

2013

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Recommended Citation

D. Kelly Weisberg, *Lindsay's Legacy: The Tragedy That Triggered Law Reform to Prevent Teen Dating Violence*, 24 *Hastings Women's L.J.* 27 (2013).

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Lindsay's Legacy: The Tragedy That Triggered Law Reform To Prevent Teen Dating Violence

by D. Kelly Weisberg*

Intimate partner violence has long been recognized as a national public health problem. Our understanding of the dynamics of domestic violence has grown significantly since the issue first emerged in the 1970s. One of the most surprising findings is that intimate partner violence is common not only among adults but among teenagers as well. A nationally representative survey reports that 10% of high school youth are victims of physical violence by a dating partner.¹ Recent research reveals an even more startling fact: Dating violence begins as early as age eleven, which is considerably sooner than previously thought.²

Teen dating violence (TDV) has been neglected as a public health issue and policy concern until the past decade.³ The subject first attracted scholarly attention in the early 1980s.⁴ Yet, it took another twenty years to witness the emergence of considerable research and policy.⁵ The catalyst

* Professor of Law, University of California, Hastings College of the Law. I would like to thank the following persons for their invaluable research assistance: Rebecca Licavoli Adams, Aaron Blumenthal, Aaron Chua, and Jessica Owen.

1. Danice K. Eaton et al., Ctrs. for Disease Control & Prevention, *Youth Risk Behavior Surveillance—United States*, 61 MORBIDITY & MORTALITY WKLY. REP. 1, 10 (2011) [hereinafter CDC, *Youth Risk Study* 2011] (based on a sample of 15,415 youth in grades nine to twelve).

2. MICHELE C. BLACK ET AL., CTRS. FOR DISEASE CONTROL & PREVENTION, NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 49 (2011) [hereinafter NISVS Study] (based on a sample of 16,507 women and men) (reporting that more than one in five women experience rape, physical violence, and/or stalking by an intimate partner for the first time *between the ages of eleven and seventeen*).

3. PRISCILLA OFFENHAUER & ALICE BUCHALTER, DEP'T OF JUSTICE, NAT'L INST. OF JUSTICE, TEEN DATING VIOLENCE: A LITERATURE REVIEW AND ANNOTATED BIBLIOGRAPHY 1 (2011). No uniform definition of teen dating violence exists in either the social science or legal literature. *See id.* at 3 (pointing out the related lack of a uniform definition in "research literature and evaluation studies"). For purposes of this article, I shall define TDV to encompass physical, sexual, and psychological abuse of youth in dating relationships (both opposite-sex and same-sex) in which at least one partner is a teenager or a preteen age eleven or twelve.

4. For the groundbreaking study, *see* June Henton et al., *Romance and Violence in Dating Relationships*, 4 J. FAM. ISSUES 467 (1983).

5. OFFENHAUER & BUCHALTER, *supra* note 3, at 1 (pointing to the decade from 2000–10 as the era of significant research and policy reforms).

for this attention was the scourge of gun violence on high school campuses that erupted in 1999 with the deaths of thirteen persons at Columbine High School in Colorado. That event riveted public attention on issues of school safety.⁶ Columbine evoked an intense debate about the culture of violence, including its causes and consequences, which plagued adolescents. Teenage victims of dating violence were the beneficiaries of a new aggressive policy targeting a number of forms of adolescent victimization.

Legal concern about the problem of TDV has sparked various law reform proposals. These proposals have included increasing the availability of civil protection orders, holding schools liable, and incarcerating teen offenders.⁷ Yet, all the preceding proposals have two significant shortcomings. They target teen dating abuse only *after* its occurrence. In addition, they fail to tailor solutions to the plight of the *youngest* victims—those middle school youth who are age eleven to fourteen.

In 2005, a state law reform movement began to redress these shortcomings. One of the most promising reforms on the horizon is state legislation that confers a proactive role upon *middle* as well as high schools for TDV *prevention* based on the recognition that TDV starts in early adolescence. This law reform movement was triggered by the tragic death of a young woman, Lindsay Ann Burke, in Rhode Island in September 2005.⁸ Since then, the law reform movement has moved at a rapid pace. Currently, twenty states have laws that address TDV in the schools.⁹ Several additional states have pending legislation.¹⁰

6. See Editorial, *Back to Columbine*, N.Y. TIMES, Aug. 17, 1999, at A16 (“The Columbine tragedy forced educators to reconsider school safety, examining how to spot dangerously troubled teen-agers and how to provide security that protects but does not imprison students.”).

7. Cheryl Hanna, *Sex Before Violence: Girls, Dating Violence, and (Perceived) Sexual Autonomy*, 33 FORDHAM URB. L.J. 437, 455 (2006) (identifying these legal responses).

8. See discussion *infra* Part II.

9. ARIZ. REV. STAT. ANN. § 15-712.01 (2011); CONN. GEN. STAT. ANN. § 10-220a (2010); DEL. CODE ANN. tit. 14, § 4112E (2012); FLA. STAT. ANN. § 1003.42 (2012); GA. CODE ANN. § 20-2-314 (2009); 105 ILL. COMP. STAT. ANN. 110/3 (2011); IND. CODE ANN. § 20-19-3-10 (2011); LA. REV. STAT. ANN. §§ 17.81, 3996 (2012); MD. CODE ANN., EDUC. § 7-411.1 (2011); MASS. GEN. LAWS ANN.ch. 69, § 1D (2012); MASS. GEN. LAWS ANN.ch. 71, § 2C (2012); NEB. REV. STAT. §§ 79-2,141, 79-2,142 (2011); N.J. STAT. ANN. §§ 18A:35-4.23, 18A:35-4.23a, 18:37-33, 18:37-35, 18:37-36, 18:37-37 (2011); OHIO REV. CODE ANN. §§ 3313.60, 3313.666, 3319.073 (2012); OR. REV. STAT. § 147.453 (2012); 24 PA. CONS. STAT. ANN. § 15-1553 (2012); R.I. GEN. LAWS §§ 16-21-30, 16-22-24, 16-85-1 (2011); TENN. CODE ANN. § 49-1-220 (2011); TEX. EDUC. CODE ANN. § 37.0831 (2011); VA. CODE ANN. §§ 22.1-207.1, 201.1:1(2011); WASH. REV. CODE ANN. § 28A.300.185 (2011).

10. See, e.g., Assemb. B. 1857, 2011-2012 Leg., Reg. Sess. (Cal. 2012); Assemb. B. 1880, 2011-2012 Leg., Reg. Sess. (Cal. 2012); S. 922, 26th Leg., Reg. Sess. (Haw. 2011); H.R. 1125, 2011 Gen. Assemb., 2012 Reg. Sess. (N.C. 2011); Assemb. 4596, 2011 Gen. Assemb., Reg. Sess. (N.Y. 2011); S. 708, 2011 Gen. Assemb., Reg. Sess. (N.Y. 2011); Assemb. 2404, 2011 Gen. Assemb., Reg. Sess. (N.Y. 2011); S. 138-A, 2011 Gen. Assemb., Reg. Sess. (N.Y. 2011).

Legal scholarship has virtually ignored this state law reform movement.¹¹ This article remedies this omission. Part I sheds light on the nature of teen dating violence and devotes special attention to the experience of the youngest victims. Part II explores the impetus for the TDV prevention law reform movement. Part III provides a comparative analysis of state laws on TDV prevention. Part IV concludes by examining pending federal legislation that overcomes a fundamental obstacle to the enactment of state laws.

I. TEEN DATING VIOLENCE: SCOPE OF THE PROBLEM

Teen dating violence consists of physical, sexual, and psychological violence that occurs in a teen dating relationship.¹² As explained above, approximately 10% of high school students suffer physical violence at the hands of a dating partner.¹³ Physical violence includes a range of intentional physical harm, such as being scratched, slapped, pushed, slammed against a wall, bitten, choked, burned, beaten, and assaulted with a weapon.¹⁴ Prevalence rates double if sexual victimization is included.¹⁵ Sexual violence includes rape and sexual assault.¹⁶ Even higher prevalence rates exist for psychological abuse.¹⁷ Electronic harassment is an especially common form of psychological abuse, since many dating

11. An occasional law review article examines *state-specific* legislation rather than the law reform movement as a whole. See, e.g., Kelly Miller, *Idaho Teen Dating Violence Initiative*, 48 *ADVOCATE* 31 (2005); Jessica Ramos, Comment, *Defining Violence on the Blackboard: An Overview of the Texas Education Code's Approach to Teen Dating Violence*, 13 *SCHOLAR* 105 (2010).

