraternization between persons in a business or social context.").

labeled as “casual.” Currently, seventeen states’ statutes explicitly exclude business relationships and nine exclude acquaintances from the scope of their DVCPO statutes.¹⁹¹ Only Illinois and West Virginia’s statutes provide a “not casual” element as the sole requirement for a “dating relationship.”¹⁹²

Although *Rucker* significantly deviated from the *Oriola* definition, one consideration that the court in *Rucker* imported from *Oriola* was that a “dating relationship” may not be “a casual business or social relationship.”¹⁹³ In *Oriola*, the parties’ testimony that they were “just friends” and that their relationship was “platonic” indicated that the parties were merely acquaintances.¹⁹⁴ The court in *Rucker* contrasted the relationship at issue before them with the relationship in *Oriola* to conclude that the relationship at hand was “romantic.” Evidence of other factors in *Rucker*, such as frequent interactions and an expectation of affection or sex, showed that the parties were more than friends.¹⁹⁵

The requirement that the relationship was not casual is included in the first *Andrews* factor.¹⁹⁶ In *Andrews*, the relationship was presented as a “casual acquaintance[ship]” by the defendant, but the plaintiff’s witnesses described the relationship as being far more “intimate.”¹⁹⁷ The plaintiff’s cousin testified that the parties’ relationship was “serious” and the plaintiff’s mother testified that the defendant was “the first female friend her son had brought home to meet the family in four years.”¹⁹⁸ *Brand* also demonstrates the heavy weight that testimonial evidence can carry. In *Brand*, the court was persuaded by the victim’s testimony that the parties’ relationship had never been “romantic.”¹⁹⁹ The nature of the activities that the pair engaged in, such as going to the movies, was consistent with friendship rather than dating.²⁰⁰ The court in *Brand* concluded that evidence of casualness “weigh[ed] against a finding that the victim and the appellant were in a dating relationship.”²⁰¹

In *Hobdy*, however, both parties’ testimony indicated that the relationship was casual while the exclusivity and frequency of the sexual relationship showed that the couple was in a “dating relationship” rather than just being friendly neighbors.²⁰² In this case, other evidence outweighed the parties’ interpretation of their relationship.

191. *Id.*

192. *Id.* (West Virginia lists “sexual or intimate partners” as a separate category).

193. *Oriola v. Thaler*, 100 Cal. Rptr. 2d 822, 831-32 (Cal. Ct. App. 2000); *People v. Rucker*, 25 Cal. Rptr. 3d 62, 69-70 (Cal. Ct. App. 2005).

194. *Oriola*, 100 Cal. Rptr. 2d at 833.

195. *Rucker*, 25 Cal. Rptr. 3d at 69.

196. *Andrews v. Rutherford*, 832 A.2d 379, 384 (N.J. Super. Ct. App. Div. 2003).

197. *Id.*

198. *Id.* at 384-85.

199. *Brand v. State*, 960 So. 2d 748, 753 (Ala. Crim. App. 2006).

200. *Id.*

201. *Id.*

202. *Hobdy v. State*, 919 So. 2d 318, 325 (Ala. Crim. App. 2005).

E. *Other Factors: Expectations, Exclusivity & How the Parties Hold Themselves Out*

Parties' expectations as to their future interactions and the seriousness of their relationship were considered implicitly in *Oriola* and explicitly in *Andrews*. How the parties "hold themselves out" may be intertwined in the analysis of their expectations.

In *Oriola*, the parties' statements that they believed they were "no more than 'friends'" and the petitioner's statement to her family that she and the respondent were "just friends" aided in the court's reasoning.²⁰³ The court found that the "prospect of a 'dating relationship' was, in short, quashed almost at the outset."²⁰⁴ Today, it is clear from *Rucker* that shared expectations of a "dating relationship" will not be required by California courts.²⁰⁵

In New Jersey, "the parties' ongoing expectations with respect to the relationship, either individually or jointly" remains a factor in their analysis.²⁰⁶ In *Andrews*, where the parties were high school students, a romantic relationship with no expectations of a long-term commitment was sufficient.²⁰⁷ The court in *Andrews* did look for evidence that the relationship was "somewhat open and notable to the public," but evidence that the parties were only open about their relationship to the victim's family was adequate.²⁰⁸ The court specified that these factors are not determinative and should only be analyzed when deemed relevant depending on the facts of the case.²⁰⁹ The Alabama court in *Brand* noted the lack of evidence of either shared expectations or a public relationship where the victim denied a romantic relationship was present and the perpetrator denied jealousy regarding the victim's interactions with other males.²¹⁰ In *Hobdy*, a New Jersey court determined that such factors need not be analyzed. In 2009, the *Hobdy* court stated that the parties' perception of the situation is key, that "most claims of a dating relationship turn on what the particular parties would view as a 'date.'"²¹¹

Romantic or sexual exclusivity was considered in *Oriola*'s traditional definition of "dating relationship" but is less likely to be considered today.²¹² In *Oriola*, the relationship was never exclusive and the perpetrator's expectations of

203. *Oriola v. Thaler*, 100 Cal. Rptr. 2d 822, 833 (Cal. Ct. App. 2000).

204. *Id.*

205. *People v. Rucker*, 126 Cal. App. 4th 1107, 1116 (Cal. Ct. App. 2005).

206. *Andrews v. Rutherford*, 832 A.2d 379, 384 (N.J. Super. Ct. App. Div. 2003).

207. *Id.* at 386.

208. *Id.* at 387.

209. *Id.*

211. *J.S. v. J.F.*, 983 A.2d 1151, 1152-53 (N.J. Super. Ct. App. Div. 2009) (That the defendant paid for victim's company doesn't mean it was not a "dating relationship." "Experience suggests that most claims of a dating relationship turn on what the particular parties would view as a 'date.'").

211. *J.S. v. J.F.*, 983 A.2d 1151, 1152-53 (N.J. Super. Ct. App. Div. 2009) (That the defendant paid for victim's company doesn't mean it was not a "dating relationship." "Experience suggests that most claims of a dating relationship turn on what the particular parties would view as a 'date.'").

212. *Oriola v. Thaler*, 84 Cal. App. 4th 397, 412 (2000).

exclusivity were “immediately disabused,” which led the court to believe that their relationship was not romantic.²¹³ Later, in *Rucker*, the court found that such a requirement was unnecessary where other evidence demonstrated a “serious relationship.”²¹⁴

In both *Oriola* and *Andrews*, the perpetrator was dating someone other than the victim when the parties met, but because *Andrews* did not require exclusivity, a DVCPD was still granted.²¹⁵ Although *Hobdy* and *Brand* both quoted the *Rucker* court when it found the *Oriola* definition to be “unduly narrow,” *Hobdy* still included exclusivity in their reasoning while *Brand* did not.²¹⁶ Specifically, the court in *Hobdy* considered the victim’s testimony that she was not “having sexual relations with anyone other than Hobdy” while concluding that the relationship was not casual.²¹⁷

F. Sexual Relationship

While the CDC’s official stance is that intimate partner violence does not require evidence of sexual intimacy, courts may implicitly or explicitly look for such evidence as it is ingrained in the traditional ideals of “dating.”²¹⁸ If the state does not require evidence of a sexual relationship in order to find a “dating relationship,” the court will plainly state that that is the case.²¹⁹ None of the highlighted cases explicitly required evidence of sexual relations, but all of the cases, except *Oriola*, analyzed evidence of the parties’ physical involvement.

In *Oriola*, the court stated that “human experience teaches that sexual intimacy does not necessarily reflect a romantic interest” and that “a romantic relationship need not involve sexual intimacy.”²²⁰ However, the court did give weight to the parties’ *expectation* of sexual intimacy. The *Oriola* court held that where such expectations were denied by the victim, a “dating relationship” would not be found.²²¹ When the California legislature wrote the statutory definition for a “dating relationship,” it chose to include *Oriola*’s consideration of an “expectation of affection or sexual involvement.”²²² Additionally, in *Rucker*, a sexual relationship was clear because the perpetrator shot the victim immediately

213. *Id.*

214. *People v. Rucker*, 126 Cal. App. 4th 1107, 1117 (Cal. Ct. App. 2005).

215. *Andrews v. Rutherford*, 832 A.2d 379, 387 (N.J. Super. Ct. App. Div. 2003).

216. *Hobdy v. State*, 919 So. 2d 318, 325 (Ala. Crim. App. 2005).

217. *Id.*

218. See Sharon G. Smith et al., *The National Intimate Partner and Sexual Violence Survey: 2015 Data Brief – Updated Release*, CDC (Nov. 2018), <https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf>; Lawson, *supra* note 20, at 537.

219. *People v. Disher*, 224 P.3d 254, 256 (Colo. 2010); *Ochoa v. State*, 355 S.W.3d 48 (Tex. Crim. App. 2010).

220. *Oriola*, 100 Cal. Rptr. 2d at 831.

221. *Id.* at 831, 833.

222. CAL. FAM. CODE § 6210 (West, Westlaw through Ch. 10 of 2021 Reg. Sess.).

after a sexual encounter, so the court did not specify what the outcome would have been in the absence of such evidence.²²³

In *Andrews*, the court mentioned the victim's testimony that the parties had a sexual relationship but did not otherwise appear to give weight to that evidence.²²⁴ Photographic evidence that the parties spent the night together and were attracted to each other were used to show that the relationship was not casual, but were not used to prove a sexual relationship existed.²²⁵

The Alabama cases that utilized the *Andrews* factors, *Hobdy* and *Brand*, interpreted the factors to include a consideration, but not a requirement, of sexual intimacy.²²⁶ While a sexual relationship was present in both cases, only *Hobdy* granted a DVCPO.²²⁷ In *Hobdy*, evidence of sexual relations was intertwined first with the frequency factor where the parties had routine sexual relations and then with exclusivity where the victim was not having sexual relations with anyone other than the perpetrator.²²⁸ The fact that these factors also were of a sexual nature strengthened the court's conviction that their relationship was sufficient for a DVCPO.²²⁹ Similarly to *Oriola*, the court in *Brand* did not believe that all sexual relationships were "dating relationships."²³⁰ Despite the parties' sexual relationship, the court looked at all other factors, which showed an unromantic, casual relationship.²³¹

IV. APPLYING THE NEW PROVISION

Since the new provision took effect in 2018, there has not been significant precedent to set the stage for Ohio's judicial interpretation of "dating relationships." Courts have largely ignored it and have continued with old habits of "patchwork protections," however where it is mentioned may indicate where it will be used in the future. The three cases to cite the new provision directly in their statement of the rule (*Halcomb, A.A.*, and *Florenz*) all upheld the granting of a DVCPO under section 3113.31(A)(1)(b). However, they may not demonstrate courts' willingness to grant DVCPOs for all victims of intimate partner violence because the parties in these cases previously cohabited and thus would be eligible for a DVCPO by "living as spouses" under section 3113.31(A)(3)(a)(i).²³² Because the relationships of the parties in these cases were not disputed, the courts did not

223. *People v. Rucker*, 126 Cal. App. 4th 1107, 1119-20 (Cal. Ct. App. 2005).

224. *Andrews v. Rutherford*, 832 A.2d 379, 385 (N.J. Super. Ct. App. Div. 2003).

225. *Id.* at 386.

226. *See generally Hobdy*, 919 So. 2d 318; *see also Brand*, 960 So. 2d 748.

227. *Hobdy*, 919 So. 2d at 318.

228. *Id.* at 325.

229. *Id.* at 325.

230. *Brand*, 960 So. 2d at 754-55.

231. *Id.* at 753.

232. OHIO REV. CODE ANN. § 3113.31(A)(3)(a)(i) (West 2019).

provide any analysis as to indicate where they would be willing to grant a DVCPO to individuals who have dated but not lived together.

A. *Halcomb v. Greenwood*

In *Halcomb*, the parties were two men who had been together for twenty years and owned a home together; each filed for a DVCPO against the other.²³³ Halcomb alleged that Greenwood was trying to forcefully evict Halcomb from their home and that Greenwood used his control of the utilities to manipulate Halcomb to the point that he feared that Greenwood would physically harm him.²³⁴ In turn, Greenwood alleged that Halcomb was physically violent due to a drinking problem and even “threatened to kill him.”²³⁵ The testimonies of both men detailed a history of ongoing physical and emotional abuse.²³⁶ The court granted both DVCPOs and convicted both parties of domestic violence.²³⁷ On appeal, the court stated that it is undisputed that the parties are family or household members according to section 3113.31 but also noted that the relationship met the definition of a “dating relationship.” One DVCPO was granted under section 3113.31(A)(1)(a)(i) as household or family members²³⁸ while the other was DVCPO granted under the “dating relationships” provision.²³⁹

The court found Greenwood’s conduct to be “abhorrent” and “directed towards Halcomb” and thus upheld his DVCPO. The conduct was characterized as “well beyond what should be considered merely innocuous disagreements between the two, regardless of the contentious nature of their relationship.”²⁴⁰ While the Court in *Halcomb* attempted to use the new provision, it did not state why the relationship qualified as a “dating relationship” nor did it analyze the difference between a family or household member and a dating relationship, nor did it specify why they used different sections for each party.

B. *A.A. v. M.G.S.*

The “dating relationships” provision was not utilized again until more than a year later in June, 2020. In *A.A. v. M.G.S.*, Ohio’s Tenth District Court of Appeals affirmed a trial court’s granting of a DVCPO where the parties did have a

233. *Halcomb v. Greenwood*, 12th Dist. Clermont No. CA2018-03-008, CA2018-03-010, CA2018-03-012, CA2018-03-013, 2019-Ohio-194, ¶ 2.

234. *Id.* at ¶ 7-8.

235. *Id.* at ¶ 10.

236. *Id.* at ¶ 14-23.

237. *Id.* at ¶ 37.

238. *Id.* at ¶ 39.

239. OHIO REV. CODE ANN. § 3113.31(A)(1)(b) (West 2019).

240. *Halcomb v. Greenwood*, 12th Dist. Clermont No. CA2018-03-008, CA2018-03-010, CA2018-03-012, CA2018-03-013, 2019-Ohio-194, ¶ 46.

relationship and a child together but had not had contact since 2017.²⁴¹ Allegations against M.G.S. included gun threats, emotional abuse, and name-calling.²⁴² A.A.'s brother testified that M.G.S. had followed him and threatened their family.²⁴³ A.A.'s friend testified that they had seen M.G.S. draw a gun on A.A..²⁴⁴ M.G.S. denied the allegations and stated that the issues between the parties were due to custody disagreements.²⁴⁵ The trial court found that M.G.S. committed a "pattern of behavior which constitutes domestic violence" and granted a DVCPO under the new provision.²⁴⁶ The court found that when the parties had intercourse at the age of sixteen, respondent was "in a position of power" because he "was providing for her basic needs."²⁴⁷

That the parties' relationship fell within the scope of the DVCPO statute was not questioned; the Court stated that "it is undisputed that A.A. and M.G.S. were (during 2012-2015) in a relationship and had a child together; this satisfies the 'domestic' part of the definition of 'domestic violence.'"²⁴⁸

C. *Florenz v. Omalley*

In September, 2020, an Ohio Court of Appeals once again affirmed the granting of a DVCPO under the new provision in *Florenz v. Omalley*.²⁴⁹

The petitioner alleged that the respondent sent her unwanted e-mails and left notes on her car, drove by late at night, and called her from unknown numbers.²⁵⁰ As a firefighter, the respondent used his position of power to run the license plates of petitioner's visitors and subsequently contact them.²⁵¹ The respondent continually asked petitioner to have sex and threatened to release nude photos of her.²⁵² The magistrate found that the parties were in a "dating relationship" and had previously had a "sexual relationship."²⁵³ The magistrate was persuaded by evidence of respondent's tireless efforts to contact the petitioner despite petitioner's efforts to prevent him from doing so.²⁵⁴ The magistrate found that the

241. A.A. v. M.G.S., 10th Dist. Franklin No. 19AP-418, 2020-Ohio-3469, ¶ 3.

242. *Id.*

243. *Id.* at ¶ 4.

244. *Id.* at ¶ 5.

245. *Id.* at ¶ 6.

246. *Id.* at ¶ 9.

247. A.A. v. M.G.S., 10th Dist. Franklin No. 19AP-418, 2020-Ohio-3469, ¶ 12.

248. *Id.* at ¶ 40 (Brunner, J., dissenting).

249. The respondent appealed due to alleged procedural deficiencies, but the Court of Appeals was unable to review the magistrate's decision to grant the DVCPO because it lacked a transcript of the hearing. *Florenz v. Omalley*, 2020-Ohio-4487, 158 N.E.3d 1009, ¶ 15 (2d Dist.).

250. *Id.* at ¶ 2.

251. *Id.*

252. *Id.*

253. *Id.* at ¶ 4.

254. *Id.*

petitioner's fear of imminent physical harm was reasonable and ordered the respondent not to possess a firearm or weapon.²⁵⁵

D. Indirect Citations

The new possibility of protection for individuals in a “dating relationship” has been mentioned tangentially by Ohio’s Ninth and Eleventh Appellate District Courts.

In *DeMarco v. Pace*, the Eleventh District analyzed the jurisdiction of a trial court to issue an *ex parte* order and to continue to a full DVCPO hearing.²⁵⁶ The Court mentioned that after an *ex parte* or full CPO hearing, the court may grant a DVCPO or approve a consent agreement to end domestic violence against an individual in a dating relationship.²⁵⁷

The provision was also mentioned in a case regarding a registered sex offender’s change of address, *State v. Beech*.²⁵⁸ The Court found evidence that the defendant began living in his girlfriend’s camper without registering as a sex offender in his new county and notifying the court of his change of address.²⁵⁹ The defendant argued that the issuance of a DVCPO against him by his girlfriend is not evidence that he resides with her because under section 3113.31, individuals in “dating relationships” may seek DVCPOs without shared residence or cohabitation.²⁶⁰ The Court found that while the defendant was correct, the consent agreement listing the defendant as the petitioner’s “live-in boyfriend” was sufficient evidence of the defendant’s residence.²⁶¹

In May 2020, the Ninth Appellate District Court of Ohio began to incorporate the new provision into its statement of the rule for section 3113.31. In *T.M. v. R.H.*, the parties had previously been married, so their eligibility for a DVCPO was not in question.²⁶² In its statement of the rule, the court stated that a protection order may be granted “to bring about the cessation of domestic violence against the family or household members or persons with whom the respondent is or was in a dating relationship.”²⁶³

Courts’ increasing citation to the new provision demonstrates the recognition of the scope of intimate partner violence and informs lawyers that their clients in dating relationships have an opportunity to succeed in obtaining DVCPOs. However, even now many cases that cite to “section 3113.31(A)(1)(b),” the “dating relationship” provision, are mistakenly referring to the section’s previous

255. *Florenz v. Omalley*, 2020-Ohio-4487, 158 N.E.3d 1009, ¶ 4 (2d Dist.).

256. *DeMarco v. Pace*, 11th Dist. Geauga No. 2019-G-0197, 2019-Ohio-3727.

257. *Id.* at ¶ 42.

258. *State v. Beech*, 9th Dist. Summit No. 29036, 2019-Ohio-120.

259. *Id.* at ¶ 2-3, 6.

260. *Id.* at ¶ 13.

261. *Id.* at ¶ 14.

262. *T.M. v. R.H.*, 9th Dist. Summit No. 29556, 2020-Ohio-3013.

263. *Id.* at ¶ 16.

contents, which stated that domestic violence requires a “threat of force” and “fear of imminent serious physical harm.”²⁶⁴

E. Guidance for Ohio Courts

While the Ohio DVCPO statute already provides a definition of “dating relationship,” the judiciary still has the power and responsibility to shape that definition in a way that will facilitate protection for victims of intimate partner violence. In *Felton v. Felton*, the Ohio Supreme Court interpreted the domestic violence statutes in a way that highlights the role of courts and judges as key players in implementing the legislation to protect survivors. Ohio’s DVCPO statute requires that the relationship be “romantic or intimate” and not casual,²⁶⁵ but as many courts have realized, those requirements can be interpreted in many different ways, especially when the legislature does not provide a list of factors.²⁶⁶ The lack of legislatively-provided factors in Ohio’s definition of “dating relationship” gives courts wide discretion to create their own or cite widely-used factors from other states, such as those in *Andrews v. Rutherford*.²⁶⁷ Courts should use this leeway to consider the totality of the circumstances and avoid rigid standards such as traditional notions of courtship.

Extra attentiveness is required to avoid setting a rigid precedent in which a narrow range of relationships are included.²⁶⁸ The Act was created to protect, not to punish; the statute should be “liberally construed in favor of finding a dating relationship” in order to protect those who are experiencing domestic violence.²⁶⁹ This legislative intent behind the statute is evidence that a variety of factors should be considered and adapted on an individual basis. In order to provide maximum protection and avoid discrimination based on judges’ personal viewpoints, “the parties’ own understanding of their relationship as colored by socio-economic and generational influences” should be considered.²⁷⁰ Therefore, courts should maintain an awareness of the parties’ situation while interpreting the evidence at hand.

Some may disagree with a broader, totality-of-the-circumstances definition of “dating relationship” or may even disagree with the new provision altogether. One argument against the “dating relationships” provision of DVCPOs is that victims can more easily leave the situation when violence occurs because they are not married, do not have kids with the offender, and do not have other legal or financial obligations tying them to the offender. It is true that victims of dating

264. See, e.g., *L.T.C. v. G.A.C.*, 8th Dist. Cuyahoga No. 107110, 2019-Ohio-789; *Pinkston v. White*, 12th Dist. Butler No. CA2019-06-094, 2019-Ohio-5165.

265. OHIO REV. CODE ANN. § 3113.31(A)(8) (West 2019).

266. *Felton v. Felton*, 79 Ohio St. 3d 34, 45, 679 N.E.2d 672 (1997).

267. *Andrews v. Rutherford*, 832 A.2d 379, 384-85 (N.J. Super. Ct. App. Div. 2003).

268. Lawson, *supra* note 20, at 540.

269. *J.S. v. J.F.*, 983 A.2d 1151, 1152 (N.J. Super. Ct. App. Div. 2009).

270. *Id.* at 1154.

violence are not faced with the same risks and challenges that those of other types of domestic violence face; they often do not have to divide their property or families and are not as financially dependent on their abuser as married victims.²⁷¹ However, this argument is rebutted by common tactics abusers use to manipulate the victim and keep the victim in the relationship; the abuser may threaten to commit suicide if their partner leaves them,²⁷² or isolate the victim from relationships with family and friends.²⁷³ Women may also fear being labelled by police as the “aggressor” and facing charges themselves, or having their credibility questioned upon reporting the incident.²⁷⁴

Further, “federal gun laws fail to protect domestic violence victims who are merely dating their intimate partner and have not married, cohabitated, or had children with their abuser.”²⁷⁵ The ignorance surrounding dating violence enhances the danger to victims, especially when the murder rate for victims of dating violence exceeds that of victims of spousal violence.²⁷⁶

Consideration of certain factors is more likely to unjustly exclude certain types of survivors from protection. “Marriage mimicry” occurs when marriage-like relationships are privileged in ways, such as legally, over those that diverge from that traditional model of a relationship.²⁷⁷ When courts follow this model in domestic violence cases, they shape the eligible parties for a DVCPO around traditional concepts of marriage. These concepts include monogamy and financial interdependence.²⁷⁸ This model is outdated and inappropriate because it provides protection only to those who abide by concepts of relations that were shaped by certain cultures and religions.²⁷⁹

In reality, most intimate partner violence is characterized by the same relationship dynamics and patterns of abuse that occur in relationships that fit within a traditional definition of “domestic violence.”²⁸⁰ These characteristics include accessibility and familiarity, violations of physical and emotional trust, an

271. Rachmilovitz, *supra* note 22, at 507.

272. *Id.*

273. Rachmilovitz, *supra* note 22, at 507 (“Because abuse isolates the victim from other relationships, it is probable that a victim’s social ties are limited to those closest to his or her abuser.”) (citing Dutton, *supra* note 23, at 1232-35, 1224-25).

274. Leigh Goodmark, *Reframing Domestic Violence Law and Police: An Anti-Essentialist Proposal*, 31 WASH. U. J. L. & POL’Y 39, 47-48, 53 (2009).

275. 18 U.S.C. § 921(a)(32) (2019); Tracy Sauro, *Don’t Leave Me Now! – A Domestic Violence Victim’s Right to be Armed Because Their Abusers Are Dangerous*, 40 WOMEN’S RTS. L. REP. 171, 190- (2019).

276. Sauro, *supra* note 275.

277. Ruth Colker, *Marriage Mimicry: The Law of Domestic Violence*, 47 WM. & MARY L. REV. 1841, 1845 (2006).

278. *Id.* at 1843-44.

279. *Id.* at 1845-46 (“The reflexive use of a marriage-mimicry model under the law of domestic violence is in sharp contrast to the use of other categories in our legal system. We no longer allow the state to use race, gender, national origin, or religion as a proxy for who should receive privileges and benefits.”).

280. Rachmilovitz, *supra* note 22, at 499.

imbalance of power and control, and dependence.²⁸¹ Whether or not the parties are married or living together, the abuser uses the victim's trust and dependence to gain control over the victim, then forces them to remain in the relationship while exploiting their trust and familiarity in order to continue the abuse.²⁸²

To avoid a marriage-mimicry model for "dating relationships," courts should not place too much weight on the factors and considerations used for "living as spouses" when deciding whether the petitioner was in a "dating relationship" with the respondent. In *State v. Williams*, the Ohio Supreme Court noted that in any intimate relationship, the victim is placed "in a position of being extremely susceptible to violence at any given time and/or place."²⁸³ The cases utilizing the *Williams* test for "living as spouses" frequently commented on the definition of a "dating relationship."²⁸⁴ Ohio courts have said that "dating relationships" do not require evidence of items kept at each other's houses.²⁸⁵ Courts should also avoid looking for the shared finances requirement found in *Williams*, and may choose to require that the intimacy of the relationship be considered "independent of financial considerations," as California does.²⁸⁶

The influence of the doctrine of common law marriage is a particular pitfall to be wary of when avoiding marriage-mimicry models. Common law marriage "takes legal effect, without license or ceremony, when a couple live together as husband and wife, intend to be married, and hold themselves out as a couple."²⁸⁷ Common law marriage is considered an outdated concept that is no longer accepted in Ohio and was never accepted at all in some states.²⁸⁸ While considering a "dating relationship," courts are at liberty to consider how the couple holds themselves out if such evidence is present, but the absence of a public relationship should not be determinative in denying a DVCPO. In other areas of law, such as intestacy, the return of common law marriage may benefit poor women of color, who are more likely to be financially vulnerable upon the death of their significant other and less likely to be married to their cohabitating partner.²⁸⁹ However, those individuals are able to get a DVCPO under the "living as spouses" provision, so an attempt to search for the requirements of a common law marriage, such as holding themselves out as a couple, may conflate the two provisions and unduly narrow the definition of "dating relationship."

281. *Id.* at 501.

282. *Id.*

283. *State v. Williams*, 79 Ohio St. 3d 459, 463, 683 N.E.2d 1126 (1997).

284. *See generally* *State v. Maudlin*, 08-MA-92, 2010-Ohio-4192.

285. *Id.* at ¶ 30.

286. FAM. CODE § 6210 (Westlaw through Ch. 10 of 2021 Reg. Sess.).

287. *Lowe v. Broward County*, 766 So. 2d 1199, 1210 (Fla. Dist. Ct. App. 2000).

288. Robert E. Oliphant & Nancy Ver Steegh, *WORK OF THE FAMILY LAWYER* 96 (Wolters Kluwer, 4th ed. 2016).

289. Cynthia Grant Bowman, *A Feminist Proposal to Bring Back Common Law Marriage*, 75 OR. L. REV. 709, 711-12 (1996).

In analyzing evidence of how the parties hold themselves out, courts should keep in mind the possibility of a secret relationship. The court in *Andrews v. Rutherford* mentioned that it considered the potential for a “secret” relationship in which the parties do not hold themselves out as a dating couple.²⁹⁰ The court suggested that if that were to occur, the other factors should carry more weight.²⁹¹ In some situations, such as a workplace relationship or a relationship where the parties are LGBTQ, the parties may not affirmatively tell others about their dating relationship.²⁹² Rather than looking for testimony from friends or family that one party referred to the other party as a husband/wife or a boyfriend/girlfriend, Ohio courts will be able to discern the intimacy of the relationship based on circumstantial evidence as the court in *State v. Brand* did as well as the parties’ testimony.²⁹³ In *Brand*, the court discussed whether or not the victim’s interaction with others at a club made the defendant jealous or not; because the defendant denied that he was jealous, the factor weighed against the finding of a dating relationship.²⁹⁴ The court should also take care to be aware of potential reasons that the petitioner may not want to present the relationship as a dating relationship; in *Oriola*, the petitioner originally listed herself in a police report as the suspect’s girlfriend but later changed the report to say “acquaintance” because she did not want to lead the respondent to believe that the parties were dating.²⁹⁵ In light of the unique and potentially abusive situation at hand, how the parties hold themselves out may not always indicate the reality of the relationship.

Ohio courts should aim to deviate from interpretations of “dating relationship” that are based on traditional, outdated ideas about dating, such as that of *Oriola*. The court’s interpretation of “dating relationship” in *Oriola* focused on a relationship that leads to marriage (courtship) or one that already resembles marriage.²⁹⁶ That definition emphasized exclusivity and continuity.²⁹⁷ Those

290. *Andrews v. Rutherford*, 832 A.2d 379, 384 n.3 (N.J. Super. Ct. App. Div. 2003).

291. *Id.*

292. Barbara Fedders, *Coming Out for Kids: Recognizing, Respecting, and Representing LGBTQ Youth*, 6 NEV. L.J. 774 (2006) (“While they may have kept them secret, adolescents have always had same-sex romantic and sexual relationships.”); Michelle Aulivola, *Outing Domestic Violence: Affording Appropriate Protections to Gay and Lesbian Victims*, 42 FAM. CT. REV. 162, 164 (2004) (“Often times, the victim may be reluctant to report cases of abuse based on his or her own fears of the negative consequences of publicly revealing sexual orientation.”); Rachmilovitz, *supra* note 22, at 531 (“In other words, the abuser might portray himself and his partner as straight parties who do not fit the notions of domestic violence as connected to intimate relationships.”).

293. As in many cases, the testimony of the parties is valuable evidence; *ex parte* protection orders are frequently granted on the testimony of the petitioner alone. Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 1037 (1993). However, victims are sometimes intimidated by the other party to not testify or may recant their testimony as a result of threats made by the offender as an effort to exert control. *Id.* at 958.

294. *Brand v. State*, 960 So. 2d 748, 754.

295. *Oriola v. Thaler*, 100 Cal. Rptr. 2d 822, 825-26 (Cal. Ct. App. 2000).

296. *Id.* at 830.

297. *Id.*

requirements have been eliminated by California's legislative definition and Ohio courts should take care not to revisit such antiquated ideas about who experiences domestic violence.²⁹⁸ Today, *Oriola* has been overruled²⁹⁹ and is unsuccessfully cited by offenders to counter petitioners' evidence of a "dating relationship."³⁰⁰

I propose that Ohio courts look to the reasoning in *People v. Rucker* for guidance in their decision to avoid strict requirements regarding the length of the relationship. "Not only is there a great likelihood that any one battering episode is part of a larger scheme of dominance and control, that scheme usually escalates in frequency and severity. Without the propensity inference, the escalating nature of domestic violence is likewise masked."³⁰¹ Even new couples may develop "unique emotional and privacy aspects" such as jealousy³⁰² that distinguish their relationship from that of other social or business relationships mentioned in Ohio's DVCPO statute.³⁰³ Ohio courts should take *Rucker*'s direction to not "preclude a relatively new dating relationship" because, similar to California's statute, the new "dating relationship" provision in Ohio does not require a lengthy relationship.³⁰⁴

Currently, no states have defined a "sexual relationship" in their domestic violence statutes or cases interpreting such statutes.³⁰⁵ Even *Oriola* stated that a sexual relationship was not required³⁰⁶ and such interactions were not required by the Andrews factors. Although a sexual relationship is not determinative, Ohio courts should consider the frequency of sexual interactions, if they are present, to indicate that the relationship is intimate or more than casual.³⁰⁷ Similar to evidence of how the parties hold themselves out, the absence of such evidence should not be dispositive. In contrast to searching for a sexual relationship, an analysis that is susceptible to heteronormative viewpoints regarding sexuality, courts should look for some form of physical intimacy, such as handholding.³⁰⁸ This view is supported by state statutes that use "sexual" interchangeably with romance or intimacy rather

298. *People v. Rucker*, 25 Cal. Rptr. 3d 62, 69 (Cal. Ct. App. 2005) ("The definition of a dating relationship adopted by the Legislature does not require 'serious courtship,' an 'increasingly exclusive interest,' 'shared expectation of growth,' or that the relationship endures for a length of time.").

299. *Id.*

300. *Brand v. State*, 960 So. 2d 748, 750-52 (Ala. Crim. App. 2006); *Rucker*, 25 Cal. Rptr. 3d at 68-69.

301. *Rucker*, 25 Cal. Rptr. 3d at 69.

302. *Bulletins for Teens: Dating Violence*, NAT'L CTR. FOR VICTIMS OF CRIME, <https://victims.ofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/bulletins-for-teens/dating-violence> (Last visited Jan. 31, 2020).

303. *Rucker*, 25 Cal. Rptr. 3d at 69.

304. *Id.*

305. Lawson, *supra* note 20, at 536.

306. *Oriola v. Thaler*, 100 Cal. Rptr. 2d 822, 831 (Cal. Ct. App. 2000).

307. Lawson, *supra* note 20, at 536-37.

308. *Andrews v. Rutherford*, 832 A.2d 379, 385 (N.J. Super. Ct. App. Div. 2003) (evidence of the party's physical interactions, such as hugging and holding hands, led the court to conclude that the relationship was "not casual" and that the parties had "a clear attraction to one another.").

than as its own requirement.³⁰⁹ Instead of using evidence of physical intimacy to prove a sexual relationship, courts should use it to analyze other factors such as frequency and nature of the interactions, as the court did in *Hobdy* and *Brand*, or casualness, as the court did in *Andrews*.³¹⁰

Regarding a consideration of “termination of the relationship,” there are two questions: if there was ever a dating relationship at all and when the dating relationship occurred. Ohio courts only have discretion to answer the former; the legislature has already determined that a dating relationship older than twelve months is outside the scope of the DVCPO statute.³¹¹ If there is evidence of a relationship within the past twelve months, courts should not rule out a relationship that has terminated, even if it was months ago. “State statutes need to protect women and children during and after the break-up of relationships because of their continuing, and often heightened, vulnerability to violence.”³¹² Other factors, such as the frequency of the interactions, may combine with a consideration of when the relationship terminated to determine whether the relationship is casual, as they did in *Brand*.³¹³ If the incident was isolated, meaning that it terminated many months ago and was only one interaction, the parties likely have not established the familiarity and dependency characteristic of a domestic violence relationship.³¹⁴

A consideration frequently overlooked by courts is the context in which the abuse occurred and whether the perpetrator was influenced by emotions relating to the interpersonal relationship. Jealousy, control and emotional dependency are emotional aspects of intimate relationships that often incite domestic violence due to one party’s desire for power or exclusivity; the presence of such emotional dynamics should indicate to courts that the violence is between dating partners rather than friends or acquaintances.³¹⁵ Perpetrators use certain behaviors such as

309. *Id.*

310. *Hobdy v. State*, 919 So. 2d 318, 325 (Ala. Crim. App. 2005); *Brand v. State*, 960 So. 2d 748, 754 (Ala. Crim. App. 2006); *Andrews*, 832 A.2d at 386385.

311. OHIO REV. CODE ANN. § 3113.31(A)(9) (West 2019) (“‘Person with whom the respondent is or was in a dating relationship’ means an adult who, at the time of the conduct in question, is in a dating relationship with the respondent who also is an adult or who, within the twelve months preceding the conduct in question, has had a dating relationship with the respondent who also is an adult.”).

312. *Felton v. Felton*, 79 Ohio St. 3d 34, 45, 679 N.E.2d 672 (1997).

313. *Brand v. State*, 960 So. 2d 748, 753 (Ala. Crim. App. 2006) (finding that the relationship was casual where “the only activity the victim and the appellant engaged in that might constitute more than mere casual fraternization, and that might therefore be characterized as a dating activity, was when they engaged in sexual relations two years before on the night they met.”); *see also* *Alison C. v. Westcott*, 798 N.E.2d 813, 813 (Ill. App. Ct. 2003).

314. *Rachmilovitz*, *supra* 22, at 501-07.

315. *Raeder*, *supra* note 1, at 1479; *People v. Daniels*, 93 Cal. Rptr. 628, 633-34, (Cal. Ct. App. 1971) (“Evidence showing jealousy, quarrels, antagonism or enmity between an accused and the victim of a violent offense is proof of motive to commit the offense.”). *See generally* Joan B. Kelly & Michael Johnson, *Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions*, 46 FAM. CT. REV. 476, 485 (2008).

isolating the victim or sexually abusing the victim to “gain and maintain power and control over the survivor.”³¹⁶ Even in the absence of a pattern of violence within the relationship, which would result in eligibility for a stalking protection order, “situational couple violence” can include yelling, pushing, and grabbing.³¹⁷

In every case highlighted above, the violence was preceded by jealousy or unfulfilled expectations of physical intimacy, except for *Andrews*, which did not provide the facts leading up to the incident. In *Oriola*, the respondent did not want the petitioner to date anyone else and was upset when the petitioner did not spend time with him; this tension led to heated arguments and physical intimidation when the petitioner attempted to end the relationship.³¹⁸ In *Brand*, the victim was physically assaulted on the same night that she testified the perpetrator “became enraged and jealous when she talked to the other male, told her not to talk to the male...”³¹⁹ A domestic violence incident that occurred prior to the incident at hand in *Rucker* was caused by the defendant’s anger that she was not invited to the victim’s party as she usually had been.³²⁰ The incident at hand in *Rucker* was caused by a comment made during sexual intercourse;³²¹ similarly, the victim in *Hobdy* testified that the defendant assaulted her because she refused to have sex with him.³²² In all cases, the violence was precipitated by the perpetrator’s desire for control over the victim or exclusivity.

However, the courts in *Oriola* and *Brand* did not find a “dating relationship;” the relationship was labeled a friendship in *Oriola* and in *Brand* because the court found that other considerations outweighed the intimate nature of the offender’s rage.³²³ The elements of jealousy, control, and dependency may not always outweigh all others, but it is instrumental in discerning whether the petitioner is at risk of the same cycle of intimate partner violence as married and cohabitating couples. Because the perpetrators’ desire for romantic exclusivity with the victim motivated their violence in both *Oriola* and *Brand*, I would argue that a DVCPO should have been granted in both cases. The offender’s expectation for such exclusivity and control over the victim are common motivations for a pattern of

316. Jane K. Stoeber, *Transforming Domestic Violence Representation*, 101 KY. L.J. 483, 512 (2012) (The eight categories of abuser’s exercise of power and control include “(1) using intimidation; (2) using coercion and threats; (3) using emotional abuse; (4) using economic abuse; (5) using isolation; (6) using minimization, denial, and blame; (7) using children; and (8) using male privilege”).

317. Kelly, *supra* note 315.

318. *Oriola v. Thaler*, 100 Cal. Rptr. 2d 822, 825-26 (Cal. Ct. App. 2000).

319. *Brand v. State*, 960 So. 2d 748, 749 (Ala. Crim. App. 2006).

320. *People v. Rucker*, 25 Cal. Rptr.3d 62, 66 (Cal Ct. App. 2005).

321. *Id.* at 65-66..

322. *Hobdy v. State*, 919 So. 2d 318, 319-20 (Ala. Crim. App. 2005).

323. *Brand v. State*, 960 So. 2d 748 (Ala. Crim. App. 2006). In *Halcomb v. Greenwood* as well, the abuse appeared to be due to control of property rather than of the victim, but that case was unique in that the couple had “broke[n] off their romantic relationship in 2015,” at least two years prior to their DVCPO petitions. *Halcomb v. Greenwood*, 12th Dist. Clermont No. CA2018-03-008, CA2018-03-010, CA2018-03-012, CA2018-03-013, 2019-Ohio-194, ¶ 2, 7.

violence.³²⁴ Because of their previous proximity to and familiarity with the victim (in *Oriola*, on their “social outings,” and in *Brand*, during their sexual interaction), they are more likely to be able to access the victim and continue to enact violence.³²⁵

The incidents of domestic violence in *A.A. v. M.G.S.* and *Florenz v. Omalley* were both precipitated by the respondents’ unfulfilled expectations from the parties’ relationships. In *A.A.*, the respondent stated that issues between the parties were due to M.G.S.’s desire to see their child and A.A.’s efforts to prevent him from doing so.³²⁶ In *Florenz*, the respondent repeatedly asked the victim for sex, similar to in *Hobdy*, and “threatened to release nude photos of her.”³²⁷ Further, in both cases the perpetrators used their power over and proximity to the victim in order to control and abuse the victim. In *A.A.*, the court noted that the first time the parties had sex was when A.A. moved in with M.G.S. and M.G.S. began providing for her basic needs.³²⁸ The court found that this relationship dynamic placed M.G.S. in a “position of power” which provided him accessibility to the victim and prevented her from being able to leave the relationship.³²⁹ In *Florenz*, the respondent used his job as a firefighter to track and contact individuals who visited the petitioner’s home.³³⁰ While the courts in these cases were not using evidence of the power dynamic to establish the parties’ “dating relationship,” it is persuasive in showing the characteristics of intimate partner violence because such a dynamic is directly tied to the abuse.

Overall, courts should take care to analyze evidence of each requirement and avoid conflating the requirements according to the court’s own ideas about relationships. For example, testimony that the relationship was not romantic does not mean that parties did not have expectations of a dating relationship or that they did not hold themselves out as dating.³³¹ While context is important and the court should look at the entire situation, each requirement is separate and should be treated as such. Further, if evidence is presented that does not fit neatly within the confines of an enumerated factor, it should not be ignored; even the thorough list of considerations provided by *Andrews v. Rutherford* was “not exhaustive” and “must allow for the consideration of additional facts.”³³²

324. See generally Rachmilovitz, *supra* note 22.

325. Rachmilovitz, *supra* note 22, at 501, 537.

326. *A.A. v. M.G.S.*, 19AP-418, 2020-Ohio-3469, ¶ 6.

327. *Florenz v. Omalley*, 2020-Ohio-4487, 158 N.E.3d 1009 (2d Dist.).

328. *A.A.*, 2020-Ohio-3469 at ¶ 12.

329. *Id.*

330. *Florenz*, 2020-Ohio-4487 at ¶ 2.

331. *Brand v. State*, 960 So. 2d 748 (Ala. Crim. App. 2006).

332. *Andrews v. Rutherford*, 832 A.2d 379, 383 n.2 (N.J. Super. Ct. App. Div. 2003); *J.S. v. J.F.*, 983 A.2d 1151, 1153 (N.J. Super. Ct. App. Div. 2009).

CONCLUSION

The “dating relationship” provision that was recently added to Ohio’s DVCPO statute is a step forward in protecting victims of domestic violence and curtailing the presence of intimate partner violence. Dating violence is a common form of intimate partner violence that threatens unmarried victims, especially young women who do not share a child with or live with the offender. The definition of “dating relationship” varies and even when legislatures provide a definition, the term is ambiguous and interpretations vary. Ohio’s new DVCPO provision defines a “dating relationship” as “of a romantic or intimate nature” in contrast to “a casual acquaintanceship or ordinary fraternization in a business or social context.”³³³ Ohio courts should interpret this definition in a way that considers the totality of the circumstances and the relationship dynamic while avoiding an emphasis on factors that mimic a traditional marriage-like relationship.

333. OHIO REV. CODE ANN. § 3113.31(A)(8) (West 2019).