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What's Love Got to Do with It: Securing Access to Justice for Abused Teens

Lisa Vollendorf Martin

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Cover Page Footnote

Clinical Associate, Families and the Law Clinic, The Catholic University of America, Columbus School of Law; Georgetown University Law Center, J.D.; The College of William and Mary, B.A. The author formerly served as co-manager and staff attorney in the Teen Dating Violence Program at Women Empowered Against Violence (WEAVE), a former provider of holistic services in Washington, D.C. to adults and teens who experienced abuse. I am indebted to all of my colleagues at Columbus Community Legal Services, especially Alvita Eason Barrow, Margaret Martin Barry, Margaret Johnson, Catherine Klein, and Faith Mullen, as well as Margaret Johnson and Jane Stoeber for their friendship, encouragement, and willingness to talk through the ideas in this Article. I am grateful for the helpful comments of Faith Mullen, my colleagues from the 2010 N.Y.U. Clinical Law Review Writers' Workshop—Angela Burton, Michele Gilman, Marybeth Musumeci, Robin Walker Sterling, and Joanna Woolman—and Nancy Cantalupo, Laurelle Lo, and Marguerite McLamb. I am also thankful to Ashleigh Elliot, Marianne Reyes, Amanda Schlener, Jenna Shapiro, and Christopher Wallace for their valuable research assistance.

WHAT’S LOVE GOT TO DO WITH IT: SECURING ACCESS TO JUSTICE FOR TEENS

Lisa Vollendorf Martin⁺

I. TEEN DATING VIOLENCE: THE NATURE OF THE PROBLEM.....	460
II. THE CIVIL PROTECTION-ORDER REMEDY AND ITS BENEFITS FOR TEENS.....	465
III. MINORS’ ABILITY TO ACCESS PROTECTION ORDERS IN THE DISTRICT OF COLUMBIA AND THE FIFTY STATES	468
A. <i>Standing: Teens’ Rights to Obtain Legal Protection from Abuse</i>	469
1. <i>Statutes According Standing to Minors</i>	471
2. <i>Statutes Denying Standing to Minors</i>	473
3. <i>Ambiguous or Silent Statutes</i>	474
4. <i>Emancipated Minors</i>	476
B. <i>Legal Capacity: Teens’ Rights to Represent Their Own Interests in Protection-Order Proceedings</i>	478
1. <i>Statutes Explicitly Granting Legal Capacity to Minor Petitioners</i>	479
a. <i>Objective Extensions of Legal Capacity</i>	479
b. <i>Legal Capacity According to Subjective Standards</i>	482
2. <i>Statutes Denying Legal Capacity</i>	482
3. <i>Ambiguous or Silent Statutes</i>	483
a. <i>Silent Statutes</i>	483
b. <i>Ambiguous Statutes Implying the Denial of Legal Capacity to Minors</i>	484
4. <i>Emancipated Minors</i>	485
C. <i>Parent Notification</i>	486

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IV. HOW CIVIL PROTECTION-ORDER LAWS PREVENT TEENS FROM ACCESSING JUSTICE	486
A. <i>Standing</i>	487
1. <i>Petitioner Age Restrictions</i>	487
2. <i>Respondent Age Restrictions</i>	491
3. <i>Qualifying Relationships</i>	493
B. <i>Legal Capacity and Parent Notification</i>	495
1. <i>Legal Capacity</i>	495
2. <i>Parent Notification</i>	506
V. THE PERILS FOR TEENS IN AMBIGUOUS PROTECTION-ORDER STATUTES	508
A. <i>Ambiguity Equals Exclusion</i>	508
B. <i>Ambiguous Statutes Should Be Interpreted to Accord Standing to Minors</i>	510
C. <i>Adult Standing to Seek Protection on Behalf of Teens Should Not Be Interpreted to Deprive Teens of Standing</i>	517
D. <i>Ambiguous Statutes Should Be Interpreted to Accord Capacity to Minors, as Permitted by Other Law</i>	517
VI. CONCLUSION	521

In 2005, seventeen-year-old Regina Howard went to the Superior Court of the District of Columbia to file a petition for a civil protection order against her ex-boyfriend and the father of her child, Marcus James.¹ Marcus and Regina constantly fought after their daughter was born, and those fights escalated into Marcus beating Regina on a weekly basis. Regina decided to seek a protection order after Marcus punched, kicked, and strangled Regina until she passed out in front of their daughter. When she attempted to file her petition, however, the clerk turned Regina away and told her that she was not permitted to file without a parent. At the time, D.C. law did not address whether or under what circumstances a minor could obtain a protection order. Regina's friend told her that she obtained a protection order in D.C. before she turned eighteen without parental involvement, so Regina decided to try again. It was only after her third attempt—and after a lawyer heard about her case and offered to assist her—that Regina was able to file her petition and obtain a protection order. If Regina had not possessed unshakable determination, she would have remained unprotected.

In 2009, fourteen-year-old Karen Carson sought a civil protection order with her mother's assistance against her seventeen-year-old boyfriend, John Brown,

1. Based on a case handled by Women Empowered Against Violence (WEAVE). Names changed to protect confidentiality.

after he beat and raped her.² It was undisputed that the parties shared a dating relationship. The trial court concluded that John's conduct amounted to domestic violence and issued a civil protection order for Karen's safety, which, among other things, ordered John to transfer to a new high school. The Washington Court of Appeals vacated the order, holding that John's conduct could not qualify as domestic violence under Washington law until Karen was at least sixteen years old.³ Being only fourteen, Karen had no right to legal protection.⁴

Since its emergence in the late 1970s,⁵ domestic-violence law has evolved considerably. Due to the tireless work of activists, courts' and communities' views of whether men have a right to beat women and whether the law has a role to play in addressing intimate partner violence have seismically shifted.⁶ Systems have been developed to make courts more accessible and legal protections more readily available to persons subjected to abuse.⁷

The issue of teen dating violence emerged against this backdrop. Activists, researchers, and scholars demonstrated the prevalence of abuse in teens' intimate relationships and argued that the same legal protections and social services developed to assist adults should also be extended to teens.⁸ Several state legislatures and courts responded by enacting laws that enhance the protections available to abused teens.⁹ Despite these positive advances, teens still face substantial obstacles when they seek legal protection from abuse, especially when they approach the courts unaccompanied by a parent or guardian.¹⁰ States must do more to recognize the issue of teen dating violence and guarantee teens the same access to justice that states have accorded adults subjected to domestic violence.

This Article builds on the work of previous scholars to focus more intently on the ways in which states continue to deny abused minors access to justice. Part I of this Article explores the problem of teen dating violence in the United States. This Part particularly examines the prevalence, severity, and lasting impact of dating violence on teens and teens' common reticence to disclose

2. Name changed to prevent further publication of sensitive information. Published case decision on file with the author.

3. Washington's civil protection-order statute was subsequently changed to grant individuals thirteen years of age and older the right to seek protection orders against dating partners. WASH. REV. CODE ANN. § 26.50.020(b) (West Supp. 2011).

4. *Id.* § 25.50.010(h) (West 2005 & Supp. 2011).

5. Elizabeth M. Schneider, *Domestic Violence Law Reform in the Twenty-First Century: Looking Back and Looking Forward*, 42 FAM. L.Q. 353, 354 (2008).

6. See Judith A. Smith, *Battered Non-Wives and Unequal Protection-Order Coverage: A Call for Reform*, 23 YALE & POL'Y REV. 93, 98–100 (2005).

7. Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107, 1111 (2009).

8. See *infra* Part II.

9. See *infra* Parts III.A.1, III.B.1.

10. See *infra* Part IV.

abuse to adults. The combination of these traits makes teen dating violence a highly dangerous, yet largely invisible phenomenon. Part II considers the civil protection-order remedy in the United States—the legal remedy most commonly pursued to address abuse in adult relationships—and analyzes the benefits of civil protection orders for teens subjected to abuse. Part III explores the extent to which state statutes make protection orders more or less accessible based on age. Specifically, this Part focuses on three features of statutes that control teens' access to protection orders based on their status as minors: standing, legal capacity, and parent notification. Part IV analyzes how protection-order statutes exclude teens based on age by denying or failing to explicitly grant teens standing, denying or failing to explicitly grant teens legal capacity to pursue cases independently, and mandating parent notification or involvement in protection-order cases. Moreover, this Part argues that to best protect teens, protection-order statutes must unambiguously extend standing and legal capacity to teenagers without requiring parent notification. Part V argues that although ambiguous statutes often are interpreted to exclude teens from protection, several legal principles support extending standing and capacity rights to teens under ambiguous laws. Part V offers strategies to assist teens in securing legal protections in the many jurisdictions that do not extend protections to them explicitly. Finally, Part VI concludes by recommending how states can reform protection-order statutes to increase abused teens' access to justice.

I. TEEN DATING VIOLENCE: THE NATURE OF THE PROBLEM

Dating violence is all too common in teen relationships. In recent years, as many as twenty-five to thirty-five percent of teen girls report that their intimate partner physically, sexually, or emotionally abused them.¹¹ Sixty percent of teens report knowing a peer in an abusive dating relationship.¹² Adolescent

11. See Jay G. Silverman et al., *Dating Violence Against Adolescent Girls and Associated Substance Use, Unhealthy Weight Control, Sexual Risk Behavior, Pregnancy, and Suicidality*, 286 JAMA 572, 572 (2001) (reporting that twenty-five percent of adolescents admit to having experienced physical or sexual abuse in a teen dating relationship); see also LIZ CLAIBORNE, INC. & FAMILY VIOLENCE PREVENTION FUND, *TEEN DATING ABUSE REPORT 2009: IMPACT OF THE ECONOMY AND PARENT/TEEN DIALOGUE ON DATING RELATIONSHIPS AND ABUSE 12* (2009) [hereinafter *TEEN DATING ABUSE REPORT*], available at http://www.maryfonden.dk/Files/System/pdf/Teen_Dating_Abuse_Report_2009.pdf (reporting that twenty-nine percent of teens admitted to having been the victim of actual or threatened sexual or physical abuse by a partner in a dating relationship, forty-seven percent reported having an intimate partner who exerted controlling behaviors, twenty-four percent reported having been the victim of abusive behavior by an intimate partner via technology, and eleven percent reported experiencing verbal abuse by an intimate partner); Antoinette Davis, *Interpersonal and Physical Dating Violence Among Teens*, FOCUS, Sept. 2008, at 2, available at http://www.nccd-crc.org/nccd/pubs/2008_focus_teen_dating_violence.pdf (estimating that up to thirty-three percent of adolescent girls are victims of violence in intimate relationships).

12. *TEEN DATING ABUSE REPORT*, *supra* note 11, at 13 (reporting that sixty percent of teens know a peer who has been the victim of actual or threatened sexual or physical abuse, eighty

women are among the most likely to experience abuse.¹³ According to a Bureau of Justice study, women of ages sixteen to twenty-four experience the highest rates of violence by current or former intimate partners.¹⁴ Intimate partner violence can be particularly devastating to teens because it can have negative long-term impacts. Teens who have experienced abuse are more likely to use alcohol, tobacco, and cocaine, drink and drive, exhibit unhealthy weight control behaviors, take greater sexual risks, become pregnant, and to attempt or commit suicide.¹⁵

Teens may have particular difficulty freeing themselves from abusive relationships for many reasons, including inexperience, peer pressure, fear of retribution, and reluctance to seek help.¹⁶ First, simply by virtue of their age, teens are relatively inexperienced in romantic relationships.¹⁷ A teen who experiences abuse in her first relationship might mistake violence or controlling behaviors for love.¹⁸ This may be particularly likely for teens who have witnessed the abuse of a parent.¹⁹ Moreover, children who witness

percent know a peer who dated someone exerting controlling behaviors, fifty-one percent reported having known a peer victim of abusive behavior via technology, and eleven percent know a peer who has been victimized by verbal abuse from an intimate partner).

13. See CALLIE MARIE RENNISON, BUREAU OF JUSTICE STATISTICS, SPECIAL REPORT: INTIMATE PARTNER VIOLENCE AND AGE OF VICTIM, 1993-99, at 1, 3 (2011), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/ipva99.pdf>.

14. *Id.*; see also Nancy Chi Cantalupo, *How Should Colleges and Universities Respond to Peer Sexual Violence on Campus? What the Current Legal Environment Tells Us*, 3 NASPA J. ABOUT WOMEN HIGHER EDUC. 49, 52 (2010) (explaining that women attending college between the ages of fifteen and twenty-four are four times more likely than other groups to be sexually assaulted and usually know their perpetrators).

15. Silverman et al., *supra* note 11, at 577-78; see also HOLLY HARNER, VAWNET, SEXUAL VIOLENCE AND ADOLESCENTS 7 (2003), available at http://vawnet.org/Assoc_Files_VAWnet/AR_Adolescent.pdf.

16. Stacy Brustin, *Legal Responses to Teen Dating Violence*, 29 FAM. L.Q. 331, 337 (1995).

17. See Robert J.R. Levesque, *Dating Violence, Adolescents, and the Law*, 4 VA. J. SOC. POL'Y & L. 339, 350 (1997) (explaining that teen relationships are often marked by "highly passionate, exciting, and possessive" feelings, which adolescents are unable to control).

18. See Brustin, *supra* note 16, at 337 ("Many teenagers believe that occasional violence is a normal part of relationships and that the violence is a sign of love."); Pamela Saperstein, *Teen Dating Violence: Eliminating Statutory Barriers to Civil Protection Orders*, 39 FAM. L.Q. 181, 186 (2005) (noting that because teens have more limited dating experience, "they often cannot identify characteristics of an abusive relationship"); see also *Dating Violence Information Sheet*, NEB. DOMESTIC VIOLENCE SEXUAL ASSAULT COALITION, <http://ndvsac.org/wp-content/uploads/DV/Dating%20Violence%20fact%20sheet.pdf> (last visited Nov. 12, 2011) (reporting that "25%-35% of teens equate jealousy, possessiveness and violence with love" (citing TEENAGE RESEARCH UNLIMITED, LIZ CLAIBORNE, INC. OMNIBUZZ TOPLINE FINDINGS: TEEN RELATIONSHIP ABUSE RESEARCH 7 (2005), available at http://loveisnoteabuse.com/c/document_library/get_file?p_l_id=45693&folderid=726128&name=DLFE-207.pdf)).

19. See TEEN DATING ABUSE REPORT, *supra* note 11, at 16 (detailing that sixty-seven percent of teens who witnessed abuse between their parents had also experienced some form of abuse in their own relationships).

domestic violence are exponentially more likely to experience abuse in future romantic relationships and to perpetrate abuse against romantic partners.²⁰

Even if teens recognize that their relationships are abusive, they may feel pressured to remain in such relationships because of peer expectations and fears of social ostracism.²¹ As Carole A. Sousa describes:

Eager to separate themselves from adults and to belong among their peers, adolescents often conform strictly to peer norms. . . . Peer pressure can be intense, and the fear of being different or of violating peer norms can create rigid conformity or enormous stress. The norms of adolescent peer groups often support stereotypical behaviors: dominance for men and passivity for women. . . . Confusion about intimacy and the idealization of relationships based on gender stereotypes can lead victims and perpetrators to conclude that it is acceptable for males to use force in relationships.²²

Apart from peer pressure, experiencing abuse in an intimate relationship “diminishes the victim’s independence and destroys her self-esteem so that she feels she has no other option than to remain in the relationship.”²³ Moreover, teens “have a very real fear that the violence will intensify if they try to end the relationship.”²⁴ Such fears are well grounded, as teens face significant risk of serious violence and homicide when attempting to end abusive relationships.²⁵

Furthermore, teens often fail to disclose abuse. Recent studies indicate that after experiencing violence in an abusive relationship, less than one in three teens turned to a school counselor or social worker, or called an abuse

20. See *Dating Violence*, WOMEN’S RESOURCE CENTER NEW RIVER VALLEY, http://www.wrcnrv.org/helpingYou/ft_datingViolence.shtml (last visited Oct. 3, 2011) (explaining that half of teens who witness domestic violence at home later experience abusive relationships).

21. See Brustin, *supra* note 16, at 337 (noting that the expectations of peers contribute to unhealthy teen dating behaviors).

22. Carole A. Sousa, *Teen Dating Violence: The Hidden Epidemic*, 37 FAM. & CONCILIATION CTS. REV. 356, 361 (1999) (footnote omitted).

23. See Kathryn E. Suarez, Comment, *Teenage Dating Violence: The Need for Expanded Awareness and Legislation*, 82 CALIF. L. REV. 423, 430 (1994).

24. See Brustin, *supra* note 16, at 337 (citing Denise Glamache, *Domination and Control: The Social Context of Dating Violence*, in DATING VIOLENCE: YOUNG WOMEN IN DANGER 81 (Barrie Levy ed., 1991)) (noting that serious violence or homicide most frequently occurs when the teenager attempts to end the relationship).

25. See, e.g., JANICE ROEHL ET AL., U.S. DEP’T OF JUSTICE, INTIMATE PARTNER VIOLENCE RISK ASSESSMENT VALIDATION STUDY, FINAL REPORT 4 (2005), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/209731.pdf> (finding that women attempting to separate from their partners face an increased risk of both renewed violence and death); Nancy Glass et al., *Young Adult Intimate Partner Femicide*, 12 HOMICIDE STUD. 177, 177–78 (2008) (finding that adolescent and young adult women (ages sixteen to twenty) are more likely to be murdered by an ex-partner than older adult women).

helpline,²⁶ and only seven percent of teens reported that they would talk to the police.²⁷ Teens are especially reticent to seek help from adults, including parents.²⁸ A study commissioned by Liz Claiborne, Inc. and the Family Violence Prevention Fund found that only thirty-two percent of teens reported talking to a parent after experiencing abuse.²⁹ The study concluded that parents are “dangerously out of touch” with the high level of teen dating violence.³⁰

Teens’ reticence to disclose abuse and seek help may stem from their desire for independence and autonomy.³¹ Being perceived as in control of their lives and being treated with the same respect accorded to adults are paramount goals for many teens.³² Teens may fear that disclosures of abuse would cause adults, especially parents, to doubt their ability to make good decisions, which could result in a reduction of privileges.³³ Teens also may be reluctant to disclose abuse to their parents because they believe, rightly or wrongly, that their families would disapprove of their relationships and punish them for having entered the relationship to begin with.³⁴ This may be a particularly pressing

26. TEEN DATING ABUSE REPORT, *supra* note 11, at 22 (reporting that only twenty-seven percent of teens who experienced abuse turned to a school counselor or social worker, and only twenty-five percent contacted an abuse helpline).

27. See Tiffany J. Zwicker, Note, *Education Policy Brief: The Imperative of Developing Teen Dating Violence Prevention and Intervention Programs in Secondary Schools*, 12 S. CAL. REV. L. & WOMEN’S STUD. 131, 136 (2002).

28. See *Hearing on Bill 17-55, The “Intrafamily Offenses Act of 2007” Before the Comm. on Pub. Safety & the Judiciary*, 2007 Leg. 22–23 (D.C. 2007) [hereinafter *Hearing on the Intrafamily Offenses Act of 2007*] (statement of Karen Cunningham, Director of Legal Services for WEAVE) (describing legal service providers’ experiences with teens who are unwilling to seek help from parents because they fear their parents will disapprove of the relationship, or that their reports of violence will not be believed); Brustin, *supra* note 16, at 332; Amy Karan & Lisa Keating, *Obsessive Teenage Love: The Precursor to Domestic Violence*, 46 JUDGES’ J. 23, 24 (2007) (noting that teens are less likely than any group to report abuse and less than five percent of teen crime victims tell a parent).

29. TEEN DATING ABUSE REPORT, *supra* note 11, at 22.

30. *Id.* at 17 (reporting that sixty-three percent of parents whose children had experienced dating violence incorrectly believed that violence was not a problem in the relationship).

31. See Leigh Goodmark & Catherine F. Klein, *Deconstructing Teresa O’Brien: A Role Play For Domestic Violence Clinics*, 23 ST. LOUIS U. PUB. L. REV. 253, 260 (2004) (presenting a role-playing exercise that exposes the real challenges faced by lawyers representing a teen who minimizes the extent of abuse in her relationship and is hesitant to take action); Saperstein, *supra* note 18, at 187 (explaining that teenagers rarely seek help from their families when experiencing dating violence, “partly because the teenage years are typically characterized by rebellion and the testing of limits where the child seeks to establish an identity separate from her family”).

32. See Suarez, *supra* note 23, at 428–29.

33. See Sousa, *supra* note 22, at 362; see also Cantalupo, *supra* note 14, at 53 (listing the fear that family would find out as one of many reasons why ninety percent of young women who were sexually assaulted did not report the abuse).

34. See Levesque, *supra* note 17, at 348–49 (citing Roger J.R. Levesque, *The Peculiar Place of Adolescents in the HIV-AIDS Epidemic: Unusual Progress & Usual Inadequacies in Adolescent Jurisprudence*, 27 LOY. U. CHI. L.J. 237, 271 (1996)) (explaining that teenage

fear for teens in same-sex relationships who have not disclosed their sexual orientation to their families,³⁵ or teens whose cultural or religious norms prohibit intimacy between unmarried persons.³⁶

Among some teens, the primacy of “toughness” in their communities may further exacerbate the obstacles that already discourage them from seeking help with abuse.³⁷ For teens living in crime-ridden communities, violence may be normalized.³⁸ Teens who view violence as a normal part of life might not recognize the violence in their relationships as being unhealthy and unsafe.³⁹ These teens may also be more reluctant to disclose abuse for fear that they will be perceived as weak and targeted by others for further violence.

Widely shared stereotypes about teens in our culture may exacerbate adult impassiveness to teen dating violence. Teens often are perceived as irresponsible, overdramatic, emotional, moody, self-centered, and destructive. As a result, even when teens seek assistance from adults, they may be disbelieved or disregarded.⁴⁰

victims of dating violence are more unwilling to turn to a family member for help when engaged in relationships prohibited by their families).

35. See *id.* at 352 (citing CLAIRE M. RENZETTI, VIOLENT BETRAYAL: PARTNER ABUSE IN LESBIAN RELATIONSHIPS 100–03 (1992)) (explaining that gay and lesbian teens experience difficulty obtaining help after incidents of intimate-partner violence, as parents, schools, and friends often ignore their requests); see also *Hearing on the Intrafamily Offenses Act of 2007*, *supra* note 28, at 22–23 (statement of Karen Cunningham, Director of Legal Services for WEAVE) (explaining that gay and lesbian teens who are not “out” may be reluctant to seek help from their parents).

36. See Barrie Levy, *Introduction to DATING VIOLENCE: YOUNG WOMEN IN DANGER*, *supra* note 24, at 3, 6 (discussing how certain cultural backgrounds may keep young women from turning to their families for help because the disclosure of intimate information can lead to feelings of shame and helplessness).

37. See Donna E. Howard & Min Qi Wang, *Risk Profiles of Adolescent Girls Who Were Victims of Dating Violence*, 38 *ADOLESCENCE* 6, 8 (2003) (describing findings that teen girls who engaged in physical fights that resulted in medical treatment also experienced dating violence, and girls who carried guns were five times more likely to experience violence in an adolescent relationship).

38. See MICHAEL L. BENSON & GREER L. FOX, U.S. DEP’T OF JUSTICE, ECONOMIC DISTRESS, COMMUNITY CONTEXT AND INTIMATE VIOLENCE: AN APPLICATION AND EXTENSION OF SOCIAL DISORGANIZATION THEORY, FINAL REPORT 10–12 (2002), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/193434.pdf> (describing a National Institute of Justice study, which concluded that contributing factors of high crime rates in communities, such as high residential mobility, ethnic heterogeneity, weak social bonds between neighbors, normative acceptance of violence, lack of resources for victims, and weaker law-enforcement control, are also contributing factors to high rates of domestic violence in those communities); Jane Powers & Erica Kerman, *Teen Dating Violence*, RESEARCH FACTS & FINDINGS, Feb. 2006, at 1, 3 (noting the correlation between community and dating violence).

39. Levesque, *supra* note 17, at 350 (citing Levy, *supra* note 36, at 12–13).

40. See *id.* at 349 (explaining that parents often do not take teen dating violence claims seriously or minimize the experience); Sousa, *supra* note 22, at 363 (noting that when teenagers report dating violence, “[a]dults may assume that they . . . are overreacting, acting out, or going through a phase” (quoting Levy, *supra* note 36, at 5)).

In sum, women are most likely to experience intimate-partner abuse during their adolescent and young-adult years;⁴¹ the experience of dating violence can have a devastating and lasting impact on teens;⁴² teen victims are likely to seek assistance only when abuse has reached a crisis point;⁴³ and teens who seek help with abuse are likely to be disbelieved or not taken seriously.⁴⁴ The many factors that conspire to put teens at significant risk of abuse and inhibit teens from disclosing abuse make it critical that protection orders are readily accessible to teens. If courts turn teens away when they seek legal protection, a second opportunity for intervention may never materialize.

II. THE CIVIL PROTECTION-ORDER REMEDY AND ITS BENEFITS FOR TEENS

Until the 1970s, domestic violence was not widely recognized as a social problem.⁴⁵ After the women's movement brought attention to the issue, an expansive array of legal protections and social services developed to assist women subjected to abuse in the United States.⁴⁶ One of the most significant

41. See RENNISON, *supra* note 13, at 1 (reporting that intimate-partner violence occurs at higher rates among young women as compared to older women).

42. See *supra* note 15 and accompanying text.

43. See Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence*, 26 HARV. WOMEN'S L.J. 351, 366 (2003) (suggesting that teens will not seek help unless the situation is dire).

44. See *supra* note 40 and accompanying text.

45. See SUSAN SCHECHTER, WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN'S MOVEMENT 16, 29–30 (1982) (describing the relationship between the women's movement of the 1960s and 1970s and the emergence of awareness of domestic abuse, and noting that “in 1970, there were supposedly few abused women” and that “[a]s late as 1974, the term ‘battered woman’ was not part of the vocabulary”); Joan S. Meier, *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, 11 AM. U. J. OF GENDER, SOC. POL'Y & L. 657, 668 (2003) (stating that even in the 1980s, “women were often hounded out of court and overly disdained for claiming domestic violence, even in protection order cases”); Schneider, *supra* note 5, at 354 (“It was not until the late 1960s or early 1970s that the issue of domestic violence surfaced in U.S. law.”).

46. See LISA A. GOODMAN & DEBORAH EPSTEIN, LISTENING TO BATTERED WOMEN: A SURVIVOR-CENTERED APPROACH TO ADVOCACY, MENTAL HEALTH, AND JUSTICE 35–37 (2008) (describing the early efforts of activists to provide advocacy and resources for women who have experienced abuse since the women's movement brought the problem to public attention in the 1970s); Johanna E. Bond, *International Intersectionality: A Theoretical and Pragmatic Exploration of Women's International Human Rights Violations*, 52 EMORY L.J. 71, 104 (2003) (providing an overview of the 1970s and 1980s movement against the subordination of women and challenging gendered laws); Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HAW. L. REV. 1849, 1868 (1996) (crediting the feminist movement with raising awareness of domestic violence); 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, 810 (1993) (noting how significant legal reform efforts directed at ending domestic violence were created in response to the women's movement in the 1960s and 1970s); Marcy L. Karin & Paula Shapiro, *Domestic Violence at Work: Legal and Business Perspectives*, SLOAN WORK & FAM. RES. NETWORK (Apr. 2009), http://wfnetwork.bc.edu/encyclopedia_entry.php?id=15512&area=All (highlighting the effect of

and widely adopted legal remedies to address domestic violence is the civil protection order, which is currently available in all fifty states and the District of Columbia.⁴⁷ Protection orders typically offer a wide range of remedies aimed at ensuring a petitioner's safety, supporting her autonomy, and preventing future abuse,⁴⁸ including stay-away and no-contact orders, orders to vacate a joint residence, temporary-custody and child-support awards, mandated batterer's treatment or substance abuse counseling, and financial assistance.⁴⁹ An individual may obtain a protection order if she has experienced or been threatened with certain types of abuse, and if she has a particular relationship to the perpetrator.⁵⁰

In the 1990s, scholars, researchers, and advocates began to note the prevalence of abuse in adolescent relationships. In seminal works published at that time, legal scholars Stacy Brustin and Roger Levesque analyzed the ways in which legal remedies and social services developed for adult victims of abuse excluded teen victims.⁵¹ Levesque argued that our "adult-centered legal system essentially fails to recognize the victimization of adolescents by devoting all of its resources to adult victims."⁵² Levesque posited that "[i]n the area of relationship violence—what for adults is labeled domestic violence—this failure to recognize adolescent issues has resulted in the legal

federal laws, including The Violence Against Women Act (VAWA), as well as state laws designed to protect victims).

47. GOODMAN & EPSTEIN, *supra* note 46, at 79; Laurie S. Kohn, *What's so Funny About Peace, Love, and Understanding? Restorative Justice as a New Paradigm for Domestic Violence Intervention*, 40 SETON HALL L. REV. 517, 519–20 (2010).

48. *See, e.g.*, *Katsenelenbogen v. Katsenelenbogen*, 775 A.2d 1249, 1256 (Md. 2001) (noting that Maryland's domestic-violence protection orders are "designed to separate the parties and avoid future abuse" (citing *Barbee v. Barbee*, 537 A.2d 224, 225 (Md. 1988))); *Frisk v. Frisk*, 719 N.W.2d 332, 335 (N.D. 2006) (stating that the purpose of North Dakota's protection-order statute "is to protect victims of domestic violence from further harm" (citing *Gaab v. Ochshner*, 636 N.W.2d 669, 671 (N.D. 2001))); *Custer v. Cochran*, 933 A.2d 1050, 1054 (Pa. Super. Ct. 2007) (stating that the purpose of Pennsylvania's Protection from Abuse Act "is to protect victims of domestic violence from those who perpetrate such abuse with the primary goal of advance prevention of physical and sexual abuse" (citing *Lawrence v. Bordner*, 907 A.2d 1109, 1112 (Pa. Super. Ct. 2006))); *see also* Robin R. Runge, *Employment Rights of Sexual Assault Victims*, 40 CLEARINGHOUSE REV. 299, 308 (2006) (exploring the gradual development of workplace protection orders to improve women's safety).

49. *See* Margaret E. Johnson, *Redefining Harm, Reimagining Remedies and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107, 1111 (2009); Klein & Orloff, *supra* note 46, at 910–1015 (addressing the various remedies that courts may order in protection-order cases).

50. Klein & Orloff, *supra* note 46, at 814–42, 848; Judith A. Smith, *Battered Non-Wives and Unequal Protection Order Coverage: A Call for Reform*, 23 YALE L. & POL'Y REV. 93, 102 (2005) (noting that to obtain a civil protection order, "a victim must show both that she shares a particular type of relationship with her abuser and that she suffered a particular variety of abuse at his hands").

51. *See* Brustin, *supra* note 16, at 339; Levesque, *supra* note 17, at 356–57 (emphasizing the legal barriers that prevent teen abuse victims from accessing support).

52. Levesque, *supra* note 17, at 342.

system, either formally or in practice, actually excluding adolescent victims.”⁵³ Similarly, Brustin noted that “[t]he majority of civil protection order statutes and criminal statutes are not designed with teen dating violence in mind,” and that “criminal justice system training and special support services do not focus on the problem of [teen dating violence].”⁵⁴ Brustin further highlighted specific civil- and criminal-law failings regarding teens subjected to abuse, including the failure of protection-order statutes to encompass dating relationships and grant teens the legal capacity to proceed independently in court proceedings.⁵⁵ Brustin also noted the failure to treat intimate partner violence as something other than a routine offense in juvenile proceedings,⁵⁶ and the need to impose conditions of release and disposition terms to protect the victim, such as mandating stay-away orders and counseling.⁵⁷ Both Brustin and Leveque argued for “the need to develop comprehensive policies that will both protect vulnerable youth from abusive relationships and aim to change socio-legal structures that create and sustain tolerance for youth’s victimization.”⁵⁸ They also advocated expanding the protection-order remedy to encompass dating relationships⁵⁹ and permitting minors to seek relief on their own,⁶⁰ or at least clarifying when minors are entitled to do so.⁶¹

In the 1990s and 2000s, many states launched advocacy campaigns to create protections for abused teens with some important successes, including the expansion of protection-order statutes in many jurisdictions to encompass dating relationships.⁶² A few states explicitly grant teens access to the protection-order remedy.⁶³ Despite these advances, Brustin’s and Levesque’s critiques largely ring true today; the protection-order remedy remains a resource created for adults and often excludes teen victims.

It is critical that teens have ready access to the protection-order remedy, as it is the only legal remedy today that provides expedited, comprehensive, and

53. *Id.* at 343.

54. Brustin, *supra* note 16, at 339.

55. *Id.* at 339.

56. *Id.* at 342.

57. *Id.* at 344.

58. Levesque, *supra* note 17, at 344; *see also* Brustin, *supra* note 16, at 351 (contending that criminal-justice actors need to be adequately trained to respond to abuse).

59. *See* Brustin, *supra* note 16, at 350; Levesque, *supra* note 17, at 368.

60. *See* Brustin, *supra* note 16, at 350; Levesque, *supra* note 17, at 368 (proposing that minors be given explicit authority to bring suit on their own behalf).

61. Brustin, *supra* note 16, at 351.

62. *Compare* Klein & Orloff, *supra* note 46, at 835 (noting that as of 1993 only twelve states extended the protection-order remedy to parties in dating relationships), *with* Devon M. Liggio, Note, *Refining the Meaning and Application of “Dating Relationship” Language in Domestic Violence Statutes*, 60 VAND. L. REV. 939, 958–59 (2007) (reporting that as of 2007, thirty-six states and the District of Columbia had extended the protection-order remedy to parties in dating relationships).

63. *See infra* Part III.A.1.

empowering relief. Civil protection orders provide “an important tool for protecting victims of domestic violence.”⁶⁴ Protection-order proceedings are designed to provide expedited relief, which can help protect individuals who are attempting to leave abusive relationships and thus are at great risk of violence.⁶⁵ Protection orders also “offer options for relief that are often more comprehensive than those available in criminal and other non-domestic violence orders,”⁶⁶ which enable petitioners to sever ties that might otherwise keep them in abusive relationships. In particular, protection orders often authorize courts to enter temporary custody, visitation, financial and child-support awards, order perpetrators to complete counseling programs and to grant “any [other] constitutionally defensible relief.”⁶⁷ The flexibility courts possess in crafting protection orders enables petitioners to obtain relief tailored to the circumstances of their particular relationships.⁶⁸ Protection orders also carry the threat of criminal prosecution to encourage compliance. Finally, as “the most survivor-centered remedy readily available in courthouses across America,”⁶⁹ protection orders are critical for their “ability to shift power and control back to the person who has experienced violence.”⁷⁰ By offering petitioners a choice of remedies and tools for enforcement, protection orders empower victims to take control of their cases and their lives.⁷¹ Civil protection orders benefit teens who have experienced abuse for the same reasons as they do adults.

III. MINORS’ ABILITY TO ACCESS PROTECTION ORDERS IN THE DISTRICT OF COLUMBIA AND THE FIFTY STATES

States have created the status of minority to protect the interests of children. Legislatures in every state have designated the legal age of majority, the age at which individuals enjoy full control over their own affairs and full legal rights,

64. Klein & Orloff, *supra* note 46, at 811.

65. See Marina Angel, *Abusive Boys Kill Girls Just Like Abusive Men Kill Women: Explaining the Obvious*, 8 TEMP. POL. & CIV. RTS. L. REV. 283, 295 (1999) (“Only recently has it been recognized that a woman’s attempt to leave an abusive relationship is dangerous and can turn deadly.”); Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 63 (1991) (pointing out the danger women face when separating from an abuser).

66. Smith, *supra* note 50, at 100; see also Brustin, *supra* note 16, at 338 (noting that civil restraining orders, which may be “cumbersome and costly,” typically offer fewer remedies than civil protection orders).

67. See Klein & Orloff, *supra* note 46, at 911, 944–45 (encouraging courts to interpret their statutory mandate broadly to create appropriate remedies).

68. *Id.*

69. Jane K. Stoever, *Freedom from Violence: Using the Stages of Change Model to Realize the Promise of Civil Protection Orders*, 72 OHIO ST. L.J. 303, 307 (2011).

70. *Id.*

71. Smith, *supra* note 50, at 120.

which typically occurs at age eighteen.⁷² Minors—individuals who have not reached the age of legal majority—have limited rights and limited ability to control their legal affairs.⁷³ The American legal system’s treatment of minors differs from its treatment of adults in many respects.⁷⁴ The differential treatment of minors is justified by “their age, their lack of maturity, their occasional helplessness, and their paucity of experience with life, as well as their reliance—or their former reliance—on their families to protect them.”⁷⁵

State legislatures have the power to determine the ages at which minors assume various rights and duties, which vary by jurisdiction.⁷⁶ States regulate minors’ ability to access justice in the protection-order context in three primary ways: defining minors’ rights to standing,⁷⁷ defining minors’ rights to legal capacity,⁷⁸ and mandating parental notification of minors’ claims.⁷⁹

A. Standing: Teens’ Rights to Obtain Legal Protection from Abuse

The accessibility of civil protection orders to teens depends, first, on whether a jurisdiction accords them standing. Standing is a component of a court’s subject-matter jurisdiction over a case⁸⁰ and encompasses “a party’s right to make a legal claim or seek judicial enforcement of a duty or right.”⁸¹ Although the precise elements of standing vary by jurisdiction, the standard inquiry generally depends on whether a party “suffered injury in fact to a legally protected interest as contemplated by statutory law or constitutional

72. BLACK’S LAW DICTIONARY 70 (9th ed. 2009); *see also* NATIONAL SURVEY OF STATE LAWS 564–74 (Richard A. Leiter ed., 6th ed. 2008) (compiling state statutes regarding emancipation and ages of majority).

73. *See* Abraham Kuhl, Comment, *Post-Majority Educational Support for Children in the Twenty-First Century*, 21 J. AM. MATRIMONIAL L. 763, 769 (2008) (“When the child reaches [the age of majority,] the child no longer suffers from the disabilities that previously mandated court protection, such as the inability to manage affairs or enjoy civic rights.” (quoting Charles F. Wilson, *But Daddy Why Can’t I Go to College? The Frightening Decline of Support for Children’s Post-Secondary Education*, 37 B.C. L. REV. 1099, 1102 (1996))).

74. DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN § 1:1, at 6 (rev. 2d ed. 2005).

75. *Id.*

76. *See id.* § 6 (citing *Valley Nat’l Bank v. Glover*, 159 P.2d 292 (Ariz. 1945); *Jacobsen v. Lenhart*, 195 N.E.2d 638 (Ill. 1964); *Zelnick v. Adams*, 606 S.E.2d 843 (Va. 2005)) (indicating the legislature’s authority to establish the age of majority).

77. *See infra* Part III.A.

78. *See infra* Part III.B.

79. *See infra* Part III.C.

80. *See, e.g., State v. 2018 Rainbow Drive*, 740 So. 2d 1025, 1028 (Ala. 1999) (“When a party without standing purports to commence an action, the trial court acquires no subject-matter jurisdiction.” (citing *Barshop v. Medina Cty. Underground Water Conservation Dist.*, 925 S.W.2d 618, 626 (Tex. 1996))); *Tomlinson v. Bd. of Educ. of Bristol*, 629 A.2d 333, 341 (Conn. 1993) (providing that “[i]f a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause” (citing *Hous. Auth. v. Local 1161*, 468 A.2d 1251, 1253 (Conn. App. Ct. 1984))).

81. BLACK’S LAW DICTIONARY, *supra* note 72, at 1536.

provisions.”⁸² To bring any claim for relief in civil proceedings, all parties—regardless of age—must demonstrate that the law provides them with standing, “the legal right to set the judicial machinery in motion.”⁸³

Although the concepts are often confused or conflated, a minor’s standing to assert a legal claim is a separate determination from whether the minor has the legal capacity to pursue the claim on his or her own behalf in court.⁸⁴ Legal capacity entails a party’s “satisfaction of a legal qualification, such as legal age or soundness of mind, [which] determines one’s ability to sue or be sued.”⁸⁵ Essentially, standing determines a party’s right to seek legal relief, whereas capacity determines how a party must pursue his or her claims for relief in court.⁸⁶

State protection-order statutes fall loosely into three groups with regard to standing for minor petitioners: (1) statutes that expressly grant standing to

82. *Wimberly v. Ettenberg*, 570 P.2d 535, 539 (Colo. 1977); *see also* *Mass. Ass’n of Indep. Ins. Agents & Brokers, Inc. v. Comm’r of Ins.*, 367 N.E.2d 796, 799 (Mass. 1977) (stating that “[a] party has standing when it can allege an injury within the area of concern of the statute or regulatory scheme under which the injurious action has occurred” (citing *Westland Hous. Corp. v. Comm’r of Ins.*, 225 N.E.2d 782, 788–89 (Mass. 1967); *Mass. Soc’y of Optometrists v. Waddick*, 165 N.E.2d 394, 396 (Mass. 1960); *Circle Lounge & Grill, Inc. v. Bd. of Appeal of Bos.*, 86 N.E.2d 920, 922–25 (Mass. 1949)); *R.I. Ophthalmological Soc’y v. Cannon*, 317 A.2d 124, 129 (R.I. 1974) (“The question is whether the person whose standing is challenged has alleged an injury in fact resulting from the challenged statute. If he has, he satisfies the requirement of standing.”).

83. *Hiland v. Ives*, 257 A.2d 822, 823 (Conn. Super. Ct. 1966).

84. *See, e.g., McCormick ex rel. McCormick v. Sch. Dist. of Mamaronek*, 370 F.3d 275, 284 (2d Cir. 2004) (holding that in a case brought by parents on behalf of their minor children, the court must determine whether the minor children—not their parents—had standing to pursue the claim); *Pintek v. Superior Court*, 277 P.2d 265, 268 (Ariz. 1954) (“[A]n infant generally may sue or be sued, and is subject to and bound by the same rules of procedure as an adult litigant, yet an infant cannot bring or defend a legal proceeding in person, but must sue or be sued by a legally appointed general guardian, or next friend or a guardian ad litem.”); *Hudis v. Crawford*, 24 Cal. Rptr. 3d 50, 54 (Ct. App. 2005) (“There is a difference between capacity to sue, which is the right to come into court, and [standing to bring] a cause of action, which is the right to relief in court. Incapacity to sue exists when there is some legal disability, such as infancy” (quoting *Klopstock v. Superior Court of S.F.*, 108 P.2d 13, 18 (Cal. 1941) (alteration in original))); *Cnty. Bd. 7 of Manhattan v. Schaffer*, 639 N.E.2d 1, 3 (N.Y. 1994) (“[T]he concept of capacity is often confused with the concept of standing, but the two legal doctrines are not interchangeable.”); *Nootsie, Ltd. v. William Cty. Appraisal Dist.*, 925 S.W.2d 659, 661 (Tex. 1996) (“A plaintiff has *standing* when it is personally aggrieved, regardless of whether it is acting with legal authority; a party has *capacity* when it has the legal authority to act, regardless of whether it has a justiciable interest in the controversy.” (citing *Pledger v. Schoellkopf*, 762 S.W.2d 145, 146 (Tex. 1988); *Hunt v. Bass*, 664 S.W.2d 323, 324 (Tex. 1984))).

85. BLACK’S LAW DICTIONARY, *supra* note 72, at 235.

86. *See Schaffer*, 639 N.E.2d at 3–4 (noting that standing relates to whether a party has “cognizable stake in the outcome,” whereas capacity relates to “power to appear and bring its grievance before the court”).

some or all minors;⁸⁷ (2) statutes that expressly deny standing to some or all minors,⁸⁸ and (3) statutes that are ambiguous or silent on the issue.⁸⁹

1. Statutes According Standing to Minors

Following widespread advocacy efforts to expand protections for teen victims, protection-order statutes in many states now expressly confer standing on minors.⁹⁰ These statutes range in coverage. Some confer blanket grants of standing,⁹¹ whereas others selectively permit standing depending upon enumerated factors, such as the minor's relationship with the respondent, the minor's age, and the respondent's age.⁹²

Today, four states and the District of Columbia explicitly grant standing to minor victims of any age, which is coextensive with the standing granted to adults.⁹³ In these states, minors can seek protection orders against persons with whom they share any qualifying relationship.⁹⁴ Illinois, for example, decrees that a “[p]etitioner shall not be denied an order of protection because petitioner or respondent is a minor.”⁹⁵ Missouri takes a more limited approach, granting standing only to minors seventeen and older, but permitting seventeen-year-olds to seek protection orders against individuals with whom they share any qualifying relationship.

Several other states selectively extend standing to minors of any age who share particular relationships with their abusers or who are victims of particular crimes.⁹⁶ For example, New Hampshire provides that “[t]he minority of the plaintiff shall not preclude the court from issuing protective orders against a

87. See *infra* Part III.A.1.

88. See *infra* Part III.A.2.

89. See *infra* Part III.A.3.

90. See, e.g., ALASKA STAT. § 18.66.990(3), (5) (2010) (defining domestic violence as an offense by or against a “household member” and including minors within the definition of “household member”); CAL. FAM. CODE § 6301(a) (West 2004 & Supp. 2011) (permitting the issuance of protective orders to minors).

91. See *infra* notes 93–95 and accompanying text.

92. See *infra* notes 97–111 and accompanying text.

93. ALASKA STAT. § 18.66.990(3), (5); CAL. CIV. PROC. CODE § 372(b)(1)(c) (West 2004 & Supp. 2011); CAL. FAM. CODE § 6301(a); D.C. CODE § 16-1003(a)(1)–(5) (Supp. 2011); 750 ILL. COMP. STAT. ANN. 60/214(a) (West 2009 & Supp. 2011); OKLA. STAT. ANN. tit. 22, §§ 60.1.1, 60.1.4, 60.2A (West 2003 & Supp. 2011). Tennessee explicitly grants minors standing to seek protection orders based on the same qualifying relationships available to adults, but does not specify whether minors have standing to seek protection orders against sexual assailants or stalkers. See TENN. CODE ANN. § 36-3-601(5) (2010 & Supp. 2011).

94. ALASKA STAT. § 18.66.990(3), (5); CAL. CIV. PROC. CODE § 372(b)(1)(c); CAL. FAM. CODE § 6301(a); D.C. CODE § 16-1003(a)(1)–(5); 750 ILL. COMP. STAT. ANN. 60/214(a); OKLA. STAT. ANN. tit. 22, §§ 60.1.1, 60.1.4, 60.2.

95. 750 ILL. COMP. STAT. ANN. 60/214(a).

96. See, e.g., FLA. STAT. ANN. § 784.046(2)(a)–(c) (West 2007 & Supp. 2011); N.H. REV. STAT. ANN. § 173-B:3(II)(a) (LexisNexis 2010); TENN. CODE ANN. § 36-3-601(5).

present or former intimate partner, spouse, or ex-spouse.”⁹⁷ States have granted minors standing to seek protection from dating partners,⁹⁸ spouses,⁹⁹ co-parents,¹⁰⁰ sexual partners,¹⁰¹ parents,¹⁰² custodians,¹⁰³ relatives,¹⁰⁴ cohabitants,¹⁰⁵ parents’ intimate partners,¹⁰⁶ stalkers,¹⁰⁷ and those who have engaged in repeated violence against them.¹⁰⁸

Other states extend even more limited grants of standing depending on the ages of the parties and the nature of their relationship.¹⁰⁹ For example,

97. N.H. REV. STAT. ANN. § 173-B:3(II)(a).

98. See CONN. GEN. STAT. ANN. § 46b-38a(1), (2)(F) (West, Westlaw through Jan. 2011 Reg. Sess. and June Sp. Sess.) (effective Oct. 1, 2011); FLA. STAT. ANN. § 784.046(1)(d)(1), (2)(b); IDAHO CODE ANN. § 39-6303(1) (2011); N.H. REV. STAT. ANN. § 173-B:3(II)(a); N.J. STAT. ANN. § 2C:25-19 (West 2005 & Supp. 2011); R.I. GEN. LAWS § 15-15-1(2) (2003 & Supp. 2010); TENN. CODE ANN. § 36-3-601(5)(c); TEX. FAM. CODE ANN. § 82.002 (West, Westlaw through 2011 Reg. Sess. and First Called Sess. of 82nd Legislature) (effective Sept. 1, 2011); VT. STAT. ANN. tit. 15, § 1101(2) (2010); WASH. REV. CODE ANN. § 26.50.010(2) (West 2005 & Supp. 2011) (granting standing to minors ages sixteen and older for protection from dating partners).

99. See, e.g., N.H. REV. STAT. ANN. § 173-B:3(II)(a); TENN. CODE ANN. § 36-3-601(5)(A).

100. See, e.g., N.J. STAT. ANN. § 2C:25-19(d).

101. See, e.g., TENN. CODE ANN. § 36-3-601(5)(c).

102. See, e.g., CONN. GEN. STAT. ANN. § 46b-38a(2); WASH. REV. CODE ANN. § 26.50.010(2).

103. See, e.g., R.I. GEN. LAWS § 8-8.1-1(3) (1997 & Supp. 2010).

104. See, e.g., *id.* § 15-15-1(2), (4) (2003 & Supp. 2010); TENN. CODE ANN. § 36-3-601(5)(D); WASH. REV. CODE ANN. § 26.50.010(1), (2).

105. See, e.g., TENN. CODE ANN. § 36-3-601(5)(B).

106. See, e.g., R.I. GEN. LAWS § 8-8.1-1(1); TENN. CODE ANN. § 36-3-601(5)(F).

107. See, e.g., FLA. STAT. ANN. § 784.046(1)(a)–(b), (2)(a)–(b) (West 2007 & Supp. 2011).

108. See, e.g., *id.* § 784.046(1)(b) (defining “[r]epeat violence” as “two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner’s immediate family member”). The statute defines “violence” to include “any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person.” *Id.* § 784.046(1)(a).

109. See, e.g., CONN. GEN. STAT. ANN. § 46b-38a(2)(D) (West, Westlaw through Jan. 2011 Reg. Sess. and June Sp. Sess.) (effective Oct. 1, 2011) (granting standing to minors sixteen and older abused by non-relative cohabitants with whom they are not in a dating relationship); HAW. REV. STAT. ANN. § 586-1(2) (LexisNexis 2010) (granting standing to minor victims of certain offenses committed by adult family or household members); OR. REV. STAT. ANN. § 107.726 (West 2003) (granting standing to minor spouses and minors in sexually intimate relationships if the respondent is eighteen years of age or older); see also UTAH CODE ANN. 78B-7-102-103 (LexisNexis 2008) (granting minors ages sixteen and older standing to seek protection orders against current or former spouses, persons with whom they are or were living as a spouse, relatives by blood or marriage, co-parents, the other parent of an unborn child, and current or former cohabitants); WASH. REV. CODE ANN. § 26.50.020(1)(b) (Supp. 2011) (according minors thirteen and older standing to seek protection orders against dating partners aged sixteen and older); WYO. STAT. ANN. § 35-21-102(a) (2001) (defining “adult” to include any person who is either at least sixteen years old or legally married). The Wyoming statute, however, also grants

Washington grants minors age thirteen and older the right to seek protection orders against dating partners age sixteen and older,¹¹⁰ whereas Connecticut grants minors age sixteen and older the right to seek protection orders against non-relative cohabitants, but grants standing to people of any age against dating partners.¹¹¹

2. Statutes Denying Standing to Minors

Just as states are empowered to confer standing to seek protection orders for minor petitioners, states also may deny standing to minors.¹¹² Wisconsin is the only state that entirely denies minors standing to seek domestic-violence protection orders.¹¹³ As described above, several states restrict minors' standing by age or relationship to the respondent. Missouri denies standing to minors under the age of seventeen.¹¹⁴ Additionally, several states deny minors standing to seek relief against parents,¹¹⁵ household members,¹¹⁶ relatives,¹¹⁷ or minors in their households.¹¹⁸ Appellate courts are often called upon to enforce these restrictions.¹¹⁹ New Jersey courts have repeatedly vacated

standing to "persons," a potentially broader term than "adult," in certain qualifying relationships. *See* WYO. STAT. ANN. § 35-21-102. The statute does not explicitly define "person," making it unclear whether minors in those specific qualifying relationships were intended to have standing even if younger than sixteen or not legally married. *See id.*

110. WASH. REV. CODE ANN. § 26.50.020(1)(b). *But cf. id.* § 26.50.020(2) (limiting standing to seek protection orders against dating partners to minors age sixteen and older). This discrepancy appears to be a drafting error.

111. CONN. GEN. STAT. ANN. § 46b-38a.

112. *See infra* notes 113–18 and accompanying text.

113. WIS. STAT. ANN. § 813.12(1)(am) (West 2007 & Supp. 2010) (defining "domestic abuse" as only being perpetrated by and against "adult[s]").

114. MO. ANN. STAT. § 455.010(2), (7) (West Supp. 2011).

115. *See, e.g.,* IOWA CODE ANN. § 236.2(4) (West 2008 & Supp. 2011); *see also* MICH. COMP. LAWS ANN. § 600.2950(27) (West 2010); N.H. REV. STAT. ANN. § 173-B:1(X)(b) (LexisNexis 2010) (denying standing if the minor lives with the defendant parent).

116. *See, e.g.,* N.J. STAT. ANN. § 2C:25-19(d) (West 2005 & Supp. 2011); OR. REV. STAT. ANN. § 107.705 (West 2003 & Supp. 2011); R.I. GEN. LAWS § 8-8.1-1(1), (3) (1997 & Supp. 2010).

117. *See, e.g.,* CONN. GEN. STAT. ANN. § 46b-38a(2)(C)–(D) (West, Westlaw through Jan. 2011 Reg. Sess. and June Sp. Sess.); IOWA CODE ANN. § 236.2(4); N.H. REV. STAT. ANN. § 173-B:1(X); OR. REV. STAT. ANN. §§ 107.705(3)(c), 107.726.

118. *See, e.g.,* ME. REV. STAT. ANN. tit. 19-A, § 4002(1), (4) (1998 & Supp. 2010) (providing that minors are only considered household members if the defendant is an adult).

119. *P.M. ex rel. D.H. v. R.H.*, No. 03-2059, 2004 WL 1899919, at *2 (Iowa Ct. App. Aug. 26, 2004) (holding that the trial court lacked jurisdiction to enter a protection order on behalf of a minor child against a parent); *Seufert v. Seufert*, 693 A.2d 86, 87 (N.H. 1997) (reversing entry of protection order against a parent on behalf of minor child because the protection-order statute excluded minor children living with a defendant from the protected class); *Strother v. Strother*, 34 P.3d 736, 737 (Or. Ct. App. 2001) (overturning a protection order sought by a mother on behalf of her minor child against the child's father because the statute did not offer minors protection against parents).

protection orders entered to protect minors against household members because New Jersey law deprives minors of standing to pursue such claims.¹²⁰

3. *Ambiguous or Silent Statutes*

Protection-order statutes in several other jurisdictions do not explicitly address the extent to which minors are accorded standing, or the statutes address the issue only partially. For example, although several statutes explicitly grant standing to the minor children of adult parties in qualifying relationships, they do not specify whether such minors have standing to seek protection orders in their own qualifying relationships, such as with dating partners or cohabitants.¹²¹ Other statutes include children, stepchildren, or foster children in the list of qualifying relationships, but do not state whether *minor* children have standing under these categories, or under any other listed categories.¹²² Still other statutes address whether minors have standing to seek protection within some relationships, but remain silent regarding others.¹²³

120. See *M.D. v. T.H.*, No. FV-07-003209-06, 2007 WL 2580567, at *1–2 (N.J. Super. Ct. App. Div. Sept. 10, 2007) (striking down a restraining order issued to protect a minor from abuse by a cousin and former household member for lack of standing); *M.A. v. E.A.*, 909 A.2d 1168, 1169, 1172–73 (N.J. Super. Ct. App. Div. 2006) (holding that the protection-order statute’s exclusion of minor victims abused by household members also precluded a mother from seeking a protection order on behalf of her minor child against the child’s stepfather).

121. See, e.g., COLO. REV. STAT. § 13-14-101(2)(a) (2011); IND. CODE ANN. § 34-6-2-44.8(b) (LexisNexis 2008 & Supp. 2011); ME. REV. STAT. ANN. tit. 19-A, § 4002(1), (4); NEV. REV. STAT. ANN. § 33.018(1) (LexisNexis 2006 & Supp. 2009); N.C. GEN. STAT. § 50B-1(a) (2009 & Supp. 2010).

122. See, e.g., ARIZ. REV. STAT. ANN. § 13-3601(A)(4) (2010); ARK. CODE ANN. § 9-15-103(4) (2009 & Supp. 2011); GA. CODE ANN. § 19-13-1 (2010); KY. REV. STAT. ANN. § 403.720(2) (LexisNexis 2010); LA. REV. STAT. ANN. § 46:2132(4) (2010 & Supp. 2011); MD. CODE ANN., FAM. LAW § 4-501(l)(4) (LexisNexis 2006 & Supp. 2010); MINN. STAT. ANN. § 518B.01(b)(2) (West 2006 & Supp. 2011); NEB. REV. STAT. ANN. § 42-903(1), (3) (LexisNexis 2011); N.M. STAT. ANN. § 40-13-2(D) (2005 & Supp. 2011); N.Y. FAM. CT. ACT § 812(1) (McKinney 2010 & Supp. 2011); N.D. CENT. CODE § 14-07.1-01(4) (2009 & Supp. 2011); OHIO REV. CODE ANN. § 3113.31(A)(3)(a)(ii)–(iii) (LexisNexis 2003 & Supp. 2011); 23 PA. CONS. STAT. ANN. § 6102(a) (West 2010 & Supp. 2011); TEX. FAM. CODE ANN. §§ 71.003, 71.004(1), 71.006 (West 2008 & Supp. 2010); VA. CODE ANN. § 16.1-228 (2010 & Supp. 2011); cf. *Katherine B.T. v. Jackson*, 640 S.E.2d 569, 576 (W. Va. 2006) (interpreting a statute listing children and stepchildren as qualifying relationships to extend protections to minors).

123. See, e.g., HAW. REV. STAT. ANN. § 586-1 (LexisNexis 2010) (permitting minors to seek protection against adult family or household members who committed certain acts against them, but failing to clarify whether minors can seek protection against minor family or household members); N.H. REV. STAT. ANN. §§ 173-B:1(X), 173-B:3(II)(a) (LexisNexis 2010) (permitting minors to seek protection orders against spouses and intimate partners, and prohibiting minors from seeking orders against parents and relatives with whom they reside, but not addressing whether minors can seek orders against non-relative cohabitants); TENN. CODE ANN. § 36-3-601(5) (2010 & Supp. 2011) (explicitly conferring standing on minors in numerous subcategories as “domestic abuse victims,” but does not address whether minors have standing to seek protection orders against stalkers and sexual assailants); VT. STAT. ANN. tit. 15, § 1101(2) (2010) (permitting minors to file against dating partners, but does not address other qualifying relationships); WYO. STAT. ANN. § 35-21-102 (2011) (defining “adult” to include minors sixteen

Finally, some statutes remain entirely silent on whether minors have standing to seek protection orders in the jurisdiction.¹²⁴

A final group of statutes, sometimes without explicitly addressing whether minors are granted standing, accords standing to particular adults to seek protection orders on behalf of minors.¹²⁵ Adults with standing to seek protection orders on behalf of minors include parents, guardians, and custodians,¹²⁶ adults appointed by the court,¹²⁷ district attorneys,¹²⁸ domestic violence program or shelter staff and volunteers,¹²⁹ family members,¹³⁰

and older, and granting standing to “adult children” and “adults sharing common living quarters,” but not defining “person,” and thus leaving ambiguous whether minors of any age can seek protection in other qualifying relationships such as marriage, dating, or cohabiting).

124. *See, e.g.*, MASS. GEN. LAWS ANN. ch. 209A, § 1 (West 2007) (failing to provide a definition for who “persons” are for purposes of defining household matters); S.D. CODIFIED LAWS § 25-10-1(2) (2004 & Supp. 2011); *cf. Beerermann v. Beerermann*, 559 N.W.2d 868, 869–70 (S.D. 1997) (holding that South Dakota’s protection-order statute, though silent on the issue, accords standing to minor victims).

125. ALA. CODE §§ 30-5-2(2), 30-5-5 (LexisNexis 1989 & Supp. 2010); ALASKA STAT. § 18.66.100(a) (2010); ARIZ. REV. STAT. ANN. § 13-3602A (2010); COLO. REV. STAT. § 13-14-103(c) (2011); DEL. CODE ANN. tit. 10, §§ 1041(3)(a)–(b), 1043(a) (1999 & Supp. 2010); FLA. STAT. ANN. § 784.046(2)(a)–(c) (2007 & Supp. 2011); GA. CODE ANN. § 19-13-3(a) (2010); HAW. REV. STAT. ANN. § 586-3(b)(1) (LexisNexis 2010); IND. CODE ANN. § 34-26-5-2(b)(1)–(2) (LexisNexis 2008 & Supp. 2010); KAN. STAT. ANN. § 60-3104(b) (2005 & Supp. 2009); KY. REV. STAT. ANN. § 403.725(3) (LexisNexis 2010); LA. REV. STAT. ANN. § 46:2133(c) (2010 & Supp. 2011); ME. REV. STAT. ANN. tit. 19-A, § 4005(1) (1998 & Supp. 2010); MD. CODE ANN., FAM. LAW § 4-501(m)(2); MINN. STAT. ANN. § 518B.01(4)(a); MISS. CODE ANN. § 93-21-7(1) (West 2007 & Supp. 2010); MONT. CODE ANN. § 40-15-102(3) (2011); OHIO REV. CODE ANN. § 3113.31(C); 23 PA. CONS. STAT. ANN. § 6106(a) (West 2010 & Supp. 2011); S.C. CODE ANN. § 20-4-40(a) (1985 & Supp. 2010); TEX. FAM. CODE ANN. § 82.002(c) (West 2008 & Supp. 2010).

126. ALASKA STAT. § 18.66.100(a); ARIZ. REV. STAT. ANN. § 13-3602(A); DEL. CODE ANN. tit. 10, §§ 1041(3), 1043(a); D.C. CODE § 16-1003(a)(1) (Supp. 2011); IND. CODE ANN. § 34-26-5-2(b); IOWA CODE ANN. § 236.3(1) (West Supp. 2011); KAN. STAT. ANN. § 60-3104(b); LA. REV. STAT. ANN. § 46:2133(c); MISS. CODE ANN. § 93-21-7(1); MONT. CODE ANN. § 40-15-102(3); OHIO REV. CODE ANN. § 3113.31(C); 23 PA. CONS. STAT. ANN. § 6106(a); VT. STAT. ANN. tit. 15, § 1103(a) (2010). The Vermont Supreme Court interpreted its statute to confer standing only to parents to seek protection orders on behalf of minors. *See Wood ex rel. Eddy v. Eddy*, 833 A.2d 1243, 1245 (Vt. 2003) (agreeing that a mother had standing to seek a protection order on behalf of her minor daughter); *Bigelow v. Bigelow*, 721 A.2d 98, 100 (Vt. 1998) (holding that the statute “does not encompass petitions by third parties, even grandparents, on behalf of minor children”).

127. *See, e.g.*, ALASKA STAT. § 18.66.100(a).

128. *See, e.g.*, LA. REV. STAT. ANN. § 46:2133(c); MD. CODE ANN., FAM. LAW § 4-501(m)(2)(ii)(1).

129. *See, e.g.*, ARK. CODE ANN. § 9-15-201(d)(4) (2009).

130. *Id.* § 9-15-201(d)(2); HAW. REV. STAT. ANN. § 586-3(b)(1); KY. REV. STAT. ANN. § 403.725(3); MD. CODE ANN., FAM. LAW § 4-501(m)(2)(ii)(3); OKLA. STAT. ANN. tit. 22, § 60.2(A) (West 2003 & Supp. 2010); WASH. REV. CODE ANN. § 26.50.020(1)(a) (Supp. 2010); W. VA. CODE ANN. § 48-27-305(2) (2009).

guardians ad litem,¹³¹ household members,¹³² “persons responsible for” a minor,¹³³ state agencies,¹³⁴ and any other adults.¹³⁵

4. *Emancipated Minors*

A common misperception is that emancipated minors enjoy the same rights to standing as adults in civil legal proceedings. Emancipation entails either the termination of a parent’s rights and obligations to a child,¹³⁶ the “removal of the disabilities of minority,”¹³⁷ or some combination thereof. In some states, children are emancipated automatically upon marriage or enlistment in the military.¹³⁸ Emancipation may also be accomplished by a court order in two ways. First, a parent may bring an action for judicial emancipation, requesting to be relieved of rights and duties regarding a child.¹³⁹ Second, a child may bring an action for statutory emancipation, which would remove the disabilities of minority and confer the legal rights of adulthood.¹⁴⁰ Judicial emancipation is often entered for specific purposes and may not alter a minor’s legal rights

131. MONT. CODE ANN. § 40-15-102(3); 23 PA. CONS. STAT. ANN. § 6106(a).

132. ARK. CODE ANN. § 9-15-201(d)(2); HAW. REV. STAT. ANN. § 586-3(b)(1); KAN. STAT. ANN. § 60-3104(b); LA. REV. STAT. ANN. § 46:2133(c); MD. CODE ANN., FAM. LAW § 4-501(m)(2)(ii)(4); MISS. CODE ANN. § 93-21-7(1) (West 2007 & Supp. 2010); OHIO REV. CODE ANN. § 3113.31(C) (LexisNexis 2008 & Supp. 2011); OKLA. STAT. ANN. tit. 22, § 60.2(A); 23 PA. CONS. STAT. ANN. § 6106(a); S.C. CODE ANN. § 20-4-40(a) (1985 & Supp. 2010); WASH. REV. CODE ANN. § 26.50.020(1); W. VA. CODE ANN. § 48-27-305(2).

133. ME. REV. STAT. ANN. tit. 19-A, § 4005(1) (1998 & Supp. 2010).

134. See COLO. REV. STAT. § 13-14-103(1)(c) (2011) (“local law enforcement agenc[ies]” and “county department of social services”); DEL. CODE ANN. tit. 10, § 1041(3)(b) (1990 & Supp. 2010) (“Division of Child Protective Services”); HAW. REV. STAT. ANN. § 586-3(b)(2) (“any state agency”); MD. CODE ANN., FAM. LAW § 4-501(m)(2)(ii)(2) (“department of social services”); ME. REV. STAT. ANN. tit. 19-A, § 4005(1) (department of child and family services); TEX. FAM. CODE ANN. § 82.002(d)(2) (West 2008 & Supp. 2010) (“Department of Family and Protective Services”).

135. COLO. REV. STAT. § 13-14-103(1)(c) (“a responsible person”); D.C. CODE § 16-1003(a)(1) (Supp. 2011) (“other appropriate adult”); GA. CODE ANN. § 19-13-3(a) (2010) (“a person who is not a minor”); IND. CODE ANN. § 34-26-5-2(b) (LexisNexis 2008 & Supp. 2010) (“another representative”); MINN. STAT. ANN. § 518B.01(4)(a) (2006 & Supp. 2011) (“a reputable adult age 25 or older” if in the best interest of the child); TEX. FAM. CODE ANN. § 82.002(c) (“any adult” may file).

136. Sanford N. Katz et al., *Emancipating Our Children—Coming of Legal Age in America*, 7 FAM. L.Q. 211, 214 (1973).

137. *Id.* at 232.

138. See, e.g., Alice M. Wright, Annotation, *What Voluntary Acts of Child, Other Than Marriage or Entry into Military Service, Terminate Parent’s Obligation to Support*, 55 A.L.R. 557, 572 (1998) (observing that in addition to attaching the legal age of majority, entry into the military and marriage are recognized as ways for minors to gain emancipation).

139. William E. Dean, Note, *Ireland v. Ireland: Judicial Emancipation of Minors in Idaho: Protecting the Best Interests of the Child or Conferring a Windfall upon the Parent?*, 31 IDAHO L. REV. 205, 215 (1994).

140. *Id.* at 216.

and duties outside of the parent-child relationship.¹⁴¹ By contrast, statutory emancipation often “achieves a more comprehensive promotion into adulthood.”¹⁴² Statutory emancipation may be complete, or the court may only grant the minor partial rights, limited either in scope or duration.¹⁴³ In a majority of states, the procedures and grounds for emancipation are statutorily defined.¹⁴⁴ In the remaining states, common law governs whether a child is emancipated.¹⁴⁵

Emancipation alone does not automatically confer to minors all the legal rights and protections accorded to adults.¹⁴⁶ Consequently, emancipated minors may not be viewed as adults for standing purposes. Protection-order statutes in several states, however, explicitly confer standing on emancipated minors as “adults,”¹⁴⁷ allowing them to seek protection orders under statutes otherwise applicable only to adults.

141. *Id.* at 217; *see also* Carol Sanger & Eleanor Willemssen, *Minor Changes: Emancipating Children in Modern Times*, 25 U. MICH. J.L. REFORM 239, 245 (1992).

142. Sanger & Willemssen, *supra* note 141, at 245.

143. *See* Katz et al., *supra* note 136, at 215 (indicating the variations in rights accorded through judicial emancipation).

144. *See* PATRICIA JULIANELLE ET AL., NAT’L CTR. ON HOMELESSNESS & POVERTY, ALONE WITHOUT A HOME: A STATE BY STATE REVIEW OF LAWS AFFECTING UNACCOMPANIED YOUTH 63 (1st ed. 2003) (compiling state statutes regarding emancipation and commending the majority of states for establishing legal processes for emancipation).

145. *See* Leiter, *supra* note 72, at 564, 571 (highlighting states that rely on the common law for emancipation determinations, such as Colorado and Rhode Island).

146. *See* Wickham v. Torley, 71 S.E. 881, 882 (Ga. 1911) (“[E]ven emancipation of the minor from parental control . . . does not remove his disability and clothe him with the power to contract.”); *Wuller v. Chuse Grocery Co.*, 89 N.E. 796, 797 (Ill. 1909) (“[T]he contract of an infant is, in general, voidable by him, and gains no additional force from the fact that he is engaged in business for himself or is emancipated.”); *Merrick v. Stephens*, 337 S.W.2d 713, 719 (Mo. Ct. App. 1960) (finding no authority for the proposition that “solely because of emancipation, the infant is sui juris for all purposes”). Several courts, for example, have rejected defenses to charges of soliciting minors for obscene performances based on the involved minors’ emancipated status, holding that because the statutes in question made no exception for emancipated minors, they were intended to protect all persons under the age of majority. *See* *State v. Robinette*, 652 So. 2d 926, 927 (Fla. Dist. Ct. App. 1995); *State v. Ladmer*, 775 S.W.2d 6, 7 (Tenn. Crim. App. 1989); *State v. Moore*, 788 P.2d 525, 529 (Utah Ct. App. 1990); *see also* Katz et al., *supra* note 136, at 229, 237 (noting that courts have construed judicial emancipations as only terminating parental rights and not as conferring benefits of adulthood).

147. *See* ALA. CODE § 30-5-2(2) (LexisNexis 1989 & Supp. 2010); ME. REV. STAT. ANN. tit. 19-A, § 4002(2) (1998 & Supp. 2010); MISS. CODE ANN. § 93-21-3(b) (West 2007 & Supp. 2010) (emancipation by marriage); MO. ANN. STAT. § 455.010(2) (West 2003 & Supp. 2011); N.J. STAT. ANN. § 2C:25-19(a), (d), (e) (West 2005 & Supp. 2011); OKLA. STAT. ANN. tit. 22, § 60.1(1) (West 2003 & Supp. 2011); R.I. GEN. LAWS § 8-8.1-1(1), (3) (1997 & Supp. 2010); TENN. CODE ANN. § 36-3-601(2) (2010 & Supp. 2011).

B. Legal Capacity: Teens' Rights to Represent Their Own Interests in Protection-Order Proceedings

The accessibility of protection orders for teens depends not only on whether minors have standing to sue, but also on whether they have the legal capacity to represent their own interests in the litigation. Capacity entails a party's "satisfaction of a legal qualification, such as legal age or soundness of mind, that determines one's ability to sue or be sued."¹⁴⁸ Generally, minors do not have capacity to take civil legal action.¹⁴⁹ Instead, minors often must advance civil claims through an adult representative.¹⁵⁰ Typically, a parent or guardian on the minor's behalf initiates cases involving the legal claims of a minor.¹⁵¹ In the event that a parent or guardian is unavailable or a minor does not want her parent or guardian involved in the case, a court must determine whether it is appropriate to appoint another adult representative to protect the minor's interests in the litigation and who such a representative should be.¹⁵² In these circumstances, a next friend, guardian ad litem, or attorney is appointed.¹⁵³

Protection-order statutes are mostly ambiguous as to whether teens have capacity to seek protection orders on their own. Most statutes fail to address the legal capacity of minors to pursue claims for protection orders. Even statutes that clearly grant standing to teens often say nothing about the procedures to be employed in cases involving teen parties.¹⁵⁴ Furthermore, imprecise legislative drafting makes it difficult to distinguish teens' rights to standing from their capacity to pursue claims. For example, Oregon's protection-order statute includes a provision titled "Standing to petition for relief," which provides that "[a] person who is under 18 years of age may

148. BLACK'S LAW DICTIONARY, *supra* note 72, at 235.

149. 2 THOMAS A. JACOBS, CHILDREN AND THE LAW: RIGHTS AND OBLIGATIONS § 11:13 (2011) (indicating that unemancipated minors generally do not have capacity to sue); 4 JAMES WM. MOORE, MOORE'S FEDERAL PRACTICE § 17.21[3][a], at 17-96-97 & n.16 (3d ed. 2011); Linda D. Elrod, *Client-Directed Lawyers for Children: It Is the "Right" Thing to Do*, 27 PACE L. REV. 869, 878 (2007) (providing a historical overview of children's legal rights).

150. 4 MOORE, *supra* note 149, § 17.21[3][a], at 17-96-97; 2 JACOBS, *supra* note 149, § 11:31.

151. See 1 KRAMER, *supra* note 74, § 12:3, at 876 (noting that parents often represent a child in legal proceedings, unless "it appears that the minor's general representative has interests which may conflict with those of the person he is supposed to represent" (quoting *Hoffert v. Gen. Motors Corp.*, 656 F.2d 161, 164 (5th Cir. 1981))); 5 RICHARD A. LORD, WILLISTON ON CONTRACTS § 9:25, at 253-54 (4th ed. 2009) (stating that guardians must bring cases on behalf of minors).

152. See 1 KRAMER, *supra* note 74, § 12:4, at 879 (highlighting the court's discretion in appointing representatives to represent minors); 4 MOORE, *supra* note 149, § 17.21[3][a], at 17-93-94 (noting the court's role of protecting the minor's interests); 6A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 1570, at 665-66 (3d ed. 2010).

153. See 1 KRAMER, *supra* note 74, § 12:4, at 879; 5 LORD, *supra* note 151, § 9.25, at 253-54; 20 CHARLES ALAN WRIGHT & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE: FEDERAL PRACTICE DESKBOOK § 75 (2009).

154. See *infra* Part III.B.3.

petition the circuit court for relief” if the person is a current or former spouse or a sexually intimate partner of the respondent.¹⁵⁵ Although its title refers only to “standing,” the provision appears to address both standing and capacity by articulating the circumstances under which minors have a claim to protection orders and by permitting qualifying minors to petition the court for relief on their own.¹⁵⁶

Although the widespread ambiguity of state protection-order statutes regarding minors’ capacity makes them difficult to categorize, state protection-order statutes fall loosely into three groups, with somewhat blurred distinctions: (1) statutes that expressly grant legal capacity to some or all minor petitioners;¹⁵⁷ (2) statutes that expressly deny legal capacity to some or all minor petitioners;¹⁵⁸ and (3) statutes that are ambiguous or silent on the issue.¹⁵⁹

1. Statutes Explicitly Granting Legal Capacity to Minor Petitioners

Reform efforts to increase protections for abused teens have resulted in protection-order statutes in several U.S. jurisdictions that explicitly accord at least some minors the legal capacity to seek protection orders under certain circumstances. Depending on factors such as the minor-petitioner’s age and the relationship between the minor petitioner and the respondent, these statutes accord minor petitioners the capacity to proceed autonomously in protection-order litigation to varying extents.¹⁶⁰ Most statutes extending legal capacity to minors do so according to objective standards, which grant capacity along bright lines to all minors meeting certain requirements.¹⁶¹ At least two jurisdictions incorporate a subjective standard that requires courts to assess whether to grant capacity according to each minor’s individual circumstances.¹⁶²

a. Objective Extensions of Legal Capacity

Several states grant minors some measure of legal capacity to pursue claims for protection orders based on objective criteria. On the most explicit end of the spectrum, two states and the District of Columbia expressly grant certain

155. OR. REV. STAT. ANN. § 107.726 (West 2003).

156. *See id.*

157. *See infra* Part III.B.1.

158. *See infra* Part III.B.2.

159. *See infra* Part III.B.3.

160. *See, e.g.,* WASH. REV. CODE ANN. § 26.50.020(2)(a) (West 2005 & Supp. 2011) (delineating sixteen as the age at which a minor may pursue action without a guardian).

161. *See infra* Part III.B.1.a.

162. *See infra* Part III.B.1.b (noting that two jurisdictions have subjective criteria).

teens the legal capacity to file petitions on their own and represent themselves in court, based on their ages and relationships with the respondent.¹⁶³

California permits minors twelve and older to file protection orders on their own against respondents with whom they share any qualifying relationship,¹⁶⁴ and states that in such cases, minors “may appear in court without a guardian, counsel, or guardian ad litem.”¹⁶⁵ California provides the court with guidance on appropriate measures for protecting unrepresented minors’ interests, stating:

The court may, either upon motion or in its own discretion, and after considering reasonable objections by the minor to the appointment of specific individuals, appoint a guardian ad litem to assist the minor in obtaining or opposing the order, provided that the appointment of the guardian ad litem does not delay the issuance or denial of the order being sought. In making the determination concerning the appointment of a particular guardian ad litem, the court shall consider whether the minor and the guardian have divergent interests.¹⁶⁶

Similarly, the District of Columbia permits minors sixteen and older to file petitions for protection orders on their own against abusers in any qualifying relationship, and minors twelve to fifteen years of age to file protection orders autonomously against romantic, sexual, or dating partners.¹⁶⁷ The D.C. Code further provides that where a minor petitioner twelve and older appears in court without an adult representative, the court may appoint an attorney to represent the minor “if doing so will not unduly delay the issuance or denial of a protection order.”¹⁶⁸ Similarly, Washington’s statute provides that persons

163. See CAL. CIV. PROC. CODE § 372(b)(1)(C)–(D) (West 2004) (according minors age twelve and older the legal capacity to appear in court without an adult representative); CAL. FAM. CODE § 6301(a) (West 2004 & Supp. 2011); D.C. CODE § 16-1003(a)(2)–(3) (Supp. 2011) (permitting minors over the age of twelve to seek protection orders without an adult representative); WASH. REV. CODE ANN. § 26.50.020(2)(a) (indicating that minors who are at least sixteen do not need a guardian or next friend to pursue their order for protection).

164. CAL. CIV. PROC. CODE § 372(b)(1)(C)–(D); CAL. FAM. CODE § 6301(a).

165. CAL. CIV. PROC. CODE § 372(b)(1).

166. *Id.* § 372(b)(1)(D).

167. D.C. CODE § 16-1003(a)(2)–(3). *But see infra* note 187 and accompanying text. The District of Columbia defines “intimate partner violence” as a criminal act or threat upon a “romantic, dating, or sexual” partner, among other things. D.C. CODE § 16-1001(7)(c). The District of Columbia’s statute clearly articulates that minors ages twelve to fifteen years may only file for protection orders against respondents other than intimate partners, such as family members and cohabitants, if a parent or another appropriate adult files on the minor’s behalf. *Id.* § 16-1003(a)(4). The D.C. Code does not specify whether and under what circumstances minors twelve to fifteen years of age may file petitions for protection orders against stalkers or sexual assailants. *See id.*

168. D.C. CODE § 16-1005(a)(1)-(4) (Supp. 2011).

sixteen and older are “not required to seek relief by a guardian or next friend.”¹⁶⁹

In addition, two states grant minor petitioners the legal capacity to seek protection orders without regard to age.¹⁷⁰ New Hampshire grants minor petitioners legal capacity in all cases,¹⁷¹ and Texas grants minors legal capacity in cases against dating partners.¹⁷²

A less explicit group of statutes designates specific ages at which minors may file petitions for protection orders, but remains silent on whether minors may represent themselves in related court proceedings.¹⁷³ These statutes, although ambiguous, suggest strongly that minors who have attained the prerequisite ages for filing are permitted to represent their own interests throughout the litigation.

Missouri, for example, designates minors seventeen and older as “adults” for purposes of the protection-order remedy.¹⁷⁴ This accords seventeen-year-olds standing to seek protection orders against respondents in any qualifying relationship.¹⁷⁵ Although Missouri’s statute says nothing about whether these minor petitioners require an adult representative to assist them in the filing and litigation of their claims, the statute’s inclusion of seventeen-year-olds within the definition of “adult” and the restriction of the remedy to adult victims suggest that courts should treat victims seventeen years of age in the same manner as other adults.

Utah’s statute, which includes minors sixteen and older within the definition of “cohabitant,”¹⁷⁶ permits all cohabitants who have experienced abuse or who are at risk of abuse to “seek” a protection order.¹⁷⁷ This suggests that Utah courts treat sixteen and seventeen-year-olds the same as adult petitioners in proceedings related to protection orders.

Similarly, under Oklahoma’s protection-order statute, minors sixteen and older are explicitly permitted to “seek relief,” which includes filing a petition for a protection order.¹⁷⁸ Because Oklahoma is silent with regard to the involvement of adult representatives for sixteen- and seventeen-year-old

169. WASH. REV. CODE ANN. § 26.50.020(2)(a) (2005 & Supp. 2011). *But see infra* note 187 and accompanying text.

170. *See* N.H. REV. STAT. ANN. § 172-B:3(II)(b) (2010); TEX. FAM. CODE ANN. § 82.002(b)(1) (West 2008 & Supp. 2010).

171. N.H. REV. STAT. ANN. § 173-B:3(II)(b) (“A minor plaintiff need not be accompanied by a parent or guardian to receive relief . . .”).

172. TEX. FAM. CODE ANN. § 82.002(b)(1) (“[A]n application for a protective order to protect the applicant may be filed by: (1) a member of the dating relationship, regardless of whether the member is an adult or a child.”).

173. *See, e.g.*, MO. ANN. STAT. § 455.010(2) (West Supp. 2011); *id.* § 455.020 (West 2003).

174. *Id.* § 455.010(2).

175. *Id.* § 455.020.

176. UTAH CODE ANN. § 78B-7-102(2) (LexisNexis 2008).

177. *Id.* § 78B-7-103(1).

178. OKLA. STAT. ANN. tit. 22, § 60.2(A)(1) (West 2003 & Supp. 2010).

petitioners, and is explicit in requiring adult representatives to file petitions on behalf of minors under sixteen,¹⁷⁹ it may be inferred that sixteen- and seventeen-year-old petitioners have the capacity to represent their own interests in protection-order proceedings.

Similarly, Tennessee's articulation of detailed procedures for filing and notifying adults when minor petitioners initiate proceedings, contrasted with its silence regarding adult participation in related court proceedings, suggests that minor petitioners may represent themselves in court.¹⁸⁰

b. Legal Capacity According to Subjective Standards

Instead of drawing a bright line based on age and relationship, at least two jurisdictions require that courts make a threshold inquiry into a minor petitioner's character and circumstances to determine whether she should be accorded the legal capacity to pursue a protection order on her own.¹⁸¹ Minnesota permits minors sixteen and older to seek protection orders on their own behalf against "a spouse or former spouse, or a person with whom the minor has a child in common if the court determines that the minor has sufficient maturity and judgment and that it is in the best interests of the minor."¹⁸² Moreover, Arizona permits courts to award minors capacity to seek protection orders on their own behalf on a case-by-case basis.¹⁸³ The statute requires that parents, guardians, and custodians file petitions for minor victims "unless the court determines otherwise."¹⁸⁴

2. Statutes Denying Legal Capacity

Only a handful of states address the circumstances in which minors are denied the capacity to seek protection orders on their own. Seven states explicitly deny legal capacity to all minors to represent their interests in protection-order proceedings, and instead require that certain adults pursue

179. *See id.* § 60.2(A) (requiring an adult or emancipated-minor household member to seek relief for a victim under sixteen).

180. *See* TENN. CODE ANN. § 36-3-602(b) (2010); *see also* *infra* Part III.C. The Tennessee statute vaguely addresses representation issues for minor petitioners who also are the subjects of ongoing abuse and neglect proceedings in juvenile court. In such cases, the Tennessee Department of Child Services or the guardian ad litem appointed to represent the child in the juvenile court proceeding is empowered to file a petition on behalf of the minor petitioner and thereby is presumably authorized to represent the minor's interests in attendant court proceedings. TENN. CODE ANN. § 36-3-602(b). The statute does not provide for adults to file petitions on behalf of minors in other circumstances. *See id.*

181. *See* ARIZ. REV. STAT. ANN. § 13-3602(A) (2010); MINN. STAT. ANN. § 518B.01(4)(a) (West 2006 & Supp. 2011).

182. MINN. STAT. ANN. § 518B.01(4)(a).

183. ARIZ. REV. STAT. ANN. § 13-3602(A).

184. *Id.*

protection-order claims on behalf of the minors affected.¹⁸⁵ Two jurisdictions permit older minors to represent their own interests,¹⁸⁶ but require younger minors—in the District of Columbia, those under twelve and in Washington, those under sixteen—to pursue protection-order claims through adult representatives, which may include an attorney or a guardian ad litem or parent.¹⁸⁷ Four additional states, by explicitly extending legal capacity to minors over a certain age, implicitly deny legal capacity to minors who have not reached the age threshold.¹⁸⁸

3. *Ambiguous or Silent Statutes*

In contrast to the group of protection-order statutes previously discussed, most protection-order statutes say nothing about the legal capacity of minor parties to file and litigate claims for protection orders independently.¹⁸⁹

a. *Silent Statutes*

Several state protection-order statutes make no mention of age in their descriptions of court proceedings and filing procedures.¹⁹⁰ These statutes'

185. See ALA. CODE §§ 30-5-2(2), 30-5-5(a)(1) (LexisNexis 1989 & Supp. 2010) (defining a “child” as a person under the age of nineteen, providing that only adults may seek protection orders, and permitting protection orders to be filed by plaintiffs or by parents, guardians, custodians, or the State Department of Human Resources on behalf of minors); ARK. CODE ANN. § 9-15-201(d)(2), (4) (2009) (requiring protection orders to be filed on behalf of minors by adult family or household members or by people working for domestic violence shelters and programs); GA. CODE ANN. § 19-13-3(a) (2010) (“A person who is not a minor may seek relief under this article by filing a petition with the superior court alleging one or more acts of family violence. A person who is not a minor may also seek relief on behalf of a minor by filing such a petition.”); LA. REV. STAT. ANN. § 46:2133(c) (2010 & Supp. 2011) (“An adult may seek relief under this Part by filing a petition with the court alleging abuse by the defendant. Any parent, adult household member, or district attorney may seek relief on behalf of any minor child”); ME. REV. STAT. ANN. tit. 19-A, § 4005(1) (1998 & Supp. 2010) (permitting only adults responsible for a minor or the department of child and family services to seek a protection order on behalf of a minor); 23 PA. CONS. STAT. ANN. § 6106(a) (West 2010 & Supp. 2011) (“An adult or an emancipated minor may seek relief under this chapter for that person or any parent, adult household member, or guardian ad litem may seek relief under this chapter on behalf of minor children . . . by filing a petition with the court alleging abuse by the defendant.”); see also MICH. CT. R. 3.703(F)(1) (providing that in the context of protection-order proceedings, “[i]f the petitioner is a minor or a legally incapacitated individual, the petitioner shall proceed through a next friend. The petitioner shall certify that the next friend is not disqualified by statute and that the next friend is an adult”). Michigan court rules further provide that next friends may serve without court appointment when minor petitioners are fourteen years of age and older. MICH. CT. R. 3.703(F)(2).

186. See *supra* notes 167–69 and accompanying text.

187. D.C. CODE § 16-1003 (Supp. 2011); WASH. REV. CODE ANN. § 26.50.020 (2005 & Supp. 2011).

188. See *supra* notes 164–66, 176–79, 181 and accompanying text.

189. See *infra* Parts III.B.3.a–b.

190. See MASS. GEN. LAWS ANN. ch. 209A, § 3 (West 2007 & Supp. 2011) (“A person suffering from abuse from an adult or minor family or household member may file a

silence does not resolve whether minor petitioners have the legal capacity represent their interests in protection-order proceedings.

b. Ambiguous Statutes Implying the Denial of Legal Capacity to Minors

A number of protection-order statutes appear to implicitly deny minor petitioners the legal capacity to pursue their claims independently. The statutes in this group detail the extent to which adults have standing to seek relief on behalf of minor victims.¹⁹¹ Although this inquiry is entirely separate

complaint . . . requesting protection from abuse.”); NEB. REV. STAT. ANN. § 33.020(1)–(2) (LexisNexis 2006) (providing no information concerning who may file a petition); *id.* § 42-924(1) (LexisNexis Supp. 2011) (permitting “[a]ny victim of domestic abuse” to seek a protection order); N.J. STAT. ANN. §§ 2C:25-28(a), 2C:25-29(a) (West 2005 & Supp. 2011) (permitting any “victim” to seek a protection order, but not specifying who may appear at the court proceedings); N.M. STAT. ANN. § 40-13-3 (2006 & Supp. 2011) (permitting “a victim of domestic abuse” to file); N.Y. FAM. CT. ACT § 822 (McKinney 2010) (permitting “any person” with a qualifying relationship to the respondent to file a petition for a protection order); N.D. CENT. CODE § 14-07.1-02(1) (2009 & Supp. 2011) (permitting petitions to be filed by “any family or household member” or by “any other person” if the court finds the relationship between the parties to warrant the issuance of a protection order); OR. REV. STAT. ANN. § 107.710(1) (West 2003 & Supp. 2010) (permitting “[a]ny person who has been the victim of abuse within the preceding 180 days” to file a petition); R.I. GEN. LAWS §§ 8-8.1-3(a); 15-15-3(a) (1997 & Supp. 2010) (permitting “[a] person suffering from domestic abuse” to file a petition for a protection order); S.D. CODIFIED LAWS § 25-10-3(1) (2004) (permitting petitions to be made by “any family or household member”); VA. CODE ANN. § 16.1-253.1(A) (2010 & Supp. 2011) (permitting a protection order to be issued “[u]pon the filing of a petition alleging that the petitioner is or has been, within a reasonable period of time, subjected to family abuse”).

191. *See, e.g.*, ALASKA STAT. § 18.66.100(a) (2010) (permitting “parent[s], guardian[s], or other representative[s] appointed by the court . . . [to] file a petition for a protective order on behalf of a minor,” and granting courts the authority to appoint a guardian ad litem or an attorney to represent a minor where a petition has been filed on the minor’s behalf); COLO. REV. STAT. §§ 13-14-102(b)(1)(B), 13-14-103(c) (2011) (providing that a permanent “protection order may be modified or dismissed on the motion of the protected person, or the person’s attorney, parent or legal guardian if a minor”); *id.* § 13-14-103(1)(c) (permitting courts to issue emergency protection orders to benefit a minor child “when requested by the local law enforcement agency, the county department of social services, or a responsible person”); DEL. CODE ANN. tit. 10, § 1041(3) (1999 & Supp. 2010) (permitting members of protected classes to seek protection orders for themselves and their minor children and permitting Child Protective Services to seek protection orders on behalf of minor children); FLA. STAT. ANN. § 784.046(2)(a)–(c) (West 2007 & Supp. 2011) (permitting “the parent or legal guardian of any minor child who is living at home” to file a petition for a protection order on behalf of a minor victim of dating, sexual, or repeat violence); HAW. REV. STAT. ANN. § 586-3(b)(1)–(2) (LexisNexis 2010) (permitting “[a]ny family or household member” and any state agency to seek a protection order on behalf of a minor family or household member); IDAHO CODE ANN. § 39-6304(2) (2011) (permitting parents and guardians to seek protection orders on behalf of minors); 750 ILL. COMP. STAT. ANN. 60/201(b) (West 2009 & Supp. 2011) (permitting “any person [to file] on behalf of a minor child”); IND. CODE ANN. § 34-26-5-2(b) (LexisNexis 2008 & Supp. 2010) (“A parent, a guardian, or another representative may file a petition for an order of protection on behalf of a child”); IOWA CODE ANN. § 236.3 (West 2008 & Supp. 2011) (permitting parents and guardians to file on behalf of unemancipated minors); KAN. STAT. ANN. § 60-3104(b) (2005 & Supp. 2009) (permitting parents or other adults residing with a minor child to seek relief on the minor’s

from the question of minors' capacity to represent their own interests, these statutes could be interpreted as addressing both the issues in tandem by simultaneously extending standing rights to adults to act for minors and also precluding minors from exercising capacity to pursue claims without the involvement of a designated adult representative.

4. *Emancipated Minors*

Although emancipation does not necessarily confer standing to sue,¹⁹² complete emancipation does remove a minor's legal incapacity to pursue legal claims that he or she has standing to assert.¹⁹³ Because emancipation removes the legal disabilities of minority, including legal incapacity, emancipated minors generally have the legal capacity to sue and be sued on their own behalf, without the need for appointment of an adult representative.¹⁹⁴

At least one state, however, expressly treats some groups of emancipated minors as minors for capacity purposes in protection-order cases.¹⁹⁵ Arkansas's protection-order statute makes clear that a married minor, like other minors, may only seek protection orders through a petition filed on her behalf

behalf); KY. REV. STAT. ANN. § 403.725(3) (LexisNexis 2010) (permitting protection-order petitions to be filed by "the family member or member of an unmarried couple seeking relief or by an adult family member or member of an unmarried couple on behalf of a minor family member"); MD. CODE ANN., FAM. LAW § 4-501(m)(2)(ii)(1)–(4) (LexisNexis 2006) (describing those entitled to file petitions for protection orders on behalf of minors); MISS. CODE ANN. § 93-21-7(1) (West 2007 & Supp. 2010) (permitting "any person" to seek a protection order for herself and "[a]ny parent, adult household member, or next friend" to seek a protection order on behalf of any minor child); MONT. CODE ANN. § 40-15-102(3) (2011) ("A parent, guardian ad litem, or other representative of the petitioner may file a petition for an order of protection on behalf of a minor petitioner against the petitioner's abuser. At its discretion, a court may appoint a guardian ad litem for a minor petitioner."); N.C. GEN. STAT. § 50B-2 (2009) (permitting "[a]ny person residing in this state" to seek a protection order for herself or on behalf of a minor child residing with or in her custody); OHIO REV. CODE ANN. § 3113.31(c) (LexisNexis 2010 & Supp. 2011) ("A person may seek relief under this section on the person's own behalf, or any parent or adult household member may seek relief under this section on behalf of any other family or household member."); S.C. CODE ANN. § 20-4-40(a) (1985 & Supp. 2010) ("A petition for relief . . . may be made by any household members in need of protection or by any household members on behalf of minor household members."); VT. STAT. ANN. tit. 15, § 1103(a) (2010) ("Any family or household member may seek relief from abuse by another family or household member on behalf of him or herself or his or her children by filing a complaint . . .").

192. See *supra* Part III.A.4.

193. See *Hefel ex rel. D.M.H. v. Thompson*, 577 N.W.2d 643, 646 (Iowa 1998) (explaining that emancipated minors can sue in their own names).

194. See, e.g., *W. Shield Investigations & Sec. Consultants v. Superior Court*, 98 Cal. Rptr. 2d 612, 621–22 (Ct. App. 2000) ("Once emancipated, a minor is under no legal disability with respect to bringing his or her own claims."); *id.* ("Emancipated persons under the age of eighteen are not under the disability of minority and for that reason could sue in their own names."); *Lee v. U.S. Fid. & Guar. Co.*, 433 So. 2d 903, 904 (La. Ct. App. 1983) ("Regardless of the form of emancipation, an emancipated minor has the legal capacity to sue." (citations omitted)).

195. See ARK. CODE ANN. § 9-15-201(d)(2), (4) (2009) (classifying married minors as minors for capacity purposes).

by an adult family or household member or an employee or volunteer of a domestic-violence shelter or program.¹⁹⁶

C. Parent Notification

In addition to standing and capacity requirements, in two states and the District of Columbia, teens must satisfy parent-notification mandates to access protection orders.¹⁹⁷ In California and the District of Columbia, teens twelve years of age and older have the right to file petitions for civil protection orders and to represent themselves in related proceedings without involving a parent, under certain circumstances.¹⁹⁸ However, when a teen chooses to appear before the court without a parent in both of these states, the court must notify a parent about the case, unless the court determines that notifying a parent would contravene the minor's best interests.¹⁹⁹ In Tennessee, unemancipated teens may file a petition for a protective order, but only if a teen's parent, guardian, or caseworker signs the petition.²⁰⁰ If only caseworker signed a minor's filed petition, the court must serve a copy of the petition, notice of hearing, and any ex parte protection order on the minor's parent, unless doing so would threaten the minor with serious harm.²⁰¹

IV. HOW CIVIL PROTECTION-ORDER LAWS PREVENT TEENS FROM ACCESSING JUSTICE

Although some progress has been made in recent years, today civil protection orders remain largely inaccessible to teens who have experienced abuse. State protection-order statutes create barriers for teens who need access to the justice system. States exclude teens from protections by restricting standing requirements by age and by the relationship between the parties.²⁰² Even when states extend standing to teens, states often deter teens from pursuing protection orders by restricting their legal capacity and requiring them to enlist adults to seek protections on their behalf,²⁰³ or by requiring that parents be notified that teens have initiated cases on their own.²⁰⁴ Reforms are needed to encourage abused teens to come forward and to ensure that they have ready access to justice when they seek legal intervention.

196. *Id.*

197. See CAL. CIV. PROC. CODE § 372(b)(2) (West 2004 & Supp. 2011); D.C. CODE § 16-1004(e) (Supp. 2011); TENN. CODE ANN. § 36-3-602(b) (2010).

198. See CAL. CIV. PROC. CODE § 372(b)(1); CAL. FAM. CODE § 6301(a) (West 2004); D.C. CODE § 16-1003(a)(2)-(3).

199. See CAL. CIV. PROC. CODE § 372(b)(2); D.C. CODE § 16-1004(e).

200. TENN. CODE ANN. § 36-3-602(b). Minors may not file petitions only signed by a caseworker against the minor's parent or legal guardian. *Id.*

201. *Id.*

202. See *supra* Part III.A.2.

203. See *supra* Part III.B.2.

204. See *supra* Part III.C.

A. Standing

Protection-order statutes conclusively exclude teens by denying them standing. Without standing, teens are entirely foreclosed from pursuing protection orders in a jurisdiction. Statutes with standing restrictions exclude teen victims by imposing three primary limitations: petitioner age restrictions,²⁰⁵ respondent age restrictions,²⁰⁶ and limitations on qualifying relationships.²⁰⁷

1. Petitioner Age Restrictions

Several state statutes expressly restrict standing to seek protection orders to adults or minors over a certain age.²⁰⁸ Although the reasons for denying standing to teens vary by state, they likely stem from two broader sources. First, legislative drafters did not consider teens when the protection-order remedy was first created.²⁰⁹ As Pamela Saperstein has described:

When states first began passing domestic violence statutes, teen dating violence was not yet a societal concern. At that time, society was just beginning to recognize adult domestic violence as a community problem. . . . This recognition was limited to a husband's violence towards his wife and did not include dating violence.²¹⁰

Moreover, surprisingly little law exists that addresses the rights and obligations of minors in the United States.²¹¹ Indeed, “there is nothing in the [U.S.] Constitution about children, minors or infants, or parents for that matter.”²¹² Thus, it is possible that state legislatures may continue to overlook abuse in teen relationships as a problem meriting legal intervention.

A second possibility is that some jurisdictions believe that the protection-order remedy is inappropriate for teens.²¹³ This view may stem from a belief that teen romantic relationships in general are inappropriate, and, therefore, the state should not legitimize them by offering them legal

205. See *infra* Part IV.A.1.

206. See *infra* Part IV.A.2.

207. See *infra* Part IV.A.3.

208. See *supra* notes 109–11 and accompanying text.

209. See Saperstein, *supra* note 18, at 183 (noting that when states started to enact domestic-violence statutes, the issue of violence in teen dating relationships was not a concern).

210. *Id.*

211. See Homer H. Clark, Jr., *Children and the Constitution*, 1992 U. ILL. L. REV. 1, 40 (observing the way in which the Supreme Court has treated children under the Constitution and noting that “where children need special treatment for the very reason that they are not adults . . . the Court is often oblivious to their interests”).

212. *Id.* at 1.

213. See Largio, *supra* note 62, at 978–79 (addressing the arguments of opponents who reject the idea that teen relationships should be addressed by domestic-violence statutes).

protection.²¹⁴ On the other hand, this view may reflect a belief that teen relationships are simply not an appropriate subject of public, legal intervention.²¹⁵ The same arguments used to justify non-intervention in abusive adult relationships—before the battered women’s movement—are often raised to justify excluding teens from the protection-order remedy today.²¹⁶ Opponents of giving teens access to protection orders argue that problems in teen relationships are private matters that should be addressed by parents, not the state.²¹⁷ Some also argue that teen abusive behavior is just kids being kids, as opposed to serious or criminal conduct,²¹⁸ and that alternate remedies exist to offer teens sufficient protection.²¹⁹

To best protect teens, states should grant standing to seek protection orders to all victims of abuse, regardless of age. Numerous studies show that teen dating violence is a pervasive, serious, and lasting problem across the United States.²²⁰ Teens and children are as deserving of legal protection from abuse as adults. Just as states have rejected the once conventional notion that domestic violence in adult relationships is a private matter,²²¹ states must also reject the idea that teen violence is a private matter. By failing to accord teens standing to seek protection orders, states send the message that the abuse of teens is not serious and not worthy of state attention.²²²

Directing minors to alternative legal remedies is not an effective solution. As one commentator noted, “To contend that existing criminal and civil laws are enough to protect teen victims ignores the fact that domestic violence laws developed precisely because existing laws did not adequately protect adult intimate violence victims.”²²³ The alternate avenues of recourse that are often recommended to abused minors, such as seeking modification of their parents’ or their own custody or visitation orders, pursuing (non-domestic violence) civil injunctions, or initiating abuse and neglect cases, provide neither the same expedient, low-cost relief from present abuse, nor the effective prevention of

214. *Id.* (acknowledging the moral argument raised by some who feel that “serious teen relationships or sexual activity should not be condoned”).

215. *See id.* (suggesting that families should handle issues regarding teen dating violence).

216. *See* SCHECHTER, *supra* note 45, at 158, 162–62, 166 (describing how law-enforcement and court perceptions of domestic violence as a personal problem resulted in police and courts ignoring and discouraging requests for assistance with abuse).

217. *See* Suarez, *supra* note 23, at 451 (rejecting the contention that intimate-partner violence is a private problem).

218. Sousa, *supra* note 22, at 362–63.

219. Suarez, *supra* note 23, at 451.

220. *See supra* Part I (describing statistics on teen dating violence).

221. *See* Suarez, *supra* note 23, at 451 (emphasizing legislatures’ recognition of domestic violence as a “social plague”).

222. *See* Angel, *supra* note 65, at 295 (“If the harm of gender violence is not recognized by society, then its victims understand, explicitly or implicitly, that society doesn’t value them, that they are objects without rights.”).

223. Suarez, *supra* note 23, at 451.

future harm offered by protection orders.²²⁴ Instead, each of these alternative remedies is procedurally lengthy, complex, and costly to pursue.²²⁵ Furthermore, none of these alternatives offers the broad range of remedies aimed at assisting the petitioner in achieving self-sufficiency, or carries the threat of criminal penalties for violation promised by protection orders.²²⁶ Finally, in many jurisdictions in which domestic-violence advocates are available to assist petitioners, the protection-order process can provide an important opportunity to connect teens with advocates and social-service providers who can help teens safety plan and address other issues that might encourage them to remain in abusive relationships.²²⁷

The child-protection-order remedy created in several states is likewise inadequate to address violence in teen dating relationships.²²⁸ First, child protection orders typically may be sought only by selected adults, usually parents and guardians, on behalf of abused minors and, therefore, are useful only when such adults are aware of the abuse and concerned enough to seek legal intervention.²²⁹ For the same reason, child protection orders deny abused teens the agency to seek court assistance on their own. Second, child protection orders are often available in much more limited circumstances than

224. See, e.g., *Egelman ex rel. Egelman v. Egelman*, 728 A.2d 360, 364, 366 (Pa. Super. Ct. 1999) (holding that the trial court could not require a mother to address future concerns about her child's welfare exclusively in a custody action, rather than in a protection-order proceeding, because neither the custody nor abuse and neglect proceedings offered the emergency relief provided by protection orders, and the standard of proof required to obtain a protection order was much lower than that required for intervention in child-abuse proceedings); *Viruet ex rel. Velasquez v. Cancel*, 727 A.2d 591, 595 (Pa. Super. Ct. 1999) (describing the different legal standards and purposes served by the remedies that protection orders and child-abuse proceedings offer to abused minors); *Beermann v. Beermann*, 559 N.W.2d 868, 871 (S.D. 1997) (describing the failure of the trial court's suggested alternate remedies to address the needs of a minor victim of domestic violence, such as a minor's reliance on his or her mother to act in custody proceedings, the higher standard of proof and level of intervention in abuse and neglect proceedings, and the failure of either alternative to offer expedient relief).

225. See, e.g., *Beermann*, 559 N.W.2d at 871 (stating that the trial court's suggested alternative remedies are more costly and drawn out compared to the simplified, inexpensive, and immediate relief offered by protection orders).

226. See *Suarez*, *supra* note 23, at 445 (stating that "generic civil and penal remedies" are insufficient to address teen dating violence because "they do not encompass the myriad of additional legal protections contained in domestic violence legislation").

227. *Id.* at 462 (highlighting the benefits that social services offer to domestic-violence victims, but noting that teens may be excluded from such benefits if they are not statutorily defined as domestic-violence victims).

228. See e.g., MO. ANN. STAT. § 455.503 (West 2003 & Supp. 2011); NEV. REV. STAT. ANN. § 33.400(1) (LexisNexis 2006 & Supp. 2009); WIS. STAT. ANN. § 813.122(2) (West 2007 & Supp. 2011).

229. See MO. ANN. STAT. § 455.503 (requiring a parent, guardian, guardian ad litem, or juvenile officer to file on behalf of a child); NEV. REV. STAT. ANN. § 33.400(1) (requiring a parent or guardian to petition the court on a child's behalf). *But see* WIS. STAT. ANN. § 813.122(2) (indicating that child victims may petition for child protection orders on their own).

domestic-violence protection orders.²³⁰ For example, child protection orders in Nevada are available only against individuals who are at least eighteen and who the petitioning guardian “reasonably believes” has committed the abuse.²³¹ Thus, child protection orders would not be available against minor dating partners. Finally, child protection orders typically offer fewer remedies for victims than domestic-violence protection orders.²³² The only remedies available in child protection orders in Wisconsin, for example, are orders requiring a respondent to stay away from a child’s residence and refrain from contacting the child.²³³ By contrast, Wisconsin’s domestic-violence protection-order statute authorizes courts to order a respondent to stay away from the petitioner’s residence, refrain from contacting the petitioner, refrain from committing domestic violence, and, most importantly, grant “any other appropriate remedy not inconsistent with the remedies requested in the petition.”²³⁴

States should not only extend standing to teens themselves, but also should explicitly accord standing to parents or other adults with close relationships to a teen to seek protection orders on the teen’s behalf. Taking this additional step permits concerned adults to protect teens from further abuse.²³⁵ This is important because, given their age and inexperience, teens may not understand the gravity of the risks posed to them or the possibility that the legal system could help.²³⁶ On the other hand, teens are autonomous individuals, and their personal perspectives and desires should be afforded the dignity and respect they deserve.²³⁷ Consequently, when an adult seeks a protection order on a teen’s behalf, courts should be required to solicit the teen’s perspective on whether a protection order should be issued and what remedies, if any, are appropriate.²³⁸ Requiring courts to obtain the teen’s perspective not only

230. See, e.g., NEV. REV. STAT. ANN. § 33.400(1) (permitting an adult to petition on a minor’s behalf only when the respondent is eighteen or older and the parent “reasonably believes” that he or she has committed the crime).

231. *Id.*

232. Compare WIS. STAT. ANN. § 813.122(4) (barring only contact by the respondent with the child victim), with *id.* § 813.12(3) (enumerating specific remedies, but also permitting any remedy that may be appropriate).

233. *Id.* § 813.122(4).

234. *Id.* § 813.12(3).

235. Karan & Keating, *supra* note 28, at 26 (noting that parents may need to take legal action upon observing signs of abuse, despite their teen’s wishes).

236. See *id.* (encouraging parents to take action even if teens object).

237. See *id.* (arguing that in cases brought by an adult on a minor victim’s behalf, “the minor victim should be given the opportunity to speak. The court should treat the minor victim as a participant, not an observer . . . [and] regard the minor petitioner the same as an adult abuse victim”).

238. See, e.g., D.C. CODE § 16-1005(a)(1)–(3) (Supp. 2011) (“[I]f a parent, guardian, custodian, or other appropriate adult has petitioned for civil protection on behalf of a minor petitioner 12 years of age or older, the court shall consider the expressed wishes of the minor

respects the teen's autonomy and dignity, but it also facilitates the truth-seeking process and discourages parents and other adults from misusing the protection-order process for inappropriate purposes, such as terminating relationships of which they disapprove.²³⁹

2. Respondent Age Restrictions

Several state statutes make protection orders available only against adult respondents or minor respondents above a certain age.²⁴⁰ Although it is difficult to know with certainty why these restrictions exist, they likely stem from perceptions that domestic violence remedies are too harsh for minor respondents or from concerns about the potential negative impact of protection orders, or prosecutions for protection-order violations, on minor respondents in the long term.

petitioner in deciding whether to issue an order pursuant to this section and in determining the contents of such an order.”)

239. See, e.g., *Claver v. Wilbur*, 280 S.W.3d 570, 570, 573–74 (Ark. Ct. App. 2008) (dismissing a civil protection order that a mother obtained on behalf of her sixteen-year-old daughter against the daughter's boyfriend on the grounds that “[t]he mere fact that [the minor's] parents do not like appellant was not a proper ground upon which to issue an order of protection in the absence of evidence of actual physical harm or the fear of imminent physical harm”); cf. *J.K.T. ex rel. R.T.T. v. Ringer*, 26 S.W.3d 830, 837–38 (Mo. Ct. App. 2000) (per curiam) (dismissing a child protection order that a father obtained on behalf of his teenage daughter against her boyfriend because the evidence demonstrated that the relationship was consensual and non-abusive, and stating that “[t]here is no indication that the legislature intended these statutes to be used by a parent as a means of controlling the actions of that parent's child”).

240. ARIZ. REV. STAT. ANN. § 13-3602(B)(2) (2010 & Supp. 2011) (prohibiting the issuance of a protection order against minors twelve years old or younger); COLO. REV. STAT. § 13-14-102(b)(IV)(15) (2011) (permitting protection orders to be issued against adults or juveniles ten years of age or older); D.C. CODE § 16-1001(13) (Supp. 2011) (defining a respondent as person twelve years of age or older); ME. REV. STAT. ANN. tit. 19-A, § 4002(4) (1998 & Supp. 2010) (permitting minor children of a household to seek protection orders against adult household members). But see ME. REV. STAT. ANN. tit. 19-A, §§ 4002(3-A), 4005 (defining dating partners and allowing for protection orders against stalkers and sexual assailants without specified age limitations); MICH. COMP. LAWS ANN. § 600.2950(27) (West 2010) (permitting courts to issue protection orders against minors ten and older, unless “[t]he respondent is the unemancipated minor child of the petitioner”); N.C. GEN. STAT. ANN. § 50B-1(b)(3) (2009 & Supp. 2010) (permitting parents to file protection orders against minor children sixteen years of age or older); N.J. STAT. ANN. § 2C:25-19 (West 2005 & Supp. 2011) (providing that abuse by a minor is not “domestic violence”); OKLA. STAT. ANN. tit. 22, § 60.1(1) (West 2003 & Supp. 2010) (permitting protection orders against minors thirteen years of age and older); OR. REV. STAT. ANN. § 107.726(2) (2003) (prohibiting minors from seeking protection orders against minor respondents, but remaining silent on whether adults are prohibited from seeking protection orders against minors); R.I. GEN. LAWS § 8-8.1-1(1), (3) (permitting protection orders only against adult cohabitants); WASH. REV. CODE ANN. § 26.50.010(2) (West 2005 & Supp. 2010) (permitting protection orders against minor respondents sixteen years of age or older who are or were in a dating relationship with or who currently or formerly resided with petitioner); WIS. STAT. ANN. § 813.12(5)(a)(2) (West 2007 & Supp. 2010) (prohibiting the entry of domestic-abuse protection orders against minors).

Notwithstanding these concerns, in order to best combat teen dating violence, statutes should permit protection orders to be sought against respondents ages twelve and older. In reality, teen petitioners seeking protection against dating partners are likely to be filing against adults—often young adults between the ages of eighteen and twenty-four.²⁴¹ Nonetheless, it is critical for the protection-order remedy to be available against teen respondents. Just as the failure to grant teen petitioners access to protection orders based on their age demonstrates the state's lack of concern about teen victims, a state's failure to make protection orders available against teen respondents based on their age sends the message that abusive conduct by teens is trivial and unworthy of state attention.²⁴² This position is untenable. Like adults, teen perpetrators of abuse need to be held accountable for their actions.

Because accountability depends on a respondent's ability to understand the nature and consequences of his actions, courts should not issue protection orders against younger minors.²⁴³ Recognizing that teens often report involvement in dating relationships beginning in middle school,²⁴⁴ it is appropriate to issue protection orders against respondents twelve and older. Concerns about the potential of imposing criminal penalties against minor respondents for protection-order violations should not preclude the availability of protection orders against minor perpetrators. Lawmakers can ensure that protection-order enforcement mechanisms are age-appropriate for minor respondents by requiring enforcement proceedings against minors to take place in juvenile courts in accordance with juvenile laws and procedures.²⁴⁵

241. For example, in the District of Columbia in 2010, minors filed petitions for protection orders against dating partners in twenty-six cases. Of these, sixteen cases were filed against respondents ages eighteen to twenty-four, six cases were filed against respondents ages fifteen to seventeen, and two cases were filed against respondents ages twenty-eight to twenty-nine. 2010 Data on Petitions by Minors for Protection Orders in the Superior Court of the District of Columbia (on file with author) [hereinafter 2010 D.C. Petition Data].

242. See Suarez, *supra* note 23, at 424 (stating that if teen dating violence is “largely ignored by society and the legal system, a whole new generation’s acts of violence will be cultivated and condoned”).

243. See Wallace J. Mlyniec, *A Judge’s Ethical Dilemma: Assessing a Child’s Capacity to Choose*, 64 *FORDHAM L. REV.* 1873, 1907 (1996) (arguing that courts “should assume that, in the absence of specific evidence to the contrary, children below the age of ten are incapable of rational thought”).

244. See TEENAGE RESEARCH UNLIMITED & LIZ CLAIBORNE INC., *TWEEN AND TEEN DATING VIOLENCE AND ABUSE STUDY 6* (2008) [hereinafter *TWEEN AND TEEN DATING VIOLENCE AND ABUSE STUDY*], available at <http://www.loveisrespect.org/wp-content/uploads/2008/07/tru-tween-teen-study-feb-081.pdf> (documenting that forty-seven percent of minors ages eleven to fourteen have been in a dating relationship).

245. See *Diehl v. Drummond*, 2 Pa. D. & C.4th 376, 378–79 (1989) (holding that petitions for protection orders may be filed against minor respondents and directing that any proceedings to enforce an order violated by a minor respondent should be held in accordance with juvenile procedures).

3. *Qualifying Relationships*

Several state statutes continue to restrict the availability of protection orders by limiting the categories of qualifying relationships. Such restrictions disproportionately impact teens because the qualifying relationships in these states are infrequently shared by teens. These restrictions stem in part from the historical development of the protection-order remedy. Initially, protection orders in most states were available only against spouses.²⁴⁶ Over time, as awareness grew that domestic violence was not exclusive to marriage, jurisdictions began to expand their protection-order statutes to encompass additional personal relationships, including blood relatives, persons who share a child in common, and household members.²⁴⁷ Since the mid-1990s, many states have begun to expand their protection-order remedies to protect victims of abuse who are not related to perpetrators by traditional marriage or family ties.²⁴⁸ Forty-two states and the District of Columbia now permit individuals to obtain protection orders in “romantic” or “dating” relationships.²⁴⁹ Nineteen states sanction protection orders against perpetrators who sexually assaulted the petitioner, regardless of the relationship between the parties.²⁵⁰ Thirty-one states offer protection orders to victims against stalkers, regardless of the

246. See Smith, *supra* note 50, at 98 (observing that before the 1970s, victims of domestic violence could only seek a protection order through the divorce court).

247. *Id.* at 102 (describing that as of 1995, “thirty-three states limited the availability of civil protection orders to individuals who were married, related by blood, shared a child, or were living with the respondent”).

248. See Margaret Martin Barry, *Protective Order Enforcement: Another Pirouette*, 6 HASTINGS WOMEN’S L.J. 339, 352 n.47 (1995).

249. See BREAK THE CYCLE, 2010 STATE LAW REPORT CARDS: A NATIONAL SURVEY OF TEEN DATING VIOLENCE LAWS 7 (2010), available at <http://www.breakthecycle.org/sites/default/files/pdf/2010-Dating-Violence-State-Law-Report-Card-Full-Report.pdf> (indicating that as of 2010, forty-one states included dating relationships as those permitted to access protection orders); see, e.g., ALA. CODE § 30-5-2(5)(d) (LexisNexis Supp. 2010) (including dating relationships in the 2010 supplement).

250. ALASKA STAT. § 18.65.850 (2010); CAL. CIV. PROC. CODE § 527.6(a)–(b)(1) (West 2011) (effective Jan. 1, 2012); COLO. REV. STAT. ANN. § 13-14-102(1.5)(a) (2010); FLA. STAT. ANN. § 784.046(2)(c) (West 2007 & Supp. 2011); 740 ILL. COMP. STAT. ANN. 22/103 (West 2010); IND. CODE ANN. § 34-26-5-2(a)(2) (LexisNexis 2008 & Supp. 2010); ME. REV. STAT. ANN. tit. 5, §§ 4002(1)(A), 4005(1) (Supp. 2010) (permitting any victims of sexual assault by family, household members, or dating partners to file a complaint); MD. CODE ANN., CTS. & JUD. PROC. § 3-1503(a)(4) (LexisNexis 2006 & Supp. 2010); MINN. STAT. ANN. § 609.748(1)(a)(1), (2) (West 2009); MO. ANN. STAT. §§ 455.010(1)(e), 455.020(1) (West 2003 & Supp. 2011); MONT. CODE ANN. § 40-15-102(2)(a) (2011); N.C. GEN. STAT. ANN. §§ 50C-1(7)(a), 50C-2(a)(1) (2009); OKLA. STAT. ANN. tit. 22 § 60.2(A) (West 2003 & Supp. 2011); S.D. CODIFIED LAWS §§ 22-1-2(9), 22-19A-8 (2006 & Supp. 2011); TENN. CODE ANN. § 36-3-601(7) (2010 & Supp. 2011); TEX. CODE CRIM. PROC. ANN. art. 7A.01 (West 2005 & Supp. 2010); TEX. PENAL CODE ANN. § 22.011 (West 2011); VT. STAT. ANN. tit. 12, § 5133(a) (Supp. 2010); WASH. REV. CODE ANN. § 7.90.010 (West 2007 & Supp. 2011); WIS. STAT. ANN. § 813.125(1), (3) (West 2007 & Supp. 2010).

parties' relationship.²⁵¹ Concern for teen safety often has motivated these developments.²⁵²

Notwithstanding these developments, a few states continue to restrict the protection-order remedy to family or adult relationships, such as spouses and cohabitants.²⁵³ The persistence of such restrictions likely stems from inertia or views on what relationships are appropriate and worthy of state recognition and intervention.²⁵⁴ Statutes that restrict protection orders to married couples, cohabitants, or individuals who share a child generally do not encompass teenagers and thus are inadequate to protect teens. Teens are much more likely to experience dating relationships than marriage, cohabitation, or parenthood.²⁵⁵ Abuse often begins during pregnancy, yet under these categories, pregnant teens who have not yet given birth and who have not married or moved in with the father-to-be may not be able to seek

251. ALASKA STAT. § 18.65.850(a); CAL. CIV. PROC. CODE ANN. § 527.6(a)–(b)(3); COLO. REV. STAT. ANN. § 13-14-102(1.5)(d); D.C. CODE § 16-1001(12) (Supp. 2011); FLA. STAT. ANN. §§ 784.046(1)(a)–(b), 2(a); GA. CODE ANN. § 16-5-90(a)(1), (d) (2011); HAW. REV. STAT. ANN. § 604-10.5(a)(2) (LexisNexis 2007); *id.* § 711-1106.5(1) (LexisNexis 2007 & Supp. 2010); IND. CODE ANN. § 34-26-5-2(a)(2); KAN. STAT. ANN. §§ 60-31a02(a), 60-31a04(a) (2005 & Supp. 2009); MD. CODE ANN., CTS. & JUD. PROC. § 3-1503(a)(7); MICH. COMP. LAWS ANN. § 600.2950a(3)(f)–(k) (West 2010); MINN. STAT. ANN. § 609.749 (West 2009 & Supp. 2011); MO. ANN. STAT. § 455.20(1); MONT. CODE ANN. § 40-15-102(2)(a); NEB. REV. STAT. ANN. § 28-311.03 (LexisNexis 2009); NEV. REV. STAT. ANN. § 200.591(1) (LexisNexis 2006 & Supp. 2009); N.M. STAT. ANN. § 40-13-2(D)(1) (West Supp. 2011); N.C. GEN. STAT. ANN. §§ 50C-1(7)(b), 50C-5(a) (2009 & Supp. 2010); OHIO REV. CODE ANN. §§ 2903.211(A), 2903.214(C)(1) (LexisNexis 2010 & Supp. 2011); OKLA. STAT. ANN. tit. 22, § 60.2; OR. REV. STAT. ANN. § 30.866(1)(a) (West 2003 & Supp. 2010); S.C. CODE ANN. § 16-3-1750(A) (2003 & Supp. 2010); S.D. CODIFIED LAWS § 22-19A-8; TENN. CODE ANN. § 36-3-602(a); TEX. CODE CRIM. PROC. ANN. art. 17.292(a)(1) (West 2005 & Supp. 2010); TEX. PENAL CODE ANN. art. 42.072(a) (West 2005 & Supp. 2010); UTAH CODE ANN. § 77-3a-101(2) (LexisNexis 2008 & Supp. 2011); VT. STAT. ANN. tit. 12, § 5133(a); WASH. REV. CODE ANN. § 9a.46.110(1) (West 2009 & Supp. 2010); *id.* § 10.14.040 (West 2002 & Supp. 2011); WIS. STAT. ANN. § 813.125(1); WYO. STAT. ANN. §§ 7-3-506(a)(iii), 7-3-507(a) (2011).

252. *See, e.g.*, COMM. OF THE JUDICIARY OF THE COUNCIL OF D.C., COMMITTEE REPORT ON BILL 10-477, at 3–5 (1994) (summarizing the remarks of several witnesses who testified before the D.C. Council to emphasize the importance to teens of extending protection-order statutes to dating relationships); Brian Mori, *Domestic Violence Law Now Extended*, ARIZ. DAILY WILDCAT, Dec. 9, 2009, at A1. The Arizona legislature passed “Kaity’s law” to extend protection orders to dating relationships after seventeen-year-old Kaity Sudberry was murdered by her boyfriend in Phoenix. *Id.* Her family had been unable to seek a protection order for her because the statute previously had not covered dating relationships. *Id.*

253. *See, e.g.*, KY. REV. STAT. ANN. § 403.720(1)–(2), (4) (LexisNexis 2010) (applying protections for domestic abuse only to family members or to unmarried couples who share a child together or live together).

254. *See supra* notes 211–14 and accompanying text.

255. *See* Brustin, *supra* note 18, at 339 (highlighting the fact that the protected categories of abuse victims do not apply to teens); Largio, *supra* note 62, at 958 (advocating that protection-order statutes extending to dating relationships are “the most likely to allow young people to seek orders of protection, because teenagers engage in dating relationships more often than they marry or have children”).

protection.²⁵⁶ Moreover, teens are at significant risk of sexual assault²⁵⁷ and stalking.²⁵⁸ Consequently, many jurisdictions have recognized that to protect abused teens most effectively, states should make protection orders available in dating and sexual relationships, as well as against perpetrators of sexual assault and stalking.

B. Legal Capacity and Parent Notification

Even where states extend standing to teens, protection-order statutes deter teens from seeking legal relief by denying them legal capacity and mandating parent notification of teens' legal claims.²⁵⁹ To best protect teens, states should grant teen petitioners the legal capacity to file and litigate claims for protection orders on their own, without notifying parents, and accord courts the authority to appoint attorneys to represent teen petitioners who need assistance in related proceedings.

1. Legal Capacity

Only a minority of states grants teens the legal capacity to represent their own interests in protection-order proceedings.²⁶⁰ States likely have been slow to accord capacity rights to teen petitioners for several reasons. First, the extent of minors' legal capacity as parties in civil matters, generally, is

256. See Brustin, *supra* note 16, at 333 (discussing a study that found that twenty-six percent of pregnant teens experienced abuse from their dating partner during the pregnancy); Jay G. Silverman et al., *Dating Violence and Associated Sexual Risk and Pregnancy Among Adolescent Girls in the United States*, 114 PEDIATRICS e220, e223 (2004) (finding that girls who are victims of dating violence are twice as likely than non-abused girls to become pregnant).

257. See HARNER, *supra* note 15, at 2; see also ANJANI CHANDRA ET AL., CTRS. FOR DISEASE CONTROL & PREVENTION, FERTILITY, FAMILY PLANNING, AND REPRODUCTIVE HEALTH OF U.S. WOMEN: DATA FROM THE 2002 NATIONAL SURVEY OF FAMILY GROWTH 76 (2005), available at http://www.cdc.gov/nchs/data/series/sr_23/sr23_025.pdf (finding that approximately fourteen to nineteen percent of young women ages eighteen to twenty-four have experienced forced sexual intercourse); MICHAEL R. RAND, BUREAU OF JUSTICE STATISTICS, NATIONAL CRIME VICTIMIZATION SURVEY: CRIMINAL VICTIMIZATION, 2008, at 4 (2009), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/cv08.pdf> (finding that young women ages sixteen to twenty-four experience the highest rates of rape and sexual assault).

258. KATRINA BAUM ET AL., BUREAU OF JUSTICE STATISTICS, STALKING VICTIMIZATION IN THE UNITED STATES 3 (2009), available at <http://www.ovw.usdoj.gov/docs/stalking-victimization.pdf> (concluding that the highest rates of stalking victimization occurs in persons ages eighteen to twenty-four); PATRICIA TADEN & NANCY THOENNES, NAT'L INST. OF JUSTICE & CTNS. FOR DISEASE CONTROL & PREVENTION, STALKING IN AMERICA: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY, U.S. DEPARTMENT OF JUSTICE, NATIONAL INSTITUTE OF JUSTICE 6 (1998), available at <https://www.ncjrs.gov/pdffiles/169592.pdf> (finding that twelve percent of stalking victims were less than eighteen years of age at the time of the first stalking incident).

259. See *supra* Parts III.B.2, III.C.

260. See *supra* Part III.B.1.

codified or addressed in court rules in every state.²⁶¹ As a result, legislators might not have perceived a need to address capacity specifically in the context of protection-order proceedings. Second, because capacity restrictions are intended to guarantee that minors and incompetent adults are able to advance their interests in court proceedings effectively, states might be concerned that teens' interests will not be adequately protected or vindicated in protection-order proceedings without an adult representative.²⁶² Third, states might be concerned about the potential risks to parents by their children's abusive partners if minor children were permitted to seek protection orders without notifying their parents.²⁶³ Fourth, states might be reluctant to encroach upon parents' desire and constitutional right to control the upbringing of their children.²⁶⁴ From this perspective, just as parents are entitled to be aware of events in their children's lives and have input in major decisions affecting their children, parents also have the right to be included in a child's decision to seek a protection order and to participate in attendant proceedings.²⁶⁵ Finally, some might fear that without adult guidance, minors might seek protection orders without cause and thus advocate for mandatory parental involvement in court

261. See Sara Jeruss, *Empty Promises? How State Procedural Rules Block LGBT Minors from Vindicating Their Substantive Rights*, 43 U.S.F. L. REV. 853, 872–73 & tbl.2 (2009) (detailing the laws and court rules addressing minors' legal capacity in the fifty states and noting that nearly all states have incorporated Rule 17(c) of the *Federal Rules of Civil Procedure* into their statutes, or contain a similar rule requiring that a guardian or next friend appear on behalf of minors).

262. See 4 MOORE, *supra* note 149, § 17.21[3][a], at 17-93-94 (noting the court's role of protecting the minor's interests); Brustin, *supra* note 16, at 351 (addressing the argument that minors are too immature to seek protection orders on their own behalf).

263. See *Hearing on the Intrafamily Offenses Act of 2007*, *supra* 28, at 3–4 (statement of Patricia A. Riley, Special Counsel to the U.S. Attorney) (arguing that courts should notify parents when a minor seeks a protection order on her own, in part because “[k]eeping parents . . . in the dark may place them and other children in the household at risk”).

264. See *infra* text accompanying note 265.

265. See *Troxel v. Granville*, 530 U.S. 57, 65–66 (2000) (striking down a state law allowing third-party petitions for child visitation rights over parental objection, holding that “[t]he liberty interest at issue in this case—the interests of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court”); *Planned Parenthood v. Casey*, 505 U.S. 833, 899–900 (1992) (upholding Pennsylvania's abortion statute requiring parental consent and stating that the waiting period provided the opportunity for parental consultation to discuss the moral consequences of abortion in a familial context); *Parham v. J.R.*, 442 U.S. 584, 588 & n.3, 604, 620–21 (1979) (upholding Georgia's mental-hospital commitment statute, which permitted parents or guardians to request that their child be committed if there was evidence of mental illness, because parental decisions regarding a child's medical care should receive great deference); *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 530, 534–35 (1925) (finding Oregon's law requiring that students between ages eight and sixteen attend school to be unconstitutional because it infringes on parents' right to direct the upbringing and education of their children); *Meyer v. Nebraska*, 262 U.S. 390, 401 (1923) (holding that a state could not restrict school curricula because parents have the right to “control the education of their own”); see also Brustin, *supra* note 16, at 351 (highlighting the continuing discussion in state legislatures about when adolescents ought to be able to act autonomously).

proceedings to curtail improvident claims for protection.²⁶⁶ Although valid, these concerns should not prevent states from according teens legal capacity.

To best protect abused teens, states should explicitly and unconditionally grant teens twelve and older the legal capacity to file petitions for protection orders on their own and represent their own interests in related court proceedings. First, states are more likely to become aware of abuse in teen relationships and be able to offer abused teens legal protection and supportive services if states encourage teens to disclose abuse. A teen's need for immediate safety outweighs concerns about and should take priority over protecting his or her interest in the litigation.²⁶⁷ The South Dakota Supreme Court struck this balance in the context of a protection-order case, stating: "We are not convinced that the need for a guardian at the petition stage outweighs the need for immediate court protection."²⁶⁸

Studies reveal that teens are often extremely reluctant to disclose abuse to adults—especially parents.²⁶⁹ In the protection-order context, this means that states that require adult involvement, especially parental involvement, in teen protection-order cases will deter many teens from seeking legal protection altogether.²⁷⁰

Many legitimate reasons exist for why teens may be reluctant or unable to involve parents in the protection-order process. Teens may fear retribution, ostracism, or worse when the family has prohibited dating or when parents are unaware of teens' sexual orientation.²⁷¹ Teens may be concerned that

266. Cf. Brustin, *supra* note 16, at 351 (acknowledging the concern of some that "[a] minor might not be mature enough . . . to weigh the consequences of seeking a protection order").

267. See, e.g., *Beermann v. Beermann*, 559 N.W.2d 868, 871 (S.D. 1997) (noting that immediate safety outweighed the need of a guardian).

268. *Id.* ("In the middle of domestic strife, preserving the mental and emotional health of the vulnerable must override other less compelling interests." (quoting *South Dakota v. Hauge*, 547 N.W.2d 173, 176 (S.D. 1996))).

269. See *supra* notes 26–35 and accompanying text.

270. See Carlson, *supra* note 43, at 36 ("Because teens tend to reject assistance from adult authorities and instead rely on peers, the fact that a teen must involve an adult in her restraining order suit is frequently a deterrent to seeking legal help in all but the most serious cases."); Sousa, *supra* note 22, at 370 (noting that a requirement that a parent or guardian accompany a minor to court is "a serious deterrent for the adolescent victim who, for a variety of reasons, may not have told her parents about the abusive relationship"); see also KRISTINE HERMAN, CTR. FOR COURT INNOVATION, YOUTH DATING VIOLENCE: CAN A COURT HELP BREAK THE CYCLE? 5 (2004), available at <http://www.courtinnovation.org/sites/default/files/youthdatingviolence.pdf> (noting that the victim advocate at the Brooklyn Youthful Offender Domestic Violence Court, a specialty court concentrating on juvenile proceedings involving dating violence, has found that "teen victims do not want their families involved in the [court] process").

271. See *supra* notes 33–35 and accompanying text. Teens participating in focus groups convened by WEAVE in Washington, D.C. in December 2005 and January 2006 also voiced these concerns. Focus Group by WEAVE with Teens, in Washington, D.C. (Dec. 2005 & Jan. 2006) [hereinafter WEAVE Focus Groups] (on file with the author).

disclosure will result in lost autonomy and heightened parental supervision.²⁷² A teen may have reason to know that a parent is likely to confront the abuser and not want the abuser to be harmed, or fear that she may be subjected to retaliatory violence by the abuser for having disclosed the abuse.²⁷³ Teens might simply be concerned that parents will not keep the information confidential.²⁷⁴ Even in cases in which teens have disclosed abuse to a parent, the parent may be unable to come to court because of inflexible work schedules or other obligations or because of a perception that a protection order is unnecessary.²⁷⁵

Teens are often so reticent to disclose abuse to adults that by the time a teen reaches out to the legal system for help, the abuse has often reached a crisis point.²⁷⁶ Moreover, because the nature and severity of abuse often intensifies over time and peaks during attempts at separation, teen victims seeking protection orders likely face significant risks of future abuse and even death.²⁷⁷ Protection orders can ensure the safety not only of the petitioning teen, but also of other persons vulnerable to retaliation or harassment by including provisions that prohibit an abuser from contacting the victim, coming near the victim's home or school, and contacting or coming near other persons.

Encouraging teens to seek legal protection can result in additional and—more enduring—benefits than the protection order itself. Although often a useful tool, a protection order is not a panacea. Teens and adults experiencing domestic violence are wise to take additional precautions to ensure their safety when leaving an abusive relationship.²⁷⁸ Moreover, protection orders cannot help victims heal and move forward from the impact of abuse. Nonetheless, the protection-order process can serve as a gateway to supportive services.²⁷⁹ This may be especially important for teen petitioners, as they often are

272. See Sousa, *supra* note 22, at 362 (“[Teens] may also fear that newly won independence will be taken away.”); WEAVE Focus Groups, *supra* note 271 (finding that teens were concerned about retribution by the abuser and about parents exacerbating an already problematic situation).

273. WEAVE Focus Groups, *supra* note 271.

274. *Id.* One focus-group participant stated that a parent would be the last person she would tell about dating violence because she feared that a parent would involve other parents, the police, or family services organizations. *Id.*

275. See *id.*

276. See *supra* notes 28–35, 42 and accompanying text.

277. See, e.g., ROEHL ET AL., *supra* note 25, at 4 (finding that violence generally increases throughout the relationship and that women attempting to separate from their partners were more likely to experience renewed violence or even be killed); Glass et al., *supra* note 25, at 177, 183–85 (identifying risk factors for femicide in adolescent and young adult women).

278. See Brustin, *supra* note 16, at 354–55 (contending that legal remedies alone are insufficient to curb dating violence and that teens need access to support services to fully address the problem).

279. See *infra* notes 294–95 and accompanying text. Cf. Largio, *supra* note 62, at 978 (arguing that support services should be available to teen victims in addition to any court-ordered remedies).

unaware of the services available to assist them in their communities.²⁸⁰ In jurisdictions offering a coordinated community response to domestic violence,²⁸¹

domestic-violence advocates are more likely to become aware of abused teens who seek court protection and refer them to community anti-domestic-violence organizations, which can assist teens in creating safety plans and can provide counseling and other supportive services to help them heal and achieve independence from abusive partners.²⁸² Domestic-violence advocates also can help teens confide in parents about abuse and address any issues that may have initially discouraged teens from reaching out.

Furthermore, states should grant teens legal capacity to represent themselves beginning at age twelve because studies indicate that abuse in intimate relationships begins as early as middle school.²⁸³ Establishing twelve as the minimum age will not open the floodgates to a deluge of claims by middle school students or minors in general. During 2010, the first full year in which minors twelve and older had the capacity to seek protection orders in the District of Columbia, the Superior Court of the District of Columbia saw few actions brought by minors under age sixteen.²⁸⁴ Of the approximately 7366 total petitions new filings in the Superior Court's Domestic Violence Unit in 2010, thirty-seven were filed by minors on their own, but only four were filed by minors under age sixteen, and none were filed by a minor under age fourteen.²⁸⁵ Setting the age at twelve ensures that the rare middle school student who faces abuse can obtain the protection she needs.

States should not only grant teens legal capacity explicitly, but also should do so unconditionally. The conditional grants of legal capacity in Minnesota and Arizona presumably are intended to ensure that teens' interests will be

280. See *Access*, BREAK THE CYCLE, <http://www.breakthecycle.org/content/access> (last visited Nov. 1, 2011) (noting that teens involved in dating violence may not know where to find resources).

281. See Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 3, 28–32 (1999) (discussing the creation of the Superior Court of the District of Columbia's Domestic Violence Unit).

282. *Cf. id.* at 29–31 (describing how the District of Columbia Domestic Violence Intake Center provides representatives for women to speak to about obtaining non-legal assistance).

283. See TWEEN AND TEEN DATING VIOLENCE AND ABUSE STUDY, *supra* note 244, at 10. One study of tweens ages eleven to fourteen found that twenty percent of tweens in relationships know friends who are physically abused. *Id.* Two in five tweens have friends who are victims of verbal abuse in relationships. *Id.*

284. See 2010 D.C. Petition Data, *supra* note 241.

285. See DISTRICT OF COLUMBIA, 2010 ANNUAL REPORT: DISTRICT OF COLUMBIA COURTS - STATISTICAL SUMMARY 11 (2010), available at <http://www.dccourts.gov/dccourts/docs/DCC2010AnnualReportStatisticalSummary.pdf#page=15> (last visited Oct. 23, 2011). Of the petitions filed by District of Columbia minors in 2010, nine were filed by sixteen-year-olds, two were filed by fifteen-year-olds, and two were filed by fourteen-year-olds. 2010 D.C. Petition Data, *supra* note 241.

adequately protected if they are permitted to represent themselves.²⁸⁶ Yet, these threshold determinations make protection orders less accessible to minors because they risk delaying the proceedings, which may deter minors from pursuing protection orders altogether. In Minnesota, for example, before a court can assess the substance of a minor petitioner's claim for relief, it must first inquire into the minor's maturity, judgment, and best interests.²⁸⁷ If the court denies the minor legal capacity, the court would then need to ensure that an appropriate adult adequately represented the minor's interests in the litigation.²⁸⁸ Because of the potential need to involve an adult representative, it may reasonably be inferred that this threshold inquiry must take place before any adjudication of the substance of the minor's claim. The process of then identifying and evaluating the fitness of potential adult representatives could result in additional delay.

Delay could pose a safety risk to abused minors for several reasons. Most notably, delays in the court proceedings could discourage minors, who may be hesitant to go to court to begin with, from pursuing their claims for relief.²⁸⁹ Because teens often want and expect near instant gratification from the court system, many teens have little patience with protracted litigation and may decide to abandon their claims entirely rather than endure multiple hearings and attendant meetings with counsel.²⁹⁰ The expedited nature of protection-order proceedings afforded to adult petitioners makes the protection-order remedy more appealing to teens than more time-intensive alternatives.²⁹¹ Therefore, adding potentially time-consuming layers to the protection-order process may make the remedy less appealing to teens. Separately, if an *ex parte* temporary protection order is in place pending resolution of the minor's petition, it may need to be repeatedly extended and served on the respondent until the capacity issue has been adjudicated.²⁹² In such circumstances, the minor petitioner may be left without effective legal

286. See *supra* Part III.B.1.b.

287. See MINN. STAT. ANN. § 518B.01(4)(a) (West 2006 & Supp. 2011) (permitting a minor who is sixteen or older to petition for a protection order on her own behalf only if the court determines that, based on various factors, it is appropriate).

288. See *id.* (requiring representation by a reputable adult if the court determines it is in the best interests of the minor).

289. See Kit Kinports & Karla Fischer, *Orders of Protection in Domestic Violence Cases: An Empirical Assessment of the Impact of the Reform Statutes*, 2 TEX. J. WOMEN & L. 163, 199 (1993) (noting that delays may discourage abused women from seeking protection orders); see also HERMAN, *supra* note 270, at 13 (noting that teens are reluctant to participate in the criminal justice system at all).

290. See Suarez, *supra* note 23, at 454 (explaining that teens may not seek orders because they perceive the process as too cumbersome).

291. See Kinports & Fischer, *supra* note 289, at 166 (explaining that civil protection orders provide a much more efficient remedy compared to proceedings in the criminal justice system).

292. See, e.g., MINN. STAT. ANN. § 518B.01(7)(a), (c)–(d) (describing the process by which an *ex parte* order is granted and served, and the fixed period of effectiveness for such an order).

protection during periods when a temporary protection order has been renewed, but not yet served on the respondent.

Moreover, even should the additional time and energy required by the threshold capacity inquiry not deter teens from pursuing litigation further, the fear of an invasive or judgmental court inquiry may.²⁹³ For these reasons, protection-order remedies are most accessible when states establish bright-line rules regarding legal capacity, such as uniformly recognizing capacity according to age.

Once states encourage teens to come forward, they can ensure that the interests of teen parties are protected by authorizing courts to appoint attorneys to represent teens who need assistance in protection-order proceedings. Attorneys, rather than next friends²⁹⁴ or guardians ad litem,²⁹⁵ are the best representatives for teens in protection-order proceedings for several reasons. First, unlike next friends, attorneys are trained to navigate the law and legal

293. See *id.* § 518B.01(4).

294. See *Jarvis v. Crozier*, 98 F. 753, 755 (D. W. Va. 1899) (defining “next friend” as an adult appointed by the court or who is next of kin, who typically has a relationship with the minor that would naturally incline him or her to protect the minor’s interests); see also H.D.W., Annotation, *Necessity for and Degree of Relationship to Infant as Affecting Representation as Next Friend or Guardian Ad Litem*, 118 A.L.R. 401, 402 (1939) (describing a next friend or guardian ad litem as “the nearest relative of the infant not having antagonistic interest in the matter, and not otherwise disqualified”). In many jurisdictions, common law articulates the qualifications for serving as a next friend, such as being “truly dedicated to the best interests of the person” and “hav[ing] some significant relationship with the real party in interest.” *Whitmore ex rel. v. Arkansas*, 495 U.S. 149, 163–64 (1990); see also *Davis v. Austin*, 492 F. Supp. 273, 275–76 (N.D. Ga. 1980) (finding that someone could not be classified as a next friend because he had no close personal relationship with the petitioner).

295. See Am. Bar Ass’n, *American Bar Association Section of Family Law Standards of Practice for Lawyers Representing Children in Custody Cases*, 37 FAM. L.Q. 131, 133 (2003) [hereinafter *ABA Family Law Standards*] (explaining that a guardian ad litem can be a parenting coordinator, evaluator, and advocate, among other things). The term “guardian ad litem” is widely used to describe two very different roles played by adults representing the interests of minor parties in civil litigation. See *id.* Much like a “next friend,” a guardian ad litem may simply be an adult appointed by the court to represent the interests of an incompetent party to the legal proceeding. See 53 AM. JUR. 2D *Mentally Impaired Persons* § 161 (2006 & Supp. 2011). In some jurisdictions, adults appointed to represent minor plaintiffs are called next friends, and adults appointed to represent minor defendants are called guardians ad litem. See *Gardner ex rel. Gardner v. Parson*, 874 F.2d 131, 137 n.10 (3d Cir. 1989); see also *Dye v. Fremont Cnty. Sch. Dist. No. 24*, 820 P.2d 982, 985 (Wyo. 1991). By contrast, a guardian ad litem may also be an attorney appointed by the court to represent a minor’s interests in a proceeding, even if the minor is not a party, such as in a custody or an abuse and neglect case. See 53 AM. JUR. 2d *Attorney as Guardian Ad Litem* § 165 (2006 & Supp. 2011); see also *ABA Family Law Standards, supra*, at 132–33 (stating that an attorney may be appointed to act in a child’s best interests in custody and visitation determinations, among other types of cases). Unlike attorneys for adults or attorneys representing minors in other capacities, guardians ad litem are typically charged with representing “a child’s best interest” as the guardian ad litem perceives them, not the minor’s expressed interests—though the expressed interests should be considered. See *ABA Family Law Standards, supra*, at 150–51.

proceedings.²⁹⁶ More importantly, attorneys are bound by ethical duties to understand and zealously advocate their client's interests and to keep all information related to a client confidential.²⁹⁷ By contrast, next friends are regulated only by their own moral compasses and court efforts to ensure that they have no conflicts of interest with the minor parties they represent.²⁹⁸

Although guardians ad litem may also be bound by ethical obligations and, therefore, may offer teens more protection than next friends,²⁹⁹ the guardian need not abide by the minor's expressed wishes when determining the minor's best interests.³⁰⁰ Certainly, guardians ad litem play an important role in many cases that significantly impact minors' lives but in which minors' voices would not otherwise be heard, such as child custody and abuse and neglect matters.³⁰¹ This role is less effective, however, in cases involving teens and cases brought by teens themselves to vindicate their own interests. For several reasons including their ages, the experiences at issue, and the limited nature of the remedy teen petitioners are seeking in protection-order cases, teens themselves are in the best position to understand what will best serve their interests.³⁰² Granting teens who have experienced abuse the authority to determine and advocate their own interests can have the added benefit of helping to restore some of the self-confidence and autonomy that an abusive partner crushed.³⁰³

Perhaps most importantly for teens, attorneys do not need a prior relationship to teen clients outside of court proceedings. In many jurisdictions, to serve as a "next friend," an adult must have a close relationship with a minor

296. See *Davis*, 492 F. Supp. at 275 (indicating only that a next friend must have a close relationship with a party and not requiring any legal knowledge).

297. MODEL RULES OF PROF'L CONDUCT R. 1.2, 1.6 (2010).

298. H.D.W., *supra* note 294, at 402 (stating only that a next friend must be a close relative of the minor and not have "an antagonistic interest in the matter").

299. *ABA Family Law Standards*, *supra* note 295, at 147. Compare Alaska Bar Ass'n Ethics Comm., Formal Opinion No. 85-4 (1985) (concluding that the traditional duty of confidentiality does not apply when an attorney is appointed to serve as a child's guardian ad litem, but that confidentiality should still be exercised in accordance with the child's best interests), with *Bentley v. Bentley*, 448 N.Y.S.2d 559, 560 (App. Div. 1982) (holding that a communication between a minor child and a guardian ad litem in a divorce and custody case is protected by the attorney-client privilege).

300. See STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES A-2, B-5 (1996), available at http://www.americanbar.org/content/dam/aba/migrated/family/reports/standards_abuseneglect.aut_hcheckdam.pdf.

301. See Nancy Neraas, *The Non-Lawyer Guardian Ad Litem in Child Abuse and Neglect Proceedings: The King County, Washington, Experience*, 58 WASH. L. REV. 853, 856 (1983) (stating that abused and neglected children need advocates to advance their interests).

302. See Emily Buss, "You're My What?" *The Problem of Children's Misperceptions of Their Lawyers' Roles*, 64 FORDHAM L. REV. 1699, 1705 (1996) ("Those advocating the guardian ad litem role for most children generally still concede that at some age—at least in the late teenage years—children should be able to direct their counsel, on some, if not all issues.").

303. Smith, *supra* note 50, at 120; Stoeber, *supra* note 69, at 307.

unrelated to the pending legal action.³⁰⁴ Such relationship requirements are meant to ensure that next friends will be motivated by their care and loyalty to vindicate the minors' interests.³⁰⁵ In the context of teen dating abuse, however, those who would qualify as next friends are the same people to whom teens are resistant to disclose abuse. This problem is less attenuated in jurisdictions that permit any adult, not just those with special relationships, to represent a teen's interests in protection-order proceedings.³⁰⁶ Nonetheless, this openness brings its own challenges, as a teen is then tasked with identifying a trusted adult who is willing to help.³⁰⁷

To avoid the delay to protection-order proceedings that could result from courts engaging in a case-by-case inquiry regarding whether attorney appointment is warranted, states should institute bright-line standards mandating attorney appointment for younger teens, who are more likely to need assistance, and making attorney appointment discretionary for older teens. Two characteristics of teen protection-order cases suggest that legal services organizations and pro bono appointments will satisfy the demand for attorneys in such cases. First, as the experience of the District of Columbia illustrates, teens are not likely to come forward in large numbers, even if they are accorded legal capacity.³⁰⁸ The small number of cases involving minors in the District of Columbia has enabled legal services attorneys who are experts in domestic violence law to fully meet the demand for services and also represent minor petitioners who choose, but are not required, to have representation. Second, even if legal services organizations are unable to meet the demand for teen representation, courts may be able to fill the remaining gap by recruiting attorneys for pro bono appointment. Civil protection-order cases are appealing pro bono matters for attorneys because they typically entail a limited and relatively predictable time commitment. A critical feature of the protection-order remedy is its expediency.³⁰⁹ To enable protection-order claims to be resolved on an expedited basis, courts may restrict the scope and

304. See *Whitmore v. Arkansas*, 495 U.S. 149, 164 (1990) (suggesting that a next friend "must have some significant relationship with the real party in interest" (citing *Davis v. Austin*, 492 F. Supp. 273, 275–76 (N.D. Ga. 1980))); *Hamdi v. Rumsfeld*, 294 F.3d 598, 604–05 (4th Cir. 2002) (dismissing a public defender's request to act as the defendant's next friend because the two parties has no close, preexisting relationship, as required by case law in multiple federal circuits), *vacated on other grounds*, 542 U.S. 507 (2004); *Davis*, 492 F. Supp. at 276 (denying the first cousin of a prisoner "next friend" standing because they were not in frequent contact).

305. See *Jarvis v. Crozier*, 98 F. 753, 755 (D. W. Va. 1899) (stating that next friend should be "next of kin, and so nearly related to [the minors] that the court would recognize the right to act for them").

306. See *Suarez*, *supra* note 23, at 454.

307. See *id.* (noting that it may be difficult for teens ashamed of the abuse or isolated from friends and family to find an adult who will file on their behalf).

308. See *supra* notes 284–85 and accompanying text.

309. See *Kinports & Fisher*, *supra* note 289, at 165–66 (describing the typical two-step process for obtaining emergency and "permanent" protection orders and noting the key advantages of providing expeditious protection).

extent of discovery and schedule final hearings within a few weeks after the filing of a petition.³¹⁰ The resulting short duration of protection-order cases may be attractive to prospective pro bono attorneys in comparison to the more extensive time commitment required by other cases available for pro bono representation.³¹¹

In addition to encouraging teens to come forward and seek legal protection, granting teens the legal capacity to seek protection orders on their own advances state public policies that authorize minors to make their own decisions when their health, well-being, or safety is at issue.³¹² Restrictions on minors' legal capacity were developed to protect minors' interests.³¹³ In certain areas, however, states have begun to recognize that restricting minors' legal capacity can harm their interests because the participation of an adult representative deters minors from seeking the assistance they need to protect themselves.³¹⁴

For example, many states authorize minors to independently consent to: emergency and outpatient medical care; testing and treatment for sexually transmitted diseases; substance-abuse treatment; outpatient mental-health services; and reproductive healthcare.³¹⁵ States have also accorded minors the legal capacity to make important decisions about the health, well-being, and

310. See Klein & Orloff, *supra* note 46, at 1054 (“Civil protection order discovery provisions should be formulated in light of the summary nature of civil protection order proceedings and the need to avoid delays in the issuance of a protection order.”); see, e.g., D.C. SUPER. CT. SCR.-DV R. 8 (making discovery available only “[f]or good cause shown” and restricting the forms of permissible discovery where the standard is met).

311. Given the complexities of representing minor parties, if states elect to appoint pro bono attorneys to represent minor parties, they should ensure that the attorneys receive proper training before their appointments.

312. See Klein & Orloff, *supra* note 46, at 895 (detailing the passage of mature-minor statutes in recent years and noting that “[a]ll of these statutes have converged on the idea that there are certain areas where minors need protection from harm. In these areas, minors are granted the rights to make important decisions without notifying their parents”).

313. See Jeruss, *supra* note 261, at 862 (indicating that courts require parental involvement in minors' legal matters to protect minors).

314. See Caitlin M. Cullitan, *Please Don't Tell My Mom! A Minor's Right to Informational Privacy*, 40 J.L. & EDUC. 417, 444 (2011) (observing that in the context of healthcare, teens are deterred from seeking treatment for sexually transmitted infections by fear of disclosure, leading states to eliminate parental-consent requirements for such treatment); Susan D. Hawkins, Note, *Protecting the Rights and Interests of Competent Minors in Litigated Medical Treatment Disputes*, 64 FORDHAM L. REV. 2075, 2123 (1996) (explaining that mature-minor medical statutes encourage minors to seek medical care that they would not if parental consent were needed).

315. See Heather Boonstra & Elizabeth Nash, *Minors and the Right to Consent to Health Care*, 4 GUTTMACHER REP. ON PUB. POL'Y, Aug. 2000, at 4–5 (detailing the healthcare context as an area in which states have expanded the capacity of minors); see also Rhonda Gay Hartman, *Adolescent Decisional Autonomy for Medical Care: Physician Perceptions and Practices*, 8 U. CHI. J. INTERDISC. LEGAL STUD. 87, 92–93 (2001) (discussing how state legislatures have lowered or eliminated the age at which teens may consent to treatment in an effort to encourage teens to access mental-health services).

safety of their own children without adult involvement.³¹⁶ To this end, in some states minors may consent to the placement of their child for adoption,³¹⁷ pursue legal claims for child support³¹⁸ and custody,³¹⁹ and apply for government benefits, such as Temporary Assistance for Needy Families (TANF) and Medicaid.³²⁰

In each of these circumstances, states set aside traditional restrictions on minors' legal capacity to encourage minors to take advantage of services and remedies important to their health, safety, and well-being. According abused teens legal capacity in protection-order cases would serve the same purpose. Granting teens the autonomy to act in their own interests is especially important in the protection-order context because teens attempting to separate from abusive relationships are often at risk of serious injury or death.³²¹ Moreover, because teens who have experienced abuse have often had their self-esteem and self-confidence crushed, having the opportunity to vindicate their own interests in protection-order proceedings may help empower teens to reassert control over their lives outside of the courthouse.³²²

It is possible, but unlikely, that teens may abuse their capacity to seek protective orders, as improper claims are occasionally asserted even by adult petitioners.³²³ Indeed, parents themselves may be tempted to seek protection orders on behalf of their children for improper purposes, such as intervening in a disfavored, though not abusive, relationship.³²⁴ It is precisely the

316. See *Minors' Rights as Parents*, ST. POL'YS IN BRIEF (Guttmacher Inst., New York, N.Y.), Sept. 1, 2011, at 2 (providing that thirty states allow minors to make medical decisions for their child).

317. See *id.*; see also *An Overview of Minor's Consent Law*, ST. POL'YS IN BRIEF (Guttmacher Inst., New York, N.Y.), Sept. 1, 2011, at 1 (detailing that as of September 2011, twenty-eight states explicitly allow minors to consent to the adoption of their child and twelve states implicitly permit it by not distinguishing between minor and adult parents).

318. KRAMER, *supra* note 74, § 14:2, at 980–87.

319. See, e.g., D.C. CODE § 16-914(a-3)(1) (Supp. 2011) (granting minor parents the right to initiate custody proceedings).

320. See JODIE LEVIN-EPSTEIN & JOHN JUTCHINS, HENRY J. KAISER FAMILY FOUND., ISSUE BRIEF: TEENS AND TANF: HOW ADOLESCENTS FARE UNDER THE NATION'S WELFARE PROGRAM 1–2 (2003) (noting that teen parents are permitted to receive TANF aid, provided that they live with a parent or guardian and attend school or a training program).

321. See *supra* note 31 and accompanying text.

322. See *supra* note 303 and accompanying text.

323. See Kathleen Waits, *Battered Women and Family Lawyers: The Need for an Identification Protocol*, 58 ALB. L. REV. 1027, 1059 (1995) (stating that false battery claims in domestic-violence situations, although rare, do exist).

324. See, e.g., *Claver v. Wilbur*, 280 S.W.3d 570, 573 (Ark. Ct. App. 2008) (dismissing a civil protection order that a mother obtained on behalf of her sixteen-year-old daughter against the daughter's boyfriend because "[t]he mere fact that S.W.'s parents do not like appellant was not a proper ground upon which to issue an order of protection in the absence of evidence of actual physical harm or the fear of imminent physical harm"); see also *Acevedo v. Williams*, 985 So. 2d 669, 669, 671 (Fla. Dist. Ct. App. 2008) (vacating a protection order that a mother obtained on behalf of her daughter against the daughter's boyfriend based solely on mother's

responsibility of judges, however to determine which claims merit relief.³²⁵ Moreover, advocates can counsel teens whose claims are denied about more appropriate recourses and refer them to supportive services. Whatever their motives, providing teens access to civil protection orders creates a rare opportunity for the community to identify and connect with troubled teens facing serious issues.

In short, although it is understandable that parents want to take part in protection-order proceedings, requiring that teens involve parents as a prerequisite to court protection may put teens' lives at risk by deterring or precluding teens from seeking legal protection altogether.³²⁶ As states have concluded in other contexts, enabling teens to take independent action in protection-order cases will encourage teens to come forward and seek protection and better protect teens' safety and well-being in the long term.³²⁷

2. Parent Notification

To more effectively encourage abused teens to seek legal protection, access to protection orders should not be conditioned on parent notification. The legislative histories of the parent-notification provisions in the California and Tennessee protective-order laws do not offer any insight into the intent behind the provisions.³²⁸ In the District of Columbia, supporters of parent notification argued that a parent should be notified when his or her child files a petition for a protection order because notification enables parents to protect the safety of the parent and other children in the household, to help enforce any protection order obtained by the child, and to preserve the sanctity of the family.³²⁹ Despite objections raised by numerous domestic-violence experts, the District of Columbia enacted a parent-notification requirement.³³⁰

allegations of sexual contact, given that the sexual contact was consensual and lawful and there were no allegations of abuse); *Anderson v. McGuffey ex rel. McGuffey*, 746 So. 2d 1257, 1258 (Fla. Dist. Ct. App. 2000) (vacating a protection order that a father obtained on behalf of his daughter against the daughter's boyfriend based solely on the father's beliefs that the respondent was a bad influence and that keeping the respondent away from his daughter was in her best interest).

325. See *Brustin*, *supra* note 16, at 352 (noting that granting teens capacity to represent their own interests in protection-order proceedings does not amount to a grant of unchecked autonomy because "judges must review and sign protection orders before they are issued").

326. See *Hearing on the Intrafamily Offenses Act of 2007*, *supra* note 28, at 22 (testimony of Karen Cunningham, Director of Legal Services of WEAVE); see also *id.* at 3 (testimony of Judith Sandalow, Executive Director, The Children's Law Center) (emphasizing that the teens who need the most help are the most likely to be deterred by requiring parental involvement).

327. See *supra* notes 312–20.

328. See S.B. Analysis, Assem. B. 2155, Reg. Sess., at 1–3 (Cal. 1996); Assem. B. Analysis, B. 2155, Reg. Sess., at 1 (Cal. 1996).

329. See *Hearing on the Intrafamily Offenses Act of 2007*, *supra* 28, at 3–4 (statement of Patricia A. Riley, Special Counsel to the U.S. Attorney).

330. See D.C. CODE § 16-1004(e) (Supp. 2011) ("If a minor has filed a petition for civil protection without a parent, guardian, or custodian, the court shall send a copy of any order issued

Statutes that grant minors the capacity to seek protection orders on their own, but also direct courts to notify a parent when a minor has taken this step, are self-defeating. Teens who are reluctant to involve a parent in a protection-order case at the outset are likely to be deterred from initiating a case if the court subsequently will notify a parent about the litigation. For this reason, parent-notification provisions alienate the same teens that statutes granting minors standing and capacity are intended to protect.

California and the District of Columbia grant courts the discretion to waive parent notification if doing so serves a minor's best interests.³³¹ Although the waiver provision is helpful, it only slightly diminishes the potential harm. Neither the protection-order statutes nor the common law in California or the District of the Columbia provide any guidance regarding what factors a court should consider when assessing whether parent notification serves a minor's best interests.³³² As a result, whether parent notification will be waived is unpredictable, as it is a case-by-case determination subject to the presiding judge's discretion. This unpredictability makes seeking a protection order a risky proposition for teens who are adamantly opposed to informing their parents about their decision to seek legal protection,³³³ even if such teens can offer persuasive reasons in support of a waiver.

In practice, the "best interests" test is superfluous. The act of seeking legal protection itself demonstrates a minor's maturity and sound judgment and also likely indicates a need for intervention, as the intensity and frequency of abuse in her relationship are likely increasing.³³⁴ If enhancing teens' safety by encouraging them to obtain legal protection from abuse is the goal of permitting minors to seek protection orders independently, then, as a policy matter, it generally will be in an abused minor's best interest to actually be protected by such an order. If a parent-notification mandate will cause a minor to choose to dismiss her petition, then it will be in a minor's best interest to waive the parent-notification requirement.

In Tennessee, minors must obtain the signature of a parent to file a petition for a protection order, unless they obtain the signature of a caseworker from a

. . . and notice of the hearing to that parent, guardian, or custodian, unless, in the discretion of the court, notification of that parent, guardian, or custodian would be contrary to the best interests of the minor.").

331. *Id.*; See also CAL. CIV. PROC. CODE § 372(b)(2) (West 2004 & Supp. 2011).

332. See CAL. CIV. PROC. CODE § 372(b)(2); D.C. CODE § 16-1004(e). The author's research has revealed no cases in California or the District of Columbia in which a court analyzed whether notifying a parent that a minor is seeking a protection order is in the minor's best interest. Lacking any sources squarely on point, courts and counsel might consult the jurisprudence regarding waivers of parent-notification requirements in the abortion context, as the inquiry necessitates similar analyses of a minor's character and life circumstances. See *infra* Part V.D.

333. See *supra* notes 21–34, 271–75 and accompanying text.

334. See *supra* notes 24–25 and accompanying text.

family violence prevention organization.³³⁵ Although better than offering no alternative to mandated parent involvement, the inclusion of the caseworker option only nominally improves the statute. Minors who are unaware of this option, who are unsure of how to contact such an organization, or who are wary of approaching an unknown organization will not benefit from the provision. Furthermore, the Tennessee statute requires the court to notify a parent when a minor files a petition that is signed by a caseworker, unless notification would “create a threat of serious harm to the minor.”³³⁶ This parent-notification requirement undermines the benefit of the caseworker alternative, which aims to make protection orders available to minors who are unable or unwilling to involve their parents.³³⁷ These same minors are likely to be deterred from filing a petition when the court is likely to notify a parent of its filing.

V. THE PERILS FOR TEENS IN AMBIGUOUS PROTECTION-ORDER STATUTES

Today, state protection-order statutes are frequently ambiguous or silent regarding the extent to which minor victims are accorded standing and capacity to seek protection orders.³³⁸ In practice, ambiguities in protection-order statutes tend to be resolved in favor of excluding minors from seeking protection orders and mandating adult involvement in cases brought by minors, as opposed to permitting minors to proceed alone.³³⁹ As a result, minors choose not to access the legal system for protection, which leaves abused minors in jeopardy.³⁴⁰ To ensure that victims of any age can assert claims for protection, states must extend standing and capacity to minors explicitly.

A. Ambiguity Equals Exclusion

Protection-order statutes with ambiguous standing and capacity requirements directly and indirectly deny teens access to justice. Ambiguity directly results in the exclusion of teens from the protection-order remedy because in practice, ambiguities regarding teens’ rights to standing and capacity typically are construed to circumscribe those rights.³⁴¹ When teens’ rights are not clearly articulated, adult protectionist instincts and perceptions of the legal system as an inappropriate forum for resolving teen problems operate to exclude teens from accessing justice.

335. TENN. CODE ANN. § 36-3-602(b) (2010).

336. *Id.*

337. See WEAVE Focus Groups, *supra* note 271 (illustrating how teens are reluctant to tell their parents about abuse for fear that parents may not adequately assist them).

338. See *supra* Parts III.A.3, III.B.3.b.

339. See *infra* Part V.A.

340. See Suarez, *supra* note 23, at 549 (noting how parent notification discourages teens from taking advantage of the legal system).

341. Cf. Largio, *supra* note 62, at 969 (describing the ways in which definitions of “dating relationship” in protection-order statutes have been interpreted to disqualify teen relationships).

For example, before March 2009 the District of Columbia's protection-order statute, the Intrafamily Offenses Act, was entirely ambiguous as to whether and under what circumstances abused minors had standing to seek protection orders, and concomitantly, whether and to what extent minors had the capacity to represent themselves in related court proceedings.³⁴² In fact, the statute made no mention of minors or of age in any of its provisions.³⁴³ During this time, the lack of specificity in the statute often prevented teens from obtaining protection.³⁴⁴ Whether teens were determined to have standing and capacity to pursue protection orders turned on which court officers considered their claims and whether they had counsel.³⁴⁵ Teens who sought to file petitions for protection orders without a parent or counsel present were often turned away from the courthouse.³⁴⁶

In January 2009, the D.C. Council enacted the Intrafamily Offenses Act of 2008, which, among many other things, explicitly accorded teens standing to file petitions for civil protection orders on their own and the capacity to represent themselves in related court proceedings to varying extents depending on their ages and their relationships to the respondents.³⁴⁷ The clarity in the new provisions has enhanced access to justice for abused teens.³⁴⁸ Minors no longer must struggle to access relief from the court; the court routinely permits minors to file petitions on their own and works with advocates to address any procedural issues.³⁴⁹

The stark contrast in teens' experiences seeking protection orders in the District of Columbia under the current and former versions of the Intrafamily Offenses Act provides an important case study. The experience of District of Columbia teens demonstrates that when protections are not explicitly extended to teens, courts start from "no,"³⁵⁰ and tend to resolve statutory ambiguities in favor of denying teens access to the protection-order remedy if they are not

342. See, e.g., D.C. CODE § 16-1001(1), (5) (2001); see also *Hearing on the Intrafamily Offenses Act of 2007*, *supra* note 28, at 6–9 (testimony of Karen Cunningham, Director of Legal Services for WEAVE) (detailing the significant uncertainty in the District of Columbia's domestic-violence statute with regard to teens' ability to file for protective orders on their own).

343. See, e.g., D.C. CODE § 16-1001(1), (5).

344. *Hearing on the Intrafamily Offenses Act of 2007*, *supra* note 28, at 8 (testimony of Karen Cunningham, Director of Legal Services for WEAVE).

345. *Id.*

346. *Id.*

347. Intrafamily Offenses Act of 2008, 56 D.C. Reg. 1338, 1340–41 (Feb. 13, 2009) (codified as amended in scattered sections of the D.C. Code).

348. See Interview with Elisabeth Olds, Co-Exec. Dir. of Survivors & Advocates for Empowerment, in Washington, D.C. (Aug. 25, 2010) (explaining that the enactment of the Intrafamily Offenses Act of 2008 has ensured that teens are able to initiate claims for protection orders when they seek help from the Superior Court of the District of Columbia).

349. *Id.*

350. *Id.*

accompanied by a parent or another adult.³⁵¹ By contrast, when statutes explicitly articulate the protections accorded to teens, courts start from “yes,” and assume that unaccompanied teens have the right to access protection orders, ensuring that their claims proceed.³⁵²

Ambiguity with regard to standing and capacity indirectly encourages the exclusion of teens from the protection-order remedy because it fosters unpredictability for parties and attorneys.³⁵³ Because most trial-court opinions in civil protection-order cases are not written and few cases are appealed, very few published opinions exist that analyze these ambiguities to guide judicial decision making and help attorneys and parties predict how courts will interpret protection-order statutes.³⁵⁴ Where the availability of protection orders for teens is unpredictable, advocates and lawyers may be reluctant to encourage teens to seek court protection for fear that they will be denied access to the remedy, which will further disempower and alienate them.³⁵⁵ Teen petitioners may be reluctant to invest time and effort into initiating protection-order cases without a guarantee that they will be able to proceed.³⁵⁶ Other teen victims also may be deterred from seeking protection orders if they hear about their peers being turned away from the courthouse.³⁵⁷ Thus, the absence of clear legal standards indirectly makes protection orders less accessible to teens. For these reasons, to best protect teens, protection-order statutes should not only extend standing and capacity to teens, but they should do so explicitly.

B. Ambiguous Statutes Should Be Interpreted to Accord Standing to Minors

Several legal principles support extending standing to minor victims to seek protection orders where statutes are ambiguous or silent on the issue. First, as a general matter, a petitioner’s age is not essential to the establishment of

351. *See id.* (noting that the default response of the Superior Court of the District of Columbia under the prior version of the Intrafamily Offenses Act was to require adult involvement in cases initiated by teens).

352. *Id.*

353. *See Hearing on the Intrafamily Offenses Act of 2007, supra* note 28, at 8 (testimony of Karen Cunningham, Director of Legal Services for WEAVE) (commenting on the consequences of the District of Columbia’s (formerly) ambiguous statute).

354. *See id.* (“Some judges permit minors to file for a CPO on their own behalf, others demand that an adult file on behalf of the minor, and others still make decisions on a case-by-case basis, considering the maturity of the partners and the severity of the abuse.”).

355. *Id.* at 9 (commenting that if a teen’s first attempt to seek protection is rejected, she will likely not seek legal remedies for protection again).

356. *See supra* notes 289–90 and accompanying text.

357. *See Hearing on the Intrafamily Offenses Act of 2007, supra* note 28, at 9 (testimony of Karen Cunningham, Director of Legal Services for WEAVE) (“If the word on the street is that the . . . legal system will not help teens, teens may be deterred entirely from seeking civil protection orders . . .”).

standing.³⁵⁸ Although the age of majority impacts a party's legal capacity to pursue litigation independently, it does not necessarily negate the party's right to assert a claim for legal relief.³⁵⁹ Absent a statute or constitutional provision to the contrary, "[c]hildren enjoy the same right to protection and legal redress for wrongs done [to] them" as adults.³⁶⁰ Indeed, some states have determined that "only the strongest reasons, grounded in public policy, can justify limitation or abolition of [children's] rights."³⁶¹ This view accords with constitutional jurisprudence. The Supreme Court has made clear that "[c]onstitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults,

358. *Gonzalez ex rel. Gonzalez v. Reno*, 86 F. Supp. 2d 1167, 1180 (S.D. Fla. 2000).

359. *See id.* at 1180–81 (indicating that a child can have standing to sue despite her age, yet lack capacity to do so, thus requiring a representative to bring the suit on her behalf); *see also supra* text accompanying note 84.

360. *Sorenson v. Sorenson*, 339 N.E.2d 907, 912 (Mass. 1975); *see also* *Petersen v. City & Cnty. of Honolulu*, 462 P.2d 1007, 1009 (Haw. 1969) ("[I]n general, minor children are entitled to the same redress for wrongs done them as are any other persons." (citing *Dunlap v. Dunlap*, 150 A. 905, 906 (N.H. 1930))); *Wilbon v. D.F. Bast Co.*, 382 N.E.2d 784, 790–91 (Ill. 1978) ("[A] minor should not be precluded from enforcing his rights unless clearly debarred from so doing by some statute or constitutional provision." (citing *Walgreen Co. v. Indus. Comm'n*, 153 N.E. 831, 833 (Ill. 1926))); *Norris v. Mingle*, 29 N.E.2d 400, 402 (Ind. 1940) ("[A] minor should not be precluded from enforcing his rights unless the same are clearly barred on account of some statutory or constitutional provision."); *Gillette v. Del. L. & W.R. Co.*, 102 A. 673, 673 (N.J. 1917) (holding that an infant's minority does not prevent him from initiating suit to redress legal claims); *Henry ex. rel. Henry v. City of N.Y.*, 724 N.E.2d 372, 374 (N.Y. 1999) ("[A]n infant's right of action 'at its origination is and remains in the infant Infancy does not incapacitate the infant from bringing the action.'" (quoting *Murphy v. Vill. of Fort Edward*, 107 N.E. 716, 717 (N.Y. 1915))); *Harrison v. Wallton's Ex'r*, 30 S.E. 372, 373 (Va. 1898) (holding that minors can bring suit through adult representatives to enforce their rights during their minority); *Hunter v. N. Mason High Sch.*, 529 P.2d 898, 899 (Wash. Ct. App. 1974) ("The legal disabilities of minors have been firmly established by common law and statute. They were established for the protection of minors, and not as a bar to the enforcement of their rights." (citing 43 C.J.S. *Infants* § 19 (1945))), *aff'd*, 539 P.2d 845 (Wash. 1975); *Lee v. Comer*, 224 S.E.2d 721, 722–23 (W. Va. 1976) ("We perceive no reason why minor children should not enjoy the same right to legal redress for wrongs done to them as others enjoy."). Courts themselves often confuse the issues of standing and capacity, but even in such instances they regularly hold that minors have the right to seek legal relief in the courts for wrongs done to them (that is, minors have standing to assert legal claims), but only through appropriate adult representatives (that is, minors lack legal capacity to pursue litigation on their own). *See, e.g., In re Morehead*, 706 P.2d 480, 481 (Kan. Ct. App. 1985) ("[M]inors generally have the capacity to sue and to be sued. However, the action must be brought in the name of the child by a next friend or guardian." (internal citations omitted)); *Day v. MacDonald*, 586 N.E.2d 1135, 1140 (Ohio Ct. App. 1990) (holding that "a minor has no standing to sue before he or she reaches the age of majority and, therefore, a minor must sue by a guardian or other like fiduciary or by a next friend").

361. *Sorenson*, 339 N.E.2d at 912 (citing *Peterson*, 462 P.2d at 1009); *see also* *Norris*, 29 N.E.2d at 402 ("It has always been the policy of the law in this state that the courts should carefully guard the rights of minors."); *Hunter*, 529 P.2d at 899 ("[I]t would be fundamentally unfair for a minor to be denied his recourse to the courts because of circumstances which are both legally and practically beyond his control.").

are protected by the Constitution and possess constitutional rights.”³⁶² Although the Constitution does not mention children, a series of Supreme Court decisions has established that minors are “persons” under the Bill of Rights and are entitled to have their rights protected against state interference under the Due Process Clause of the Fourteenth Amendment.³⁶³ In reaching these decisions, the Supreme Court implies that minors have standing to seek legal relief when their constitutional rights are violated, because without standing to seek redress for deprivations of rights, minors’ rights would have symbolic value but no practical effect.³⁶⁴ To be sure, minors’ constitutional rights are not coextensive with adults’; the Supreme Court has made clear that states may impose greater burdens on minors’ exercise of constitutional rights if doing so serves a state interest not otherwise applicable to adults.³⁶⁵

362. *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 74 (1976).

363. *See, e.g., Thompson v. Oklahoma*, 487 U.S. 815, 838 (1988) (finding that the Eighth and Fourteenth Amendments prohibited the execution of a person who was a minor at the time of his offense); *New Jersey v. T.L.O.*, 469 U.S. 325, 333 (1985) (holding that minors are entitled to the Fourth Amendment’s protections against unreasonable searches and seizures, including at school); *Carey v. Population Servs. Int’l*, 431 U.S. 678, 692 (1977) (holding that minors are entitled to the right to privacy guaranteed by the Fourteenth Amendment’s Due Process Clause, including the right to purchase contraceptives); *Breed v. Jones*, 421 U.S. 519, 541 (1975) (holding that the Fifth Amendment’s prohibition against double jeopardy, which applies to the states through the Fourteenth Amendment, protects minors); *Goss v. Lopez*, 419 U.S. 565, 581 (1975) (holding that minors have a right to procedural due process in school disciplinary proceedings, including being provided with reasonable notice of the charges against them and an opportunity to respond); *In re Winship*, 397 U.S. 358, 365 (1970) (holding that minors’ rights to procedural due process require that they be adjudicated in juvenile delinquency proceedings by proof beyond a reasonable doubt); *Tinker v. Des Moines Indept. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (holding that minors enjoy the right to free speech accorded by the First Amendment); *Levy v. Louisiana*, 391 U.S. 68, 71–72 (1968) (holding that minors have the right to equal protection under the law and that a law permitting “legitimate,” but not “illegitimate,” children to seek compensation for the wrongful death of their mothers lacked a rational basis); *In re Gault*, 387 U.S. 1, 30–31, 41, 55, 57 (1967) (holding that minors have a right to procedural due process and fair treatment in juvenile delinquency proceedings, which requires, among other things, that minors are given adequate notice of the charges against them, appointed counsel if they cannot afford to retain an attorney, accorded the right to confront and cross-examine witnesses, and are protected by the Fifth Amendment privilege against self-incrimination). *See generally* Clark, *supra* note 211 (collecting and summarizing constitutional cases involving children’s rights).

364. *See supra* notes 339–40 and accompanying text.

365. *See, e.g., T.L.O.*, 469 U.S. at 340–42 (holding that schools must only show that a search of a minor’s property is reasonable under the circumstances to satisfy the Fourth Amendment, a less exacting requirement than the probable-cause standard required for searches of adults); *Bellotti v. Baird*, 443 U.S. 622, 640, 643–44 (1979) (holding that states may require parent notification or consent for minors seeking abortions if the state creates a mechanism for mature minors, or minors who can demonstrate that parental involvement would contravene their best interests, to bypass the requirement); *McKiever v. Pennsylvania*, 403 U.S. 528, 545 (1971) (holding that minors’ rights to procedural due process, unlike adults’, do not require states to accord minors the right to demand a jury trial in juvenile delinquency proceedings); *Ginsberg v. New York*, 390 U.S. 629, 638 (1968) (finding a statute prohibiting the sale of obscene materials to minors to be constitutional).

Nonetheless, the Constitution's baseline assumption is that minors, like adults, have rights warranting legal protection.³⁶⁶

Moreover, constitutional provisions and statutes in several states explicitly guarantee to minors a general right to access the courts for redress of grievances.³⁶⁷ South Dakota, for example, dictates that “[a] minor may enforce his rights by civil action, or other legal proceedings, in the same manner as a person of full age.”³⁶⁸ Even where minors’ right to access the courts is not explicitly codified, by establishing the procedures to be followed when courts are presented with claims by minor parties who lack legal capacity to sue, court rules in many states manifest a presumption that individuals of any age are entitled to pursue legal claims.³⁶⁹ For all of these reasons, teens should be presumed to have the same rights to standing to seek protection orders as adults, unless the legislature explicitly has denied teens standing in the governing statute.

Furthermore, court interpretations of protection-order statutes support conferring standing on teens when the law does not explicitly prohibit doing so. In numerous jurisdictions, it is well-settled that because of the remedial nature of statutes creating protection orders, the statutes should be liberally construed to benefit the class of individuals the statutes were created to protect—victims of domestic violence.³⁷⁰ In a practical sense, this principle of

366. See *supra* note 363 and accompanying text.

367. See Jeruss, *supra* note 261, at 904 tbl.1 (including an appendix compiling state constitutional provisions and statutes according minors a right of access to the courts).

368. S.D. CODIFIED LAWS § 26-1-3 (2004).

369. See Jeruss, *supra* note 261, at 904 tbl.1 (including states that find a minor’s right of access to courts through case law, rather than through statute); *cf.* Alison M. Brumley, Comment, *Parental Control of a Minor’s Right to Sue in Federal Court*, 58 U. CHI. L. REV. 333, 356 (1991) (“Congress designed [Federal Rule of Civil Procedure] Rule 17(c) to promote and protect the ability of minor plaintiffs and defendants to pursue their legal interests with such guidance as the trial court deems necessary in the best interests of the minor. The rule reflects a belief that minors as well as adults should have access to the courts to protect their legal rights.”).

370. See, e.g., W. VA. CODE ANN. § 48-27-101(b) (LexisNexis 2009 & Supp. 2011) (“This article shall be liberally construed and applied to promote the following purposes: (1) To assure victims of domestic violence the maximum protection from abuse that the law can provide.”); *Cruz-Foster v. Foster*, 597 A.2d 927, 929 (D.C. 1991) (“The Intrafamily Offenses Act . . . was designed to protect victims of family abuse from acts and threats of violence. . . . ‘The paramount consideration concerning this legislation is that it is remedial,’ and the Act must be liberally construed in furtherance of its remedial purpose.” (quoting *United States v. Harrison*, 461 F.2d 1209, 1210 (D.C. Cir. 1972))); *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 98–99 (Minn. Ct. App. 2009) (“As a remedial statute, the Domestic Abuse Act receives liberal construction in favor of the injured party.” (quoting *Swensen v. Swensen*, 490 N.W.2d 668, 670 (Minn. Ct. App. 1992))); *Frisk v. Frisk*, 719 N.W.2d 332, 335 (N.D. 2006) (noting that the state’s protection-order statute is a remedial statute that the court construes “liberally, with a view to effecting its objects and to promoting justice” (quoting *Gaab v. Ochsner*, 636 N.W.2d 669, 671 (N.D. 1980))); *Raynes v. Rogers*, 955 A.2d 1135, 1140 (Vt. 2008) (stating that, as a remedial statute, Vermont’s Abuse Prevention Act “must be liberally construed to ‘suppress the evil and advance the remedy

liberal construction means that when courts are faced with a choice between alternate interpretations of protection-order statutes, courts should select interpretations that provide the greatest protections for victims of domestic violence. From this perspective, ambiguous statutes regarding minors' right to standing to pursue the protection-order remedy should be interpreted to extend standing to minors.

The West Virginia Supreme Court relied, in part, on the principle of liberal construction in support of its holding that West Virginia's protection-order statute accords standing to minor victims of domestic violence.³⁷¹ The West Virginia protection-order statute included children and stepchildren within the list of qualifying relationships³⁷² and provided that any "person" seeking relief for himself or herself could file a petition for a protective order,³⁷³ but did not specify whether minors had standing as "persons" to seek protection.³⁷⁴ In *Katherine B.T. v. Jackson*, the court affirmed the issuance of a protection order sought by a fifteen-year-old against his mother.³⁷⁵ In support of its conclusion that the legislature intended to protect all victims of domestic violence, minors and adults, the court cited the statute's findings and purposes section, which provided, in part: "(b) This article shall be liberally construed and applied to promote the following purposes: (1) To assure victims of domestic violence the maximum protection from abuse that the law can provide."³⁷⁶

Finally, public policy supports extending standing to all individuals, regardless of age, when the law is silent to instill confidence in the legal system. As recognized by Michigan's Court of Appeals:

Courts must stand prepared to protect the rights of all citizens, including teenagers. Denying a teen-aged litigant access to our courts simply because he happens to be a minor not only tends to lessen the confidence of young people in our legal system but adds credence to the existence of the 'generation gap.' And it may even help widen that gap.³⁷⁷

This is especially true in the case of abused minors coming forward to seek assistance from the legal system. Teens may be especially reticent to seek

intended by the Legislature'" (quoting *Dep't of Corr. v. Human Rights Comm'n*, 917 A.2d 451, 454 (Vt. 2006)).

371. See *Katherine B.T. V. Jackson*, 640 S.E.2d 569, 576 (W. Va. 2006) (concluding that the state legislature intended for the protection-order statute to extend to all domestic-violence victims, regardless of age).

372. See W. VA. CODE ANN. § 48-27-204(7)(4) (LexisNexis 2009 & Supp. 2011).

373. See *id.* § 48-27-305 (LexisNexis 2009 & Supp. 2011); see also *id.* § 48-27-304(b) (LexisNexis 2009 & Supp. 2011) ("No person shall be refused the right to file a petition under the provisions of this article. No person shall be denied relief under the provisions of this article if she or he presents facts sufficient under the provisions of this article for the relief sought.")

374. See *Katherine B.T.*, 640 S.E.2d at 575-76.

375. *Id.* at 571-72.

376. *Id.* at 576 (citing W. VA. CODE § 48-27-101 (2001)).

377. *Buckholz v. Leveille*, 194 N.W.2d 427, 427 (Mich. Ct. App. 1971).

assistance from the legal system because they feel intimidated by or lack experience with the legal system, have had negative personal experiences with law enforcement or the courts, or perceive the legal system to be racist, ineffective, or otherwise out of touch with their community.³⁷⁸ Teens who are turned away when they reach out to the courts for help are unlikely to seek court assistance again, and may be further discouraged from pursuing other avenues of relief.³⁷⁹ Conversely, according minors standing to seek protection orders fosters their confidence in the legal system and increases the likelihood that minors will turn to the legal system for help in the future.

In addition to West Virginia, the highest courts in at least two other states have interpreted protection-order statutes that are silent on the issue to accord standing to minors.³⁸⁰ The Supreme Court of South Dakota interpreted the state's protection-order statute to grant minors standing coextensive with that accorded to adults,³⁸¹ and, in *D.M.H. ex rel. Hefel v. Thompson*, the Supreme Court of Iowa interpreted the Iowa statute to accord minors standing to seek protection orders against cohabitants and spouses.³⁸²

Unfortunately, the Iowa Supreme Court's decision exemplifies the need for precision in legislative drafting on matters of standing. The Iowa protection-order statute defines "[f]amily or household members" as "spouses, persons cohabiting, parents, or other persons related by consanguinity or affinity," but "does not include children under age eighteen" of such persons.³⁸³ In doing so, the statute appears to explicitly preclude the issuance of protection orders between parents and children, and children and their adult relatives.³⁸⁴ Yet, the statute seems to contemplate that protection orders will be issued to protect minors in some circumstances because it permits "[a] person, including a parent or guardian on behalf of an unemancipated minor, [to] seek relief from domestic abuse by filing a verified petition."³⁸⁵ Furthermore, because all minors are under the age of eighteen,³⁸⁶ it is unclear under what circumstances the statute permits the issuance of protection orders to benefit or restrain minor parties.

The Supreme Court of Iowa resolved this question by interpreting the statute to "afford[] a right of action against domestic abuse to married persons under

378. See WEAVE Focus Groups, *supra* note 271.

379. See *supra* notes 355–56 and accompanying text.

380. See *D.M.H. ex rel. Hefel v. Thompson*, 577 N.W.2d 643, 646 (Iowa 1998); *Beermann v. Beermann*, 559 N.W.2d 868, 869–70, 874 (S.D. 1997).

381. See *Beermann*, 559 N.W.2d at 874.

382. 577 N.W.2d at 646.

383. IOWA CODE ANN. § 236.2(4)(a)–(b) (West 2008 & Supp. 2011).

384. See *D.M.H.*, 577 N.W.2d at 646 (noting how the Iowa statute excludes minor children of "family or household members" from the definition of domestic abuse).

385. IOWA CODE ANN. § 236.3 (West 2008 & Supp. 2011).

386. See *id.* § 599.1 (West 2001 & Supp. 2011) (noting that the age of minority extends to age eighteen).

age eighteen and children under eighteen who are cohabitating.”³⁸⁷ The court explicitly held that the statute precluded only actions brought by children who witnessed abuse committed by or experienced by a family or household member parent, but implicitly also held that the statute precluded actions by children abused by family or household members,³⁸⁸ a conclusion that the Iowa Court of Appeals later reached in another case.³⁸⁹

Although the *D.M.H.* decision provides some guidance regarding the extent of minors’ standing to seek relief under the statute, the opinion leaves many questions unanswered. Under the court’s reasoning, by virtue of sharing marital or cohabitant relationships, minors are viewed as persons of their own accord, and not solely as the children of others.³⁹⁰ The court does not explain, however, why its reasoning would not also extend a right of action to children who fall within the other relationship categories within family or household membership, such as children who are themselves parents and abused by co-parents, or who are abused by child relatives. Furthermore, because the opinion says nothing about minors’ standing to seek protection orders in the context of other relationships covered by the statute apart from family or household membership, it does not elucidate whether the lack of an age requirement in those provisions includes or excludes minors from their protections.

Like Iowa’s, statutes that explicitly confer standing on adults to seek protection orders on behalf of minors, but remain ambiguous with regard to the rights to standing enjoyed by minors themselves, should be interpreted to extend standing to minors. An adult representative cannot attempt to vindicate a right on a minor’s behalf if the law does not accord such a right to a minor herself.³⁹¹ Washington’s Supreme Court affirmed this principle when it held that the same standing restrictions that (formerly) prevented a minor under sixteen years of age from seeking a protection order against a dating partner on her own behalf also denied a parent standing to seek a protection order against a dating partner on behalf of a minor child under the age of sixteen.³⁹² Conversely, a grant of standing to an adult to vindicate a minor’s rights

387. *D.M.H.*, 577 N.W.2d at 646.

388. *Id.*

389. *P.M. v. R.H.*, No. 03–2059, 2004 WL 1899919, at *2 (Iowa Ct. App. Aug. 26, 2004).

390. *D.M.H.*, 577 N.W.2d at 646 (noting how minors who are married or are cohabiting with another are entitled to protection, but that children of family or household members are excluded).

391. See, e.g., *M.A. v. E.A.*, 909 A.2d 1168, 1171 (N.J. Super. Ct. App. Div. 2006) (precluding a mother from bringing a claim on behalf of her minor daughter against the child’s stepfather because the statute permitted only persons over eighteen or emancipated minors to bring claims against household members); *Strother v. Strother*, 34 P.3d 736, 737 (Or. Ct. App. 2001) (overturning a protection order sought by a mother on behalf of her minor child against the child’s father because the statute did not offer protection to minors against parents).

392. *Neilson ex rel. Crump v. Blanchette*, 201 P.3d 1089, 1092 (Wash. Ct. App. 2009).

implicitly indicates that minors themselves must have standing to seek relief as well.³⁹³

C. Adult Standing to Seek Protection on Behalf of Teens Should Not Be Interpreted to Deprive Teens of Standing

Courts may also interpret ambiguous protection-order statutes to deny adults standing to seek protection orders on behalf of minors. Thus, as with grants of standing to minors, it is important that states unequivocally accord adults standing to file on behalf of minors.

The extent to which adults are accorded standing to seek protection orders benefitting minors is a separate inquiry from whether minors are accorded the capacity to seek protection orders on their own.³⁹⁴ In practice, however, those two issues may be conflated incorrectly, with courts interpreting an explicit grant of standing to adults to deprive standing or capacity to minors.³⁹⁵ In *Katherine B.T. v. Jackson*, the West Virginia Supreme Court of Appeals recognized the distinct nature of these inquiries and held that the state protection-order statute's language authorizing an adult to file a petition for a protection order on behalf of minor family or household members did not deprive a minor of the right to file a petition for a protection order on his own behalf.³⁹⁶ To mitigate this potential for confusion, however, legislatures must specifically articulate the extent to which adults are accorded standing to seek relief on behalf of minors and the extent to which minors are accorded standing and legal capacity to represent their own interests in protection-order proceedings.

D. Ambiguous Statutes Should Be Interpreted to Accord Capacity to Minors, as Permitted by Other Law

Several legal principles also support extending legal capacity to teens to represent themselves in protection-order proceedings when statutes are ambiguous or silent on the issue. First, because teens are more likely to seek protection orders if they are empowered to represent their own interests in court proceedings, the principle of liberal construction supports extending legal capacity to teens when statutes are ambiguous.³⁹⁷

Furthermore, statutes and court rules governing capacity in over half of states grant courts the discretion to determine whether a minor party is able to represent herself or whether the appointment of an adult representative is

393. Cf. *Katherine B.T. v. Jackson*, 640 S.E.2d 569, 575–76 (interpreting the broad language of the West Virginia statute permitting the filing of petitions for protection orders by any “person” or adult family or household members on behalf of minor family or household members to accord standing to minors).

394. See *supra* note 84 and accompanying text.

395. See *supra* Part III.B.3.b.

396. *Katharine B.T.*, 640 S.E.2d at 575–76.

397. See *supra* notes 370–76 and accompanying text.

required.³⁹⁸ In accordance with its laws regarding capacity, the Supreme Court of South Dakota has affirmed that trial courts have the discretion in minors' civil protection-order proceedings to appoint a guardian ad litem or conclude that no guardian is necessary, thus permitting the minor to proceed alone.³⁹⁹ Applicable laws in other states indicate that court appointment of guardians ad litem for minor parties is discretionary, not mandatory.⁴⁰⁰ Likewise, in the twenty-four states that follow Federal Rule of Civil Procedure 17(c), a court may permit a minor party to proceed on her own, without involving a parent or another adult representative, if the court determines that the minor's interests will be adequately protected.⁴⁰¹ Federal Rule of Civil Procedure 17(c) addresses the procedures to be applied in federal court when an action is brought by a minor or incompetent person⁴⁰² and explicitly permits general guardians, committees, conservators, or like fiduciaries to sue on behalf of minors.⁴⁰³ Minors lacking one of these enumerated representatives "may sue by a next friend or by a guardian ad litem. The court must appoint a guardian

398. Several states accord minor parties ages fourteen and older the right to select their adult representatives, subject to court approval. *See, e.g.*, ARIZ. REV. STAT. ANN. § 14-5203 (2005 & Supp. 2010); CAL. CIV. PROC. CODE § 373(a)–(c) (West 2004 & Supp. 2011); MONT. CODE ANN. § 25-5-301(1)–(2) (2011); NEV. REV. STAT. ANN. § 12.050(1)–(2) (LexisNexis 2008); N.D. CENT. CODE § 28-03-01 (2006); WASH. REV. CODE ANN. § 4.08.050 (West 2005 & Supp. 2011); WIS. STAT. ANN. § 803.01(b)(2)–(3) (West 1994 & Supp. 2010); ALA. R. CIV. P. 17(d); MICH. CT. R. 2.201(E)(2); MINN. R. CIV. P. 17.02; N.Y. C.P.L.R. 1202(a)(1) (McKinney 1997); OR. R. CIV. P. 27(A)(1); S.C. R. CIV. P. 17(d)(3); UTAH R. CIV. P. 17(c). Several other states require adults to represent the interests of minor parties in all court proceedings, without exception. *See, e.g.*, ARK. CODE ANN. § 16-61-103(a) (2005); LA. CODE CIV. PROC. ANN. art. 683(A)–(B) (2011); MO. ANN. STAT. § 507.110 (West 2003 & Supp. 2011); NEB. REV. STAT. ANN. § 25-307 (LexisNexis 2004 & Supp. 2010); WIS. STAT. ANN. § 803.01(3)(a) (West 1994 & Supp. 2010); IOWA R. CIV. P. 1.210; KY. R. CIV. P. 17.03(1); MICH. CT. R. 2.201(E); MINN. R. CIV. P. 17.02; N.Y. C.P.L.R. 1201 (McKinney 1997 & Supp. 2011); OR. R. CIV. P. 27(A); PA. R. CIV. P. 2027; UTAH R. CIV. P. 17(b).

399. *Beermann v. Beermann*, 559 N.W.2d 868, 870–71 (S.D. 1997).

400. *See, e.g.*, CONN. GEN. STAT. ANN. § 45a-132(b) (West 2004 & Supp. 2011) (giving courts discretion to appoint a guardian ad litem in probate proceedings); N.H. REV. STAT. ANN. § 464-A:41 (LexisNexis 2007).

401. *See* GA. CODE ANN. § 9-11-17(c) (2006); KAN. STAT. ANN. § 60-217(c) (West 2005); OKLA. STAT. ANN. tit. 12, § 2017(c) (West 2010); S.D. CODIFIED LAWS § 15-6-17(c) (2011); ALA. R. CIV. P. 17(c); ALASKA R. CIV. P. 17(c); ARIZ. R. CIV. P. 17(g); COLO. R. CIV. P. 17(c); DEL. SUPER. CT. R. CIV. P. 17(c); FLA. R. CIV. P. 1.210(b); HAW. R. CIV. P. 17(c); IDAHO R. CIV. P. 17(c); ME. R. CT. CIV. P. 17(b); MASS. R. CIV. P. 17(b); MISS. R. CIV. P. 17(c); MONT. R. CIV. P. 17(c); NEV. R. CIV. P. 17(c); N.M. DIST. CT. R. CIV. P. 1-017(c); N.D. R. CIV. P. 17(b); OHIO R. CIV. P. 17(B); S.C. R. CIV. P. 17(c); TENN. CT. R. ANN. 17.03; VT. R. CIV. P. 17(b); WYO. R. CIV. P. 17(c); *see also* Jeruss, *supra* note 261, at 875–78, 905–10 (comparing state procedural rules to the Federal Rule of Civil Procedure 17(c)). *But see Katherine B.T.*, 640 S.E.2d at 577 (holding that West Virginia Rule of Civil Procedure 17(c) requires that "a minor must have either a next friend or guardian in order to prosecute or defend civil actions generally").

402. FED. R. CIV. P. 17(c)(1).

403. *Id.*

ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.”⁴⁰⁴

Although Rule 17(c) may be characterized as mandating the appointment of a guardian ad litem for minor parties who appear in court without an adult representative, courts repeatedly have interpreted Rule 17(c) to accord judges broad discretion to protect unrepresented minors’ interests in litigation by appointing—or not—adult representatives as they deem appropriate.⁴⁰⁵ As explained by the Fifth Circuit Court of Appeals:

We spell out the [Federal Rule of Civil Procedure 17(c)] to mean: (1) as a matter of proper procedure, the court should usually appoint a guardian ad litem; (2) but the [c]ourt may, after weighing all the circumstances, issue such order as will protect the minor in lieu of appointment of a guardian ad litem; (3) and may even decide that such appointment is unnecessary, though only after the [c]ourt has considered the matter and made a judicial determination that the infant is protected without a guardian.⁴⁰⁶

Cases interpreting Rule 17(c) provide little guidance regarding the factors a court should evaluate to determine whether a minor’s interests are adequately protected without the appointment of a guardian ad litem.⁴⁰⁷ As an alternative, the jurisprudence analyzing whether pregnant minors are entitled to judicial bypass of parent-notification requirements under state abortion laws provides a model of how the issue might be resolved.⁴⁰⁸ In *Bellotti v. Baird*, the Supreme Court held that a court must permit a minor to obtain an abortion without securing parental consent or notifying a parent if the minor establishes her maturity or if the court determines that bypassing the consent or notification

404. *Id.* 17(c)(2).

405. *See, e.g., Gardner ex rel. Gardner v. Parsons*, 874 F.2d 131, 140 (3d Cir. 1989) (stating that “under Rule 17(c), a court may appoint a guardian, or it may decline to do so if the child’s interests may be protected in an alternative manner”); *M.S. v. Wermers*, 557 F.2d 170, 174 (8th Cir. 1977) (noting that the “[a]ppointment of a guardian ad litem is considered to be discretionary under the Federal Rules, provided the District Court enters a finding that the interests of the minor are adequately protected in the event it does not make such appointment”).

406. *Roberts v. Ohio Cas. Ins. Co.*, 256 F.2d 35, 39 (5th Cir. 1958).

407. The few cases addressing this issue hold that a minor party’s interests were adequately protected without an appointed guardian because another adult accompanied the minor to court proceedings. *See, e.g., Cowden v. Ramsey*, 154 B.R. 531, 535 (Bankr. E.D. Ark. 1993) (affirming judgment entered in favor of a minor and holding that the minor’s interests were adequately protected in the litigation, despite the court’s failure to appoint a next friend or guardian ad litem, because the minor’s aunt litigated the case and the minor’s mother was present throughout the proceedings).

408. *See Brumley, supra* note 369, at 348–49 (arguing that courts should apply the text used in *Bellotti v. Baird*, 443 U.S. 622 (1979), which permits a minor to avoid parental notice and consent requirements in seeking an abortion if she demonstrates her maturity, when assessing whether a minor should have a right to sue over parental objection regarding an issue normally reserved to parental discretion under constitutional law).

requirement is in the minor's best interest.⁴⁰⁹ Determining that a minor is sufficiently mature to represent her own interests or that representing herself will serve a minor's best interests would likewise justify extending legal capacity to minors in the protection-order context.

Although one court has recognized that "[n]o definitive list of criteria can be adopted to determine maturity,"⁴¹⁰ courts considering whether a minor is sufficiently mature to be granted a judicial bypass have focused on evaluating a minor's demeanor, life experience, perspective, and judgment.⁴¹¹ In evaluating a minor's demeanor, courts observe "a minor's composure, analytic ability, appearance, thoughtfulness, tone of voice, expressions, and [the minor's] ability to articulate" her reasons for being before the court.⁴¹² In assessing a minor's life experience, courts consider a minor's experience with employment, living away from home, and handling personal finances,⁴¹³ as well as a minor's educational background, extracurricular activities, and grades.⁴¹⁴ Courts weighing a minor's perspective consider the minor's level of appreciation and understanding of the relative gravity and possible detrimental impact of each available option to her, as well as the minor's ability to assess realistically the possible short- and long-term consequences of each option.⁴¹⁵ Courts evaluating a minor's judgment assess the minor's conduct, in light of her circumstances.⁴¹⁶ A minor's autonomous decision to seek a judicial waiver of parent notification itself may be indicative of good judgment.⁴¹⁷ Courts assessing whether bypassing a notification or consent requirement is in a minor's best interest, regardless of her maturity, evaluate factors such as the risks posed to a minor's safety and the potential disruption to the stability of a minor's home life.⁴¹⁸

Each of these factors would similarly weigh in favor of granting a minor legal capacity to represent her interests in a protection-order proceeding. Minors who have the wherewithal to recognize that they need protection from

409. 443 U.S. at 643–44.

410. *In re Doe 2*, 166 P.3d 293, 295 (Colo. App. 2007).

411. *See, e.g.*, *H.B. v. Wilkinson*, 639 F. Supp. 952, 954 (D. Utah 1986) (focusing on a minor's experience, perspective, and judgment); *Ex parte Anonymous*, 806 So. 2d 1269, 1274 (Ala. 2001); *In re Anonymous*, 782 So. 2d 791, 792 (Ala. Civ. App. 2000) (focusing on demeanor); *In re B.S.*, 74 P.3d 285, 290–91 (Ariz. Ct. App. 2003) (considering experience, judgment, and perspective of a minor); *In re Doe*, 973 So.2d 548, 551 (Fla. Dist. Ct. App. 2008) (gauging a minor's good judgment); *In re Doe*, 19 S.W.3d 249, 256 (Tex. 2000) (examining numerous factors in assessing a minor's maturity).

412. *Ex parte Anonymous*, 806 So. 2d at 1274.

413. *Wilkinson*, 639 F. Supp. at 954.

414. *In re Doe*, 19 S.W.3d at 257.

415. *In re B.S.*, 74 P.3d at 290–91.

416. *See In re Anonymous*, 782 So. 2d at 793.

417. *Id.*

418. *See, e.g.*, *In re Doe 2*, 166 P.3d 293, 296 (Colo. App. 2007); *In re Doe*, 866 P.2d 1069, 1075 (Kan. Ct. App. 1994); *In re Doe*, 19 S.W.3d at 282.

an abusive partner and independently approach the court for help typically possess sufficient maturity to represent their interests in related court proceedings. In addition, permitting a minor to seek a protection order independently will nearly always serve her interests in safety and well-being,⁴¹⁹ particularly if a minor will elect not to seek legal protection if she must involve a parent or another adult in the litigation.

In sum, ambiguity regarding teens' rights to standing and capacity in protection-order statutes tends to result in the exclusion of teens from the protection-order remedy.⁴²⁰ To maximize teens' access to protection orders, states must explicitly articulate minors' rights to standing and legal capacity in protection-order statutes. In the interim, courts interpreting ambiguous statutes may be empowered to extend their protections to teens based on the principles of liberal construction, children's rights of access to the courts, public policies authorizing adolescents to make autonomous decisions governing their safety, health, and well-being, and assessments of teen petitioners' maturity and best interests.⁴²¹

VI. CONCLUSION

To offer teens meaningful legal protection from abuse, state legislatures must draft statutes in a manner that facilitates teens' access to civil protection orders. Protection-order statutes must clearly and unconditionally grant abused teens standing and legal capacity to seek protection orders, without requiring parent notification or involvement. At a minimum, protection-order statutes must specifically articulate the circumstances under which minors have standing and capacity to seek protection orders. To best protect teens, protection-order statutes should confer standing without regard to age, and legal capacity on persons ages twelve and older. Furthermore, states should extend protection-order statutes to encompass individuals in romantic, dating, or sexual relationships, as well as to individuals subjected to sexual assault or stalking. Moreover, courts should be authorized to appoint attorneys to represent minor petitioners who need assistance pursuing their claims. Adults should be accorded standing to seek protection orders on behalf of minors who they know are or fear to be experiencing abuse, and courts should be required to consider the wishes of minor petitioners when adults seek protections on their behalf. Protection orders should be available against minor perpetrators ages twelve and older, and safeguards should be put in place to ensure that courts treat minor respondents in an age-appropriate manner at hearings and in any subsequent enforcement proceedings. In short, by expanding the reach of civil protection-order statutes to encompass the abuses experienced by teens

419. *See supra* notes 312–14.

420. *See supra* Part V.A.

421. *See supra* Parts V.B, V.D.

and encouraging eligible teens to come forward and seek relief, these reforms will maximize abused teens' ability to access justice.

APPENDIX

A model protection-order statute for protecting teens would include the following provisions:

(1) In the definitions section:

(a) A minor is an unemancipated individual under the age of 18.

(b) A petitioner is any individual, regardless of age, who alleges that he or she:

(i) has been subjected to abuse or a criminal offense, or has been threatened with a criminal offense by a respondent:

(A) with whom the petitioner is or was related by blood, marriage, or having a child in common;

(B) with whom the petitioner has or had a romantic, dating, or sexual relationship; or

(C) with whom the petitioner shares or has shared a common residence; or

(ii) has been stalked or sexually assaulted by a respondent.

(c) A respondent is any individual aged 12 and older who is alleged to have abused, committed, threatened to commit a criminal offense against, stalked, or sexually assaulted a petitioner.

(2) In the section outlining the procedures for seeking a protection order:

(a) A petitioner, or a person authorized by this section to act on a petitioner's behalf, may file a petition for civil protection in the [appropriate court] against a respondent.

(b) If the petitioner is a minor, the petitioner's parent, guardian, custodian, or another adult may file a petition for civil protection on the petitioner's behalf.

(c) A minor petitioner who is 12 years of age or older may file a petition for civil protection and represent his or her own interests in related proceedings without the involvement of a parent, guardian, or another adult.

(d) A minor who is less than 12 years of age may file a petition for civil protection and participate in related proceedings only if his or her parent, guardian, or custodian, or another adult files the petition on the minor's behalf and represents the minor petitioner's interests in related proceedings.

(e) The court may appoint an attorney to represent a minor petitioner or minor respondent if necessary to protect the minor party's interests, and if doing so will not unduly delay the issuance or denial of a protection order.

(f) In a hearing under this section, if a parent, guardian, custodian, or other adult has filed a petition for civil protection on behalf of a minor petitioner 12 years of age or older, the court shall consider the expressed wishes of the minor petitioner in deciding whether to issue an order pursuant to this section and in determining the contents of such an order.

(g) Enforcement proceedings under this section in which the respondent is a juvenile [as defined in applicable juvenile delinquency laws and rules] shall be brought in [the division of the court with jurisdiction over juvenile delinquency proceedings] and shall be governed by [applicable juvenile delinquency laws and rules].