12. CTRS. FOR DISEASE CONTROL & PREVENTION, INJURY CTR.: *Violence Prevention, Teen Dating Violence 1* (2012), http://www.cdc.gov/ViolencePrevention/intimatepartner-violence/teen_dating_violence.html.

13. CDC, *Youth Risk Study 2011*, *supra* note 1. The rate of teenage violence among high school students has remained unchanged from 1999–2011. *Id.*

14. OFFENHAUER & BUCHALTER, *supra* note 3, at 3. The CDC definition is more limited, including hitting, slapping and being otherwise “physically hurt on purpose by [a] boyfriend or girlfriend.” See CDC, *Youth Risk Study 2011*, *supra* note 1, at 66.

15. Jay Silverman et al., *Dating Violence Against Adolescent Girls and Associated Substance Use, Unhealthy Weight Control, Sexual Risk Behavior, Pregnancy, and Suicidality*, 286 *JAMA* 572, 574 (2001) (reporting that one in five female high school students reports physical and/or sexual violence from dating partners).

16. Callie Marie Rennison, Bureau of Justice Statistics, Special Report, *Intimate Partner Violence and Age of Victim, 1993–1998* (Table 6) (2001) (reporting that, from 1993–99, 11.4% of females ages twelve to fifteen and 5.1% of those ages sixteen to nineteen were victims of rape or sexual assault).

17. Carolyn T. Halpern et al., *Partner Violence Among Adolescents in Opposite-Sex Romantic Relationships: Findings from the National Longitudinal Study of Adolescent Health*, 91 *AM. J. PUB. HEALTH* 1679 (2001) (reporting that one in five adolescents reports only psychological abuse, compared to one in ten youth who report physical violence) (sample = 7500 youth in seventh to twelfth grade). Psychological abuse includes insults, humiliation, disrespectful treatment in front of others, threatening behavior, and emotional manipulation. OFFENHAUER & BUCHALTER, *supra* note 3, at 3–4.

partners constantly monitor their teenage significant others by means of text messages and cell phone calls.¹⁸

Although perpetrators of TDV can be male or female, victims are more likely to be female, and female victims suffer more severe physical consequences.¹⁹ Intimate partner violence also occurs in adolescent same-sex relationships at approximately the same prevalence as in opposite-sex relationships.²⁰

The rate of teen dating violence escalates throughout the adolescent years. Dating violence is higher among eleventh- and twelfth-grade girls than ninth-grade girls.²¹ With more teens involved in dating and at earlier ages, the rate of dating violence among the youngest victims is likely to rise.²² Victims of TDV also face increased risk of intimate partner victimization in adulthood.²³

Until recently, our knowledge of TDV was based on high school samples only. Little was known about the experiences of the youngest victims—those in middle school. That omission has been addressed by two recent empirical studies.²⁴ These studies reveal that many middle school

18. PETER PICARD, LIZ CLAIBORNE, INC., TECH ABUSE IN TEEN RELATIONSHIPS STUDY 8 (2007) (sample = 615 youth, age thirteen to eighteen) [hereinafter PICARD, TECH ABUSE] (reporting that one in three teens in dating relationships has been text messaged ten, twenty, thirty, or more times per hour by a partner to monitor his/her whereabouts and his/her companions), available at <http://www.loveisrespect.org/wp-content/uploads/2009/03/liz-claiborne-2007-tech-relationship-abuse.pdf>. See also Andrew King-Ries, *Teens, Technology, and Cyberstalking: The Domestic Violence Wave of the Future?*, 20 TEX. J. WOMEN & L. 131, 152 (2011).

19. Judith W. Herman, *There's a Fine Line . . . Adolescent Dating Violence and Prevention*, 35 PEDIATRIC NURSING 164, 165 (2009) (reporting that boys inflict severe physical and sexual abuse that has more serious consequences, in contrast to girls who inflict minor physical and psychological abuse). See also NISVS Study, *supra* note 2, at 43–44 (reporting higher rate of female victims).

20. Carolyn T. Halpern, *Prevalence of Partner Violence in Same-Sex Romantic and Sexual Relationships in a National Sample of Adolescents*, 35 J. ADOLESCENT HEALTH 124, 124 (2004) (reporting that about one in ten adolescents in same-sex relationships reports physical victimization).

21. CDC, *Youth Risk Study 2011*, *supra* note 1, at 10 (reporting the prevalence of TDV for ninth-grade girls at 7.6%, increasing to 9.3% for eleventh-grade girls and 10.3% for twelfth-grade girls).

22. Herman, *supra* note 19, at 165. See also PICARD, TECH ABUSE, *supra* note 18, at 12 (reporting a 3% increase from 2005–07 among teens who report being hit, punched, slapped, or kicked while in a dating relationship).

23. Ctrs. for Disease Control & Prevention, *Physical Dating Violence among High School Students – United States*, 2003, 55 MORBIDITY & MORTALITY WKLY. REP. 532, 532 (2006) [hereinafter CDC, *Physical Dating Violence*]; Paige Hall Smith et al., *A Longitudinal Perspective on Dating Violence Among Adolescent and College-Age Women*, 93 AM. J. PUB. HEALTH 1104, 1107 (2003).

24. See LIZ CLAIBORNE, INC., TEENAGE RESEARCH UNLIMITED (TRU), TWEEN AND TEEN DATING VIOLENCE AND ABUSE STUDY 6 (2008) [hereinafter TRU, *Tween/Teen Study*] (surveying 1043 youth, age eleven to fourteen, and 626 teens, ages fifteen to eighteen), <http://www.loveisrespect.org/wp-content/uploads/2008/07/tru-tween-teen-study-feb-081.pdf>; ROBERT WOOD JOHNSON FOUND. & BLUE CROSS OF CAL. FOUND., PREVENTION IN MIDDLE SCHOOL MATTERS: A SUMMARY OF FINDINGS OF TEEN DATING VIOLENCE

youth are dating, many of their dating relationships involve serious sexual activity, and many of these relationships are abusive. As evidence of the early onset of dating, almost three-fourths of teens ages eleven to fourteen report that dating relationships generally begin before age fourteen.²⁵ Among younger adolescents, more than one in three youth age eleven to twelve admit to having been in a dating relationship.²⁶ Dating relationships of youth age eleven to fourteen reflect the full range of sexual activity, including oral sex and sexual intercourse.²⁷

Physical abuse also occurs in early dating relationships. Among teens ages thirteen to fourteen, one in five of those in dating relationships report that they know friends and peers who have been kicked, hit, slapped, or punched by girlfriends or boyfriends.²⁸ Even younger teens report witnessing the occurrence of physical dating abuse: more than one in three seventh graders have observed physical violence between dating partners.²⁹

Dating violence has severe physical consequences for teen victims, often resulting in serious injuries.³⁰ Homicides occur with alarming frequency, even among the youngest victims. Females ages sixteen to nineteen are victims in 22% of all homicides committed by an intimate partner.³¹ An even more chilling fact is that younger girls, ages twelve to fifteen, are victims in 10% of all intimate partner homicides.³²

Despite its prevalence and severity, TDV remains stubbornly hidden from adults who might be able to intervene. Teenagers rarely disclose the abuse to authority figures. Most violent incidents involving teen dating relationships are not reported to law enforcement.³³ Fewer than one in three teens talk to a parent about the abuse, and far fewer teens talk to a

BEHAVIORS AND ASSOCIATED RISK FACTORS AMONG 7TH-GRADE STUDENTS: EXECUTIVE SUMMARY (2012) [hereinafter JOHNSON FOUND., MIDDLE SCHOOL MATTERS] (sample = 1430 youth, mean age twelve), available at http://www.rwjf.org/content/dam/farm/reports/surveys_and_polls/2011/rwjf72533.

25. TRU, *Tween/Teen Study*, *supra* note 24, at 6.

26. *Id.*

27. *Id.* at 7.

28. *Id.* at 10.

29. JOHNSON FOUND., MIDDLE SCHOOL MATTERS, *supra* note 24, at 2, 4.

30. Rennison, *supra* note 16, at 7 (Table 6) (reporting that 5.5% of females ages twelve to fifteen are seriously injured).

31. *Id.* at 3 (Table 3).

32. *Id.*

33. *Id.* at 8 (Table 7) (reporting that 72.1% of females ages twelve to fifteen fail to report the violence to police). In fact, adolescent dating violence is far less likely to be reported to the police than intimate partner violence involving adults. *Id.* (reporting that 28% of violence against girls ages twelve to fifteen is reported to police, compared to 57% reported by females ages twenty-five to thirty-four or those ages thirty-five to forty-nine).

school counselor or social worker.³⁴ If teens do disclose the abuse, they are more likely to make such disclosures to peers rather than to adults.³⁵

Many reasons exist for teens' failure to report dating violence to adults. Primary among these reasons is ignorance. Teenagers are unable to recognize the warning signs of abuse or understand when a relationship becomes abusive.³⁶ They misconstrue a partner's abuse, believing that their partner's controlling behavior and excessive jealousy are signs of love.³⁷ Because teenagers are in the process of learning the art of relationship building, they lack knowledge of healthy interpersonal skills (e.g., communication, conflict resolution, and compromise).³⁸ "Their immaturity and lack of experience may cause them to not fully appreciate or underestimate the true consequences of the violence."³⁹ Further, teens may be ignorant of appropriate responses to abuse,⁴⁰ such as the importance of seeking adult intervention.

Teenagers' underreporting also stems from the fact that they experience conflicting emotions about the violence. They may be embarrassed, ashamed, or confused about the abuse.⁴¹ They may fear their partners' retaliation.⁴² And they may worry about their parents' reactions to their disclosures, fearing that their parents will respond by withdrawing privileges (use of a cell phone, computer, or car) or preventing them from seeing their partners.⁴³

34. Rennison, *supra* note 16, at 8 (Table 7) (reporting that 32% of teen victims talk to a parent; 15% talk to a school counselor or social worker).

35. Liz Claiborne, Inc. & Family Violence Prevention Fund, *Troubled Economy Linked to High Levels of Teen Dating Violence and Abuse Survey 2009* [hereinafter Claiborne, Inc., *Troubled Economy*] (revealing that 80% of teens who were in abusive relationships turn to a friend) (sample = 1233 teens, http://loveisnotabuse.com/web/guest/search/-/journal_content/56/10123/81382).

36. TRU, *Tween/Teen Study*, *supra* note 24, at 12. Only half of teens ages eleven to fourteen claim to know the warning signs of a harmful relationship. Some of the early warning signs include intense, rapid involvement in a romantic relationship; extreme courtship behavior (charm, flattery); efforts at control and isolation; and use of violence in other relationships. Lynn Short & Pamela M. McMahon, *Early Warning Signs of Intimate Partner Violence*, 1 *ENCYCLOPEDIA OF INTERPERSONAL VIOLENCE* 211 (Claire M. Renzetti & Jeffrey L. Edleson, eds., 2008) (review of literature about early warning signs).

37. MAURA O'KEEFE, NAT'L RESOURCE CTR. ON DOMESTIC VIOLENCE, *TEEN DATING VIOLENCE: A REVIEW OF RISK FACTORS AND PREVENTION EFFORTS* 1, 2 (2005), available at http://www.vawnet.org/Assoc_Files_VAWnet/AR_TeenDatingViolence.pdf.

38. Carrie Mulford & Peggy C. Giordano, *Teen Dating Violence: A Closer Look at Adolescent Romantic Relationships*, 261 *NAT'L INST. JUST. J.* 34, 37 (2008) (differentiating adolescent and adult dating violence based on this factor of the lack of relationship skills).

39. Nina M. Fredland et al., *The Meaning of Dating Violence in the Lives of Middle School Adolescents: A Report of a Focus Group Study*, 4 *J. SCH. VIOLENCE* 95, 109 (2005).

40. TRU, *Tween/Teen Study*, *supra* note 24, at 12 (reporting that approximately half of teens ages eleven to fourteen report that they would not know what to do if a friend asked for their assistance about dating abuse).

41. *Teen Dating Violence*, NAT'L CTR. FOR VICTIMS OF CRIME, <http://www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentID=32370>.

42. *Id.*

43. *Id.* See also PICARD, *TECH ABUSE*, *supra* note 18, at 14.

Parents, because of their own ignorance, likewise fail to respond to teen dating violence. They are unaware of the extent of dating abuse in their children's lives, the types of victimization that teens experience, and the warning signs of adolescent abusive relationships.⁴⁴ Modern technology (i.e., cell phones and the Internet) helps keep parents in the dark because these devices enable teens to maintain the privacy of their relationships.⁴⁵ Even if parents are troubled by evidence of a dating partner's controlling behavior, parents may not know how to intervene to protect their children.⁴⁶

In addition, parents often fail to discuss dating violence with their teenagers.⁴⁷ Many factors account for this omission, including parents' minimizing their children's involvement in dating and parents' ignorance about the occurrence of early dating abuse.⁴⁸ Parents also eschew such discussions based on the rationale that children would find the discussion too embarrassing.⁴⁹ In fact, parents, themselves, manifest considerable discomfort about the prospect of talking with teenagers about dating abuse.⁵⁰

Recent recognition of the important role that schools can play in dispelling ignorance about TDV has led to a state law reform movement aimed at the strategic audience of educators. The next section of this paper will illuminate the impetus for this wave of state laws.

II: THE IMPETUS FOR THE STATE REFORM MOVEMENT

Beginning in 2005, state legislatures began adopting TDV prevention education statutes at a rapid pace. This paper will now explore the social conditions that led to the creation of these laws. It will identify the primary actors who delivered the message to the public that action needed to be taken to address this issue. It will also explain why the accepted solution to this social problem took the form of prevention education.

The story begins with the tragic murder of a young woman, Lindsay Ann Burke, by her former boyfriend in Rhode Island in 2005.⁵¹ Although other young women previously perished at the hands of their dating

44. Claiborne, Inc., *Troubled Economy*, *supra* note 35.

45. PICARD, TECH ABUSE, *supra* note 18, at 5; *see also* Claiborne, Inc., *Troubled Economy*, *supra* note 35.

46. Kate Harding, *1 in 3 Girls Has Suffered Sexual Abuse in a Relationship*, JEZEBEL (Sept. 1, 2009), <http://jezebel.com/lindsay-ann-burke-act>.

47. Claiborne, Inc., *Troubled Economy*, *supra* note 35; Emily F. Rothman, et al., *The Proportion of U.S. Parents Who Talk with Their Adolescent Children About Dating Abuse*, 49 J. ADOLESCENT HEALTH 216, 217 (2011).

48. PICARD, TECH ABUSE, *supra* note 18, at 16–20.

49. Rothman, et al., *supra* note 47, at 216–18.

50. Claiborne, Inc., *Troubled Economy*, *supra* note 35. Parents talk less with teens about dating violence than about such topics as drugs, alcohol, sex, money management, the economy, and the family finances. Rothman, *supra* note 47, at 217.

51. *See* discussion *infra* notes 53–57 and accompanying text.

partners, the reaction to this particular crime was far-reaching. In response, Rhode Island became the first state to pass a comprehensive teen dating violence prevention law.⁵² The statute was named in honor of Lindsay Ann Burke. Although Lindsay was not a teenager when she died (she was twenty-three),⁵³ her death was the impetus for the law reform movement because of her mother's advocacy efforts, as will be explained below.

Lindsay met Gerardo Martinez, a Navy seaman, at a friend's wedding after she graduated from college.⁵⁴ Smitten by his intense devotion, she was swept off her feet. When the abuse started, she failed to recognize the signs. Gerardo was extremely controlling. He called Lindsay incessantly, talked to her for hours on the phone, and monitored her whereabouts constantly. He was also possessive and jealous, isolating Lindsay from her family and friends. Soon, the relationship turned violent. According to Lindsay's mother, "[E]very form of violence (verbal, emotional, sexual, physical, and financial) was used on her."⁵⁵ After two tumultuous years, Lindsay ended the relationship. A few days after the breakup, Lindsay visited Gerardo to retrieve some of her stuffed animals. There, after discovering a photo of another man in Lindsay's purse, Gerardo brutally murdered her. He broke her nose, stabbed her multiple times in the head and chest, slashed her throat with a six-inch knife, and dumped her bloodied body in the bathtub.⁵⁶ He was found guilty of first-degree murder and sentenced to life without parole.⁵⁷

In the course of the criminal prosecution of Gerardo Martinez, the victim's mother, Ann Burke, met Rhode Island Attorney General Patrick Lynch.⁵⁸ The meeting with Ann Burke made a profound impression on the state Attorney General. As he later explained, "[S]he's why I got involved" in activism against teen dating violence.⁵⁹ He elaborates:

I met Ann at the outset of the case and I told her not to expect closure, even with a conviction. Closure is pretty hard to come by for surviving family members. Most just try to live with the pain in whatever way they can. But some are able to actually rise out of it—out of their suffering—and ask what else can I do? Ann is one

52. R.I. GEN. LAWS §§ 16-21-30, 16-22-24, 16-85-1 (Supp. 2011).

53. See LINDSAY ANN BURKE MEMORIAL FUND, *Lindsay's Story* (last visited Sept. 7, 2012), <http://labmf.org/pages/story>. Lindsay's story is recounted on her parents' memorial website.

54. *Id.*

55. *Id.*

56. Philip Marcelo, *Turning Tragedy into Teaching Tool for Teens*, PROVIDENCE J., Mar. 23, 2007, at A1.

57. *Gerardo Martinez Sentenced to Life Without Parole for Murder of Lindsay Ann Burke*, U.S. ST. NEWS, Apr. 12, 2007, available at 2007 WLNR 7186530.

58. Meaghan Morelli, *Patrick C. Lynch, Attorney General, State of Rhode Island*, MAMA'S CUP (Dec. 3, 2009), <http://www.mamascup.com/2009/12/patrick-c-lynch-attorney-general-state.html>.

59. *Id.*

of those special people. She told me 'I want to do something. What should we do?' [After looking] at her family's background in education, at Lindsay's love of education . . . , it was clear what we needed to do. We're at a deficit of education [on teen dating violence] in our schools in this country. . . . [I]f we can reach teens *before* the violence, if we can help them understand that it's wrong and that they don't have to endure it, then we're making a real difference. That's how we'll stop this violence.⁶⁰

Ann Burke and Attorney General Lynch concurred on the need for prevention education in the schools. Ann's emphasis on education stemmed from her profession. She was a middle school teacher and school nurse, who taught health education.⁶¹ Ann explained her motivation by saying, "To honor Lindsay's life, we have chosen to speak out and help others become educated. By remaining silent, abusers are empowered. Education gives us power, the power to recognize an abusive relationship and help ourselves and others."⁶²

Ann spent a year researching the subject of teen dating violence. She was stunned to learn the number of teenage victims. She was appalled at the lack of education about dating abuse. As a health educator, she strongly believed that TDV prevention should be taught in the health education curricula. Criticizing schools' neglect of the subject, she charged: "It enraged me. As a health teacher, I know the value of education, and I thought, 'This is a major health issue, so *why isn't this being taught in schools?*'"⁶³ She continued: "[I]n my 8th grade class [when] I was teaching [the students] about HIV, STDs, drugs, alcohol, I started to think, 'Why isn't dating violence education mandated?'"⁶⁴ As she looked into her students' eyes, she kept asking herself, "Why is it that I'm teaching them about health, disease, and substance abuse—but I'm not teaching them about this?"⁶⁵

Ann was adamant that prevention education should begin early. As she explained, "[T]he time to learn about this is before our kids get involved in

60. Morelli, *supra* note 58.

61. Lisa Belkin, *Talk About Teen Dating Abuse*, N.Y. TIMES PARENTING BLOG (Dec. 2, 2008), <http://parenting.blogs.nytimes.com/2008/12/02/talking-about-teen-dating-abuse/?scp=1&sq=teen%20dating%20abuse&st=cse>. Ann is also married to a teacher. *Id.*

62. *Lindsay's Story*, *supra* note 53.

63. Lindsay Palmer, *Stop Teen Dating Abuse*, REDBOOK MAG. (last visited Oct. 15, 2012) (quoting Ann Burke) (emphasis in the original), <http://www.redbookmag.com/kids-family/advice/teen-dating-violence>.

64. Meaghan Morelli, *Ann Burke*, MAMA'S CUP (Dec. 3, 2009) (quoting Ann Burke), <http://www.mamascup.com/2009/12/ann-burke.html>.

65. *High Number of U.S. 'Tweens' Report Abuse in Relationships*, ASIAN NEWS INT'L, Dec. 4, 2009 (quoting Ann Burke), available at 2009 WLNR 24494177.

these relationships.”⁶⁶ She was convinced that education about dating abuse should begin during the middle school years.

Ann advocated training not only for teachers but also for parents. She worried that many parents are too complacent. “They think, ‘I’m a good parent, we have a good home, I know what my kids are doing.’ [But] this thinking sets us up and sets up our kids for experiences they’re not prepared to deal with.”⁶⁷ She continued:

Lindsay died of something she knew nothing about and of something her parents knew next to nothing about. . . . You know, I have a Master’s [degree] in Health Education. I’ve been teaching kids for years. Shouldn’t I have known about this? I didn’t even recognize the signs in the beginning with Lindsay. Some things made me uncomfortable, but I didn’t really see it for what it was.⁶⁸

Ann’s approach was to advocate *mandatory* prevention education. To promote this goal, she directed her efforts at state law reform. She partnered with state Attorney General Lynch to support legislation requiring TDV prevention instruction in Rhode Island schools in all health education classes for grades seven to twelve. Her influence on the enactment of the legislation in Rhode Island was enormous. Speaking shortly after passage of the bill, Attorney General Lynch credited the advocacy of Ann and her husband for ensuring passage of the law named in honor of their daughter.⁶⁹

Yet, Ann was not content with success at the state level. She soon initiated efforts to make TDV awareness a national priority. She founded the Lindsay Ann Burke Memorial Fund (LABMF) to pursue a nationwide mission to end dating violence through education. She dreamed that every middle and high school would teach students about teen dating violence and conduct educational programming annually for students in grades seven to twelve. “We broadened our sight to the national scene,” she explained, “because all students, not just Rhode Island ones, deserve to have this information.”⁷⁰ She began crisscrossing the country, conducting workshops to train middle and high school health teachers, school staff, and parents.⁷¹ Ann partnered with a corporate sponsor, Liz Claiborne, Inc., a Fortune 500 company that had worked to address domestic violence since 1991.⁷² As part of an ongoing commitment to prevent domestic violence,

66. Morelli, *supra* note 64 (quoting Ann Burke).

67. *Id.*

68. Kimberly Vetter, *Violence Education Targeted*, BATON ROUGE ADVOC., Dec. 13, 2010, at B1 (quoting Ann Burke).

69. *Attorney General Lynch Bills Enhance Rhode Islanders’ Civil, Criminal Protections*, U.S. STATE NEWS, July 11, 2007, available at 2007 WLNR 14060685.

70. Palmer, *Stop Dating Abuse*, *supra* note 63 (quoting Ann Burke).

71. Vetter, *supra* note 68.

72. Belkin, *supra* note 61.

Liz Claiborne, Inc. developed a curriculum on TDV prevention and made it available to the public free of charge.⁷³

To encourage national policy reform, Ann and her husband Chris, together with Rhode Island Attorney General Patrick Lynch and Nebraska Attorney General Jon Bruning, introduced a Teen Dating Violence Education Resolution to the National Association of Attorneys General (NAAG).⁷⁴ Only a few months after Rhode Island adopted its law, NAAG unanimously passed the Resolution. The NAAG Resolution affirmed support for Rhode Island's Lindsay Ann Burke Act and encouraged state attorneys general nationwide to work with their public school districts to incorporate similar TDV policies and curricula in their states.

Ann and her husband supported a similar resolution that promoted state legislation at a second national organization. At the annual conference of the National Foundation of Women Legislators (NFWL), the Burkes, together with Rhode Island Attorney General Lynch and executives from Liz Claiborne, Inc., gave presentations on TDV.⁷⁵ The ripples from that meeting were widespread. In November 2008, NFWL passed a Teen Dating Abuse Education Resolution that targeted policy leaders nationwide.⁷⁶ Like the NAAG Resolution, the NFWL Resolution affirmed support for Rhode Island's Lindsay Ann Burke Act and the implementation of teen dating violence prevention education in all states. Mobilizing women legislators proved to be a highly successful strategy. As the CEO of the NFWL had assured Ann Burke, "Don't worry, Ann, the women legislators will get the job done."⁷⁷ Ann later claimed that, as a direct result of her advocacy and that of Attorney General Lynch at the NFWL, five states passed TDV laws and several more states had bills pending.⁷⁸

Ann Burke's efforts to promote law reform continued. In December 2008, she and her husband, together with Liz Claiborne, Inc., founded Moms and Dads for Education To Stop Teen Dating Abuse (MADE), a national grassroots organization of parents, teachers, and concerned citizens to encourage communities to enact prevention education. Their

73. LINDSAY ANN BURKE MEMORIAL FUND, *Curriculum Materials* (last visited Sept. 7, 2012), <http://labmf.org/teachers/curriculum> (describing various curricula on TDV prevention).

74. Nat'l Ass'n of Attorneys General, *Resolution in Support of Teen Dating Violence Education* (adopted June 2008), available at <http://www.naag.org/assets/files/pdf/Resolution.TeenDatingViolenceEducation.Adopted.pdf>.

75. LINDSAY ANN BURKE MEMORIAL FUND, LABMF NEWSLETTER, Fall 2008, http://labmf.org/content/documents/0000/0063/Fall_08_Newsletter.pdf.

76. NAT'L FOUND. FOR WOMEN LEGISLATORS (NFWL), *Committee Resolutions* (Nov. 21, 2008), <http://www.womenlegislators.org/committees/resolutions.php?id=554>.

77. Ann Burke, Speech to the National Foundation of Women Legislators (2011), available at http://labmf.org/content/documents/0000/0100/NFWL_lunch_speech_2011.pdf (recounting conversation between Ann Burke and Robin Read, CEO of NFWL).

78. Editorial, PROVIDENCE J.-BULL. (R.I.), Aug. 16, 2009, available at 2009 WLNR 15959818.

corporate sponsor, Liz Claiborne, Inc., promoted a dating-abuse educational campaign, calling for volunteers in every state to work with state attorneys general and school systems to “ensure that the nationwide [NAAG] Teen Dating Violence Education Resolution gets implemented in every middle and high school across the country.”⁷⁹ As part of this campaign, Liz Claiborne, Inc. selected “Action Leaders” to collaborate with legislators, testify at legislative hearings, speak at press conferences, contact the media, and work with domestic violence advocates to create teen dating abuse educational programs.⁸⁰ Such advocacy proved to be highly effective in laying the groundwork for legislative reform.

Ann Burke’s crusade racked up additional successes in other states. In Nebraska, state Attorney General Jon Bruning praised Rhode Island’s law for influencing him to support similar legislation in Nebraska.⁸¹ Nebraska’s Lindsay Ann Burke Act, mandating TDV prevention education in state schools, was enacted on May 28, 2009.⁸² In December 2009, Ohio followed suit with the enactment of another strong, comprehensive statute, the Tina Croucher Act, named after a high school junior murdered in that state by her boyfriend.⁸³ Like the Rhode Island law, passage of the Ohio legislation was facilitated by the efforts of the victim’s parents, Elsa and Jim Croucher, who founded a nonprofit organization to combat domestic violence and became frequent speakers on dating violence.⁸⁴

Legislation in Louisiana also can be traced to the death of Lindsay Ann Burke.⁸⁵ After learning of Lindsay’s murder, a Louisiana legislator introduced legislation there on TDV prevention education. Louisiana State Representative Nita Hutter later explained “what really sparked [me] to pen the bill was the tragic story of Lindsay Ann Burke who was killed by an

79. Palmer, *supra* note 63.

80. Lindsay Palmer, *Is Your Daughter Safe?: Ending Dating Violence*, REDBOOK MAG. (last visited Oct. 15, 2012), http://www.redbookmag.com/health-wellness/advice/dating-violence?click=main_sr. Redbook Action Leaders played a major role in enacting legislation in Connecticut, Maryland, and New York. *See id.*

81. Jon Bruning, Nebraska Attorney General, *Domestic Violence is Happening at a Younger Age – The Time for Intervention is Now* (Oct. 14, 2008), http://www.ago.ne.gov/resources/dyn/files/569847/_fn/101408+Domestic+Violence+Month+Teen+Dating+Violence.pdf;jsessionid=47517962A4794130999278ECD2CC9FA.vipa-07b.

82. Lindsay Ann Burke Act, NEB. REV. STAT. §§ 79-2, 138-79-2, 142 (Supp. 2011).

83. Tina Croucher Act, OHIO REV. CODE ANN. §§ 3313.60, 3313.666, 3319.073 (Supp. 2012).

84. Associated Press, *Ohio Couple Leads Fight against Dating Violence*, HERALD-DISPATCH, Apr. 4, 2009, <http://www.herald-dispatch.com/news/briefs/x955385008/Ohio-couple-leads-fight-against-dating-violence>. Another Ohio teen also played a role in law reform there. Johanna Orozco was shot in the face with a sawed-off shotgun by her ex-boyfriend, Juan Ruiz, in 2007. She survived the attack and became a frequent speaker on TDV prevention. *See* Steve Penhollow, *Teens Hear Abuse Victim’s Story*, J. GAZETTE (Ft. Wayne, Ind.), Oct. 16, 2011, at C.5.

85. LA. REV. STAT. ANN. § 17.81 (Supp. 2012).

abusive boyfriend in 2005.”⁸⁶ Hutter was also influenced by her own victimization by an intimate partner for thirteen years.⁸⁷

Thus, Lindsay Ann Burke's murder was successful in producing the sympathy and outrage that sparked the movement to enact TDV prevention legislation. Lindsay's death, together with the effective advocacy of her mother, galvanized the law reform movement. Her mother's profession as a middle school health education teacher contributed the distinctive imprimatur that shaped the law reform as a violence prevention measure taught in the nation's schools.

Yet, it is important to note that the TDV prevention education movement did not proceed in a vacuum. Identical social conditions in several other states fanned the flames of reform that were ignited by the Lindsay Ann Burke tragedy. High-profile murders of other young women occurred with startling frequency in many jurisdictions. These senseless homicides added to the sympathy that fueled passage of laws in those states. For example, Arizona enacted TDV prevention legislation in memory of Kaity Sudberry, a high school senior killed by her former boyfriend in 2008.⁸⁸ Indiana enacted Heather's Law, named after twenty-year-old Heather Norris who was murdered by her former boyfriend in 2007.⁸⁹ Texas adopted a law in 2007 to commemorate the deaths of two teens—the stabbing death of Ortralla Mosley, age fifteen, in a hallway of her high school; and the shooting death of Jennifer Ann Crecente, age eighteen.⁹⁰

The violence still continues. Bills sparked by other high-profile murders are pending in California and New York. In California, the death of seventeen-year-old Cindi Santana on school grounds during lunchtime inspired proposed legislation.⁹¹ New York's legislature is considering the

86. Lauren Langlois, *Legislation Aims to Decrease Domestic Violence through Education*, DAILY REVEILLE (L.S.U.), Oct. 24, 2010, <http://www.lsureveille.com/radio/legislation-aims-to-decrease-domestic-violence-through-education-1.2384008#.T8qV2FLlfK0>. (Further, Hutter was a member of the NFWL that passed the Resolution supporting TDV prevention education at the instigation of Ann Burke and Rhode Island's State Attorney General).

87. Vetter, *supra* note 68.

88. ARIZ. REV. STAT. ANN. § 15-712.01 (Supp. 2011); *see also* Catherine Holland, *Help End Teen Dating Violence*, GOOD MORNING ARIZONA, July 22, 2011, <http://www.azfamily.com/good-morning-arizona/Help-end-teen-dating-violence-126023718.html>; LINDSAY ANN BURKE MEMORIAL FUND, *RI's Comprehensive Lindsay Ann Burke Act: A Model for the Nation*, LABMF NEWSLETTER, Ed. 6, Spring 2010 (both describing the history of the Arizona law), http://labmf.org/content/documents/0000/0070/LABMF_Newsletter_Spring_10_.pdf.

89. IND. CODE ANN. § 20-19-3-10 (Supp. 2011); *see Governor Daniels to Sign Dating Violence Law*, HEATHER'S VOICE (April 9, 2010), http://heathersvoice.net/heathers_law.html.

90. Elizabeth Olson, *A Rise in Efforts to Spot Abuse in Youth Dating*, N.Y. TIMES, Jan. 3, 2009, at A12, <http://www.nytimes.com/2009/01/04/us/04abuse.html?pagewanted=all>.

91. *See* Assemb. B. 1880, 2011-2012 Leg., Reg. Sess. (Cal. 2011); *see also* Rachel Smith, *Congressman and Students Unite to Prevent Dating Violence*, CALIFORNIA PERSONAL INJURY BLOG (Mar. 12, 2012), <http://personalinjury-california.com/school-attacks/>

Jessica Tush Act,⁹² named after a nineteen-year-old woman murdered there by her former boyfriend. Several of these victims' parents have added their voices to the clamor for reform in order to honor their daughters' memories.⁹³ As the deaths mount and add fuel to the law reform movement, the haunting refrain of one victim's parent resonates powerfully, "How many more daughters have to lose their lives to an abusive partner?"⁹⁴

III. THE STATE LAW REFORM MOVEMENT: EDUCATION POLICY REFORM

A. SCHOOLS ARE AN IDEAL CONTEXT TO ADDRESS TDV

This article will now turn to an analysis of state TDV prevention laws. The state law reform movement aims to educate youth about TDV prevention. Schools are ideal settings for educating youth about the prevention of dating abuse. Schools have a unique role to play for three reasons: (1) educators can dispel the ignorance and secrecy that contribute to teen dating violence; (2) schools have a legal obligation to provide health education, and TDV significantly impacts adolescents' health; and (3) schools have a legal obligation to ensure students' safety.

First, schools have the ability to confront the unique characteristics (especially, the ignorance and secrecy) that make TDV such an intractable problem. Educators can dispel ignorance by raising awareness about the features of abusive relationships. Education can give students the tools to recognize the warning signs of abusive behavior as well as the qualities of healthy intimate relationships. Too often, "teenagers don't see the signs [of dating abuse] and they don't see the red flags, so they believe this is simply

congressman-and-students-unite-to-prevent-dating-violence (describing event that motivated California bill).

92. Jessica Tush Act, Assemb. B. 4596, S708, 2011 Leg., 234th Sess. (N.Y. 2011).

93. See, e.g., Holland, *supra* note 88 (reflecting influence of Kaity Sudbury's mother in Arizona); INDIANA COALITION AGAINST DOMESTIC VIOLENCE, HEATHER'S LAW: ENGAGING SCHOOL STAKEHOLDERS TO IMPLEMENT HEALTHY RELATIONSHIP EDUCATION AND POLICY: A STRATEGY PACK FOR ADVOCATES 15 (Jan. 7, 2011) (reflecting influence of Heather Norris's mother in Indiana), <http://www.icadvinc.org/wp-content/uploads/2011/03/Strategy-Pack-3-21-2011rev.pdf>; LINDSAY ANN BURKE MEMORIAL FUND, *RI's Comprehensive Lindsay Ann Burke Act*, LABMF NEWSLETTER, *supra* note 88 (also reflecting the influence of Kaity Sudbury's mother in Arizona); Diane Lore, *May Peace Prevail*, STATEN ISLAND ADVANCE, June 9, 2011, at E05 (reflecting the influence of Jessica Tush's mother in New York); Joyce Miles, *Shining a Light on the Issue of Teen Dating Violence*, NIAGARA GAZETTE, Feb. 12, 2012 (reporting the influence of Kari Ann Gorman's mother, Kim Davidson, in New York), <http://niagara-gazette.com/communities/x2063991558/Shining-a-light-on-the-issue-of-teen-dating-violence>.

94. Tom Barnes, *Father of Slain Teen Lobbies for Education*, POST-GAZETTE, Dec. 4, 2009 (quoting Gary Cuccia, father of Demi Brae Cuccia who was murdered at age sixteen in Pennsylvania), <http://old.post-gazette.com/pg/09338/1018347-454.stm>.

how a relationship works,” explains a child therapist who counsels victims of teen dating violence.⁹⁵

Early intervention can also challenge beliefs about the acceptability of abuse. “[A] consistent finding in studies is that beliefs and attitudes tolerant of dating violence are among the most significant risk factors.”⁹⁶ These beliefs contribute to making TDV a precursor for adult intimate partner violence. Schools can also confront teenagers’ attitudes about gender stereotypes that lead to TDV.⁹⁷ Traditional beliefs about the proper roles for males and females are a major contributing factor. As commentators point out: “[P]atriarchal gender ideas about males may promote the infliction of abuse and influence the type of abuse used, while sexist stereotypes about females and a female’s gender socialization may increase the odds of victimization.”⁹⁸ These facts suggest that the ideal time for prevention efforts is early adolescence when romantic relationships first form and beliefs become entrenched.

Moreover, schools have the ability to confront the *secrecy* that enables TDV to remain hidden. Dating abuse remains secret because teen victims fail to recognize and disclose their victimization. Peers, who play an important role as confidants and observers, fail to bring TDV to light because they share the same beliefs as victims.⁹⁹ Schools can teach effective methods of bystander intervention by educating peers about the appropriate responses to TDV and the need to solicit adult intervention. “Knowing that a friend is involved in TDV can be scary and overwhelming for adolescents. They can be taught to understand that they cannot continue to be silent passive witnesses, but instead can assist their friends in seeking help.”¹⁰⁰

The hidden nature of TDV also is attributable to parents’ ignorance about dating violence. As part of educational initiatives, schools can teach parents to understand the extent of TDV, the need to discuss dating abuse with their children, the warnings signs of abusive relationships, and effective intervention strategies.

In addition, schools can confront the hidden nature of TDV by mandating training for school personnel. Because teachers, administrators, and other staff members have daily contact with youth, they may be the first to notice the signs of TDV in students’ behavior or students’

95. Jennifer Shutt, *Teen Dating Violence Drawing Lawmakers’ Attention*, SALISBURY DAILY TIMES (Salisbury, Md.), Feb. 21, 2012, available at 2012 WLNR 3725935.

96. OFFENHAUER & BUCHALTER, *supra* note 3, at 3.

97. *Id.* at 19.

98. *Id.*

99. Mulford & Giordano, *supra* note 38, at 38.

100. NAT’L CTR. FOR MENTAL HEALTH PROMOTION & YOUTH VIOLENCE PREVENTION, *Teen Dating Violence: Prevention, Identification, and Intervention* (2011), <http://sshs.promoteprevent.org/publications/prevention-briefs/teen-dating-violence-prevention-identification-and-intervention>.

interactions with others. Unfortunately, however, many school personnel currently lack the necessary training to assist victims of teen dating violence.¹⁰¹ Schools can adopt a proactive approach through the education of school personnel about the warning signs of TDV, the elements of schools' TDV policies, the proper procedures for handling TDV cases (including the development of safety plans), and the need to refer students for appropriate services and legal intervention. Regular training, particularly for teachers, administrators, coaches, guidance counselors, and school nurses, is essential. Schools, thus, have considerable potential to prevent teen dating violence by raising the awareness of those influential adults who interact with youth.

Second, educators have a unique role in addressing TDV prevention because many states impose legal obligations on educators to provide health education in the school curriculum.¹⁰² TDV prevention education, unquestionably, fits within that mandate. States require students to study health education in order to promote healthy behaviors that will prevent chronic health problems over the life span.¹⁰³ Both health education and physical education are components of a nationally recognized model on the promotion of health.¹⁰⁴ States prescribe a range of topics in their health education curricula, including: sexuality education, mental and emotional health, injury prevention and safety, nutrition, prevention of disease, and substance abuse. A majority of states also require the teaching of violence prevention.¹⁰⁵ Education about TDV fits clearly within the goals of the

101. Jagdish Khubchandani et al., *Adolescent Dating Violence: A National Assessment of School Counselors' Perceptions and Practices*, 130 *PEDIATRICS* 202, 204, 207 (2012) (reporting that almost half of high school counselors did not have training to assist victims of TDV and more than two-thirds lacked protocols to follow).

102. For a survey of those states that require instruction in health education, see NAT'L ASS'N OF STATE BDS. OF EDUC., *State School Healthy Policy Database: Health Education*, http://nasbe.org/healthy_schools/hs/bytopics.php?topicid=1100&catExpand=acdnbtm_catA (last visited Sept. 10, 2012).

103. See CTRS. FOR DISEASE CONTROL & PREVENTION, *SCHOOL HEALTH POLICIES & PROGRAMS STUDY 2006, FACT SHEET: HEALTH EDUCATION 2* (2006) (reporting that 92% of schools require students to receive instruction on at least one health topic), http://www.cdc.gov/healthyyouth/shpps/2006/factsheets/pdf/FS_HealthEducation_SHPPS2006.pdf (last visited Sept. 10, 2012). State laws on health, safety, and physical education for public school students date from World War I when states aimed to improve the preparation of young men for the rigors of military service. State of New Jersey, Dep't of Educ., *New Jersey Comprehensive Health Education and Physical Education Curriculum Framework 3* (1999) (explaining the rationale for the study of comprehensive health education and physical education), <http://www.state.nj.us/education/frameworks/chpe/chapter1.pdf>.

104. *Id.*

105. CTRS. FOR DISEASE CONTROL & PREVENTION, *SCHOOL HEALTH POLICIES & PROGRAMS STUDY 2006: OVERVIEW 2* (2006), http://www.cdc.gov/healthyyouth/shpps/2006/factsheets/pdf/FS_Overview_SHPPS2006.pdf (reporting that 65% of middle schools and high schools require education of students about violence prevention). For a state survey of schools with programs in injury- and violence-prevention education, see NAT'L ASS'N OF STATE BDS. OF EDUC., *State School Healthy Policy Database: Injury and Violence*

health education curriculum to promote healthy behaviors and prevent injuries.

In addition, educating youth about TDV may prevent the occurrence of other harmful behavior that frequently accompanies dating abuse. Research reveals a strong correlation between TDV and such harmful conduct as substance abuse, unsafe sex practices, suicidal attempts, access to weapons, physical fighting, expulsion or suspension from school, and membership in a gang.¹⁰⁶ TDV prevention education might also lessen the prevalence of bullying, because a strong correlation also exists between dating violence and bullying.¹⁰⁷ Further, TDV education may reduce the risk of serious injuries and death.¹⁰⁸ Schools have a major role to play in TDV education to prevent these adverse consequences.

Third, schools are ideal settings for TDV prevention education because schools have a legal obligation to ensure school safety. School officials who fail to respond to reports of dating violence may incur liability under various federal and state laws. For example, schools may be liable under Title IX of the Education Amendments of 1972.¹⁰⁹ Title IX imposes liability for sex discrimination, including sexual harassment, in federally funded educational programs or activities.¹¹⁰ Several commentators contend,¹¹¹ and at least one court has held,¹¹² that schools have a legal duty

Prevention Education, http://nasbe.org/healthy_schools/hs/bytopics.php?topicid=1170&catExpand=acdnbtm_catA (last visited Sept. 10, 2012).

106. CDC, *Physical Dating Violence*, *supra* note 23, at 532; Herman, *supra* note 19, at 165. Additional risk factors include: having a friend involved in dating violence; subscribing to the belief that dating violence is acceptable; exposure to harsh parenting and inconsistent discipline; and lack of parental supervision, monitoring, and warmth. VANGIE A. FOSHEE & REBECCA A. MATTHEW, *ADOLESCENT DATING ABUSE PERPETRATION: A REVIEW OF FINDINGS, METHODOLOGICAL LIMITATIONS, AND SUGGESTIONS FOR FUTURE RESEARCH*, *THE CAMBRIDGE HANDBOOK OF VIOLENCE BEHAV. & AGGRESSION* 431, 438–41 (Daniel J. Flannery et al., eds., 2007); O'Keefe, *supra* note 37, at 6.

107. Jennifer Connolly et al., *Dating Experiences of Bullies in Early Adolescence*, 5 *CHILD MALTREATMENT* 299, 305 (2000); Nina M. Fredland, *Sexual Bullying: Addressing the Gap Between Bullying and Dating Violence*, 31 *ADVANCES IN NURSING SCI.* 95, 95 (2008).

108. See discussion, *supra* notes 30–32.

109. 20 U.S.C. §§ 1681–1688 (2006).

110. Title IX provides that “[n]o person in the United States shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving federal financial assistance.” *Id.* See also *Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629 (1999) (upholding private suit against a school board pursuant to Title IX in case of peer sexual harassment).

111. See CAL. WOMEN'S LAW CTR., *CALIFORNIA MODEL POLICY ON SCHOOL RESPONSE TO TEEN DATING VIOLENCE AND SEXUAL VIOLENCE 6–7* (2007) [hereinafter *CWLC, MODEL POLICY*]; Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 *HARV. WOMEN'S L. J.* 351, 371–76 (2003).

112. P.K. ex rel. Hassinger v. Caesar Rodney High Sch., No. 10–CV–783, slip op. at 10, 2012 WL 253439 (D. Del. Jan. 27, 2012) (recognizing existence of valid Title IX claim for the physical and emotional abuse of eighth grader by her ninth-grade boyfriend, but granting summary judgment to school officials and school district because plaintiffs failed to establish that defendants were “deliberately indifferent” to the student-on-student sexual harassment or that defendants’ actions were “clearly unreasonable”).

to respond to complaints of TDV pursuant to Title IX. Although not all forms of TDV might constitute sexual harassment pursuant to Title IX, liability might arise if a victim of TDV can prove that the school had actual knowledge of the harassment; the harassment was severe, pervasive, and objectively offensive; the harassment caused the student to be deprived of access to educational opportunities or benefits; and the school was “deliberately indifferent” to the victim’s plight.¹¹³

Schools also face potential liability under federal law that requires *safe* public schools. Federal law requires schools that receive funds under the Safe and Drug-Free Schools and Communities Act (SDFSCA), as amended by the No Child Left Behind Act,¹¹⁴ to have a plan that promotes school safety. To help schools meet their responsibility to keep students safe, the SDFSCA provides funding for school security efforts.¹¹⁵ Schools also have reporting responsibilities, pursuant to SDFSCA, to track incidents of violence that occur at school.¹¹⁶

Because schools have a responsibility to maintain safety on school grounds, schools may face federal liability for failure to prevent or respond to dating abuse. Dating violence sometimes erupts on school grounds (such as school hallways or cafeterias), thereby posing a danger to the victim as well as to bystanders.¹¹⁷ Schools also may face liability for victimization that occurs off-campus, particularly if the abuser’s actions have a direct and immediate effect on either school discipline or the safety of students and staff.¹¹⁸ Courts are likely to uphold school actions that are “taken out of concern for student safety, such as intervention in response to violence, online threats, or severe ‘cyberbullying.’”¹¹⁹

113. See CWLC, MODEL POLICY, *supra* note 111, at 7; Carlson, *supra* note 111, at 372–73 (both suggesting that educators’ liability for TDV might be based on the peer harassment theory of *Davis v. Monroe*, 526 U.S. at 638–53).

114. 20 U.S.C. § 7161(3)(B) (2006). See also CWLC, MODEL POLICY, *supra* note 111, at 8.

115. States that receive funding must “conduct a needs assessment based on ongoing evaluation of violence factors in schools, establish performance measures for its violence prevention, and assess and publicly report its progress toward meeting the performance measures.” THOMAS HUTTON & KIRK BAILEY, HAMILTON FISH INST. ON SCH. & COMMUNITY VIOLENCE, CTR. FOR CLASSROOM TEACHING & LEARNING, SCHOOL POLICIES AND LEGAL ISSUES SUPPORTING SAFE SCHOOLS 15 (2008), available at <http://gwired.gwu.edu/hamfish/merlin-cgi/p/downloadfile/d/20708/n/off/other/1/name/legalpdf/>.

116. 20 U.S.C. § 7132(b) (2006).

117. For several high-profile accounts of teen dating violence that occurred on school grounds, see Citizens Against Domestic Violence, *Founder’s Bio: Tina’s Story*, <http://www.cadv-ohio.com/home/founders/> (recounting events leading up to murder of Tina Croucher, including her boyfriend’s assault slamming her against a school locker); Olson, *supra* note 90 (recounting murder of Ortralla Mosley, age fifteen, in a hallway of her high school); *Students Mourn Loss of Girl Stabbed at School by Ex-Boyfriend*, KTLA-TV (Oct. 3, 2011), 2011 WLNR 20186939 (recounting stabbing death of Cindi Santana, age seventeen, by her boyfriend on school grounds at lunchtime and the injuries of another student and a school official who came to her aid).

118. Hutton & Bailey, *supra* note 115, at 13.

119. *Id.* at 13–14.

In addition, *state* law may impose similar duties to provide safe schools¹²⁰ and to combat sexual harassment.¹²¹ School districts may face potential tort liability, pursuant to state law, if they fail to establish or adhere to school safety policies, fail to provide appropriate supervision on campus or at school-sponsored functions (especially if schools have notice of prior instances of violence), or fail to warn victims, potential targets, or school personnel about a preexisting danger.¹²² This article will now analyze state teen dating violence educational reforms.

B. NATURE OF STATE LAW REFORM MOVEMENT: COMPARATIVE ANALYSIS OF STATE STATUTES

The state law reform movement that was launched in 2005 adopted a new proactive approach to teen dating violence. That year, state legislatures began enacting laws that implemented prevention efforts in the schools. Before 2005, states authorized schools to offer health education programs, but those programs did not include dating violence prevention. In 2005, the situation changed with Rhode Island's adoption of the first comprehensive statute on teen dating violence prevention.¹²³ The Rhode Island law requires mandatory education about teen dating violence in the health education curriculum in state schools from grades seven to twelve. This statute served as a model for legislation in several other states. Currently, twenty states have statutes addressing teen dating violence in the schools.¹²⁴

These twenty state laws incorporate both primary and secondary prevention approaches. A primary prevention approach aims to prevent violence in dating relationships *before* it occurs. This approach consists of educational awareness programs. A secondary prevention approach addresses dating violence that has *already* occurred in an attempt to intervene in order to prevent its recurrence or escalation. This latter approach includes the creation of policies and protocols to deal with reports and incidents of violence after they come to light. Both approaches are important aspects of an institutional response to teen dating violence.

Six states are identified here as "strong" states that have comprehensive policies.¹²⁵ For purposes of this article, I define a "strong" state as a jurisdiction that offers at least four of the following five components: (1)

120. See, e.g., CAL. CONST., Art. I, § 28(f)(1) (2012) (guaranteeing California students the right to attend campuses that are "safe, secure and peaceful"). See also CWLC, MODEL POLICY, *supra* note 111, at 91.

121. See, e.g., CAL. EDUC. CODE § 201(b)(c) (West 2002 & Supp. 2012). See also CWLC, MODEL POLICY, *supra* note 111, at 9.

122. Hutton & Bailey, *supra* note 115, at 17.

123. R.I. GEN. LAWS § 16-85-1 (Supp. 2011) (establishing Lindsay Ann Burke Act); § 16-21-30 (Supp. 2011) (requiring school districts to establish specific policies addressing incidents of TDV); § 16-22-24 (Supp. 2011) (requiring TDV education).

124. See *supra* note 9.

125. These states include Delaware, Florida, Nebraska, Ohio, Rhode Island, and Texas.

mandatory instruction for students about TDV prevention; (2) mandatory training of school personnel; (3) a broad scope that targets the youngest victims; (4) intervention strategies to respond to reports and incidents of dating violence; and (5) a parental awareness program. The aforementioned six states have “comprehensive” approaches in the sense that they contain virtually all of these core components and also encompass both primary and secondary objectives.

Unfortunately, the majority of states with TDV prevention legislation have statutes that may be classified as “weak.” The statutes are designated as “weak” because they fail to address many of the above core components. These statutes also are identified as “weak” because they reflect either a primary prevention approach (that is, TDV awareness) *or* a secondary prevention approach (a TDV policy that specifies protocols for responding to incidents), rather than a combination of the two approaches.

This article will now compare and contrast “strong” versus “weak” state laws. Five major differences between “strong” and “weak” laws are highlighted. First, state laws on TDV prevention vary in terms of the strength of their mandates to implement prevention education. The strongest state laws impose *mandatory* education requirements. These states *require* school districts to implement dating violence instructional programs for their students. All of the aforementioned “strong” states prescribe mandatory education programs.¹²⁶ Several of these statutes specify the method for teaching these programs—that is, programs must be included in the health education curriculum.¹²⁷ Some statutes prescribe with specificity the content of the instruction. That is, they provide that the programs should include definitions of dating violence, warning signs of dating violence, and the characteristics of healthy relationships.¹²⁸

Second, “strong” states mandate not only education of students but also training of school personnel. Curricular development is unlikely to be effective unless school personnel are sufficiently trained to implement the instructional materials. In addition, school staff must be taught to recognize, intervene, and respond appropriately to reports of teen dating abuse. Almost all of the “strong” states mandate in-service training of school personnel.¹²⁹ Some statutes designate with specificity the

126. DEL. CODE ANN. tit. 14, § 4112E (2012); FLA. STAT. ANN. § 784.046 (Supp. 2012); Neb. Rev. St. § 142 (Supp. 2011); OHIO REV. CODE ANN. § 3313.60 (Supp. 2012); R.I. GEN. LAWS § 16-22-24 (Supp. 2011); TEX. EDUC. CODE ANN. § 37.0831 (Supp. 2011).

127. DEL. CODE ANN. tit. 14, § 4112E (2012); FLA. STAT. ANN. § 1003.42 (Supp. 2012); 105 ILL. COMP. STAT. Ann. § 110/3 (2011); OHIO REV. CODE ANN. § 3313.60 (Supp. 2012); R.I. GEN. LAWS § 16-22-24 (Supp. 2011).

128. FLA. STAT. ANN. § 1003.42 (Supp. 2012); NEB. REV. STAT. § 79-2,142 (Supp. 2011); R.I. GEN. LAWS §§ 16-21-30, 16-22-24 (Supp. 2011).

129. DEL. CODE ANN. tit. 14, § 4112E (2012); FLA. STAT. ANN. § 1003.42 (Supp. 2012); NEB. REV. STAT. § 79-2,141 (Supp. 2011); OHIO REV. CODE ANN. § 3319.073 (Supp. 2012); R.I. GEN. LAWS § 16-21-30 (Supp. 2011); TEX. EDUC. CODE ANN. § 37.0821 (Supp. 2011).

description of school personnel who must attend such training. Teachers and administrators are commonly mentioned. The most inclusive statute provides for training of teachers and administrators as well as school nurses and counselors.¹³⁰

Third, “strong” states target a broad student audience. Effective comprehensive statutes are age-inclusive. That is, they include not only high school students but also middle school students.¹³¹ These statutes reflect an awareness of the early onset of dating abuse. They mandate that prevention efforts must start early. “Strong” statutes typically provide that instruction must be taught to students from grades seven to twelve (thereby including middle school students ranging from ages eleven to fourteen who constitute the youngest victims of TDV).

Fourth, states with strong mandates also require that school districts develop policies about teen dating violence. Statutes typically require the formulation of a “policy,” “procedures,” or “guidelines” to address reports and incidents of teen dating violence.¹³² Although most statutes tend to mandate development of school policies only in vague general terms, these policies would be expected to encompass such elements as: definitions of teen dating violence, identification of the range of behaviors that constitute dating abuse, interventions for victims (such as counseling services) and perpetrators (such as sanctions), identification of persons and agencies that must be notified of the abuse, guarantees of confidentiality, procedures for reporting and documenting incidents and also for ensuring the victim’s safety (such as creation of a safety plan and protocols following issuance of restraining orders), and the provision of immunity for good faith reports.¹³³

A few “strong” statutes designate the requisite elements of schools’ TDV policies with more specificity. That is, some laws require that school policies include a statement of zero tolerance regarding dating violence.¹³⁴ Some statutes require that schools implement a disciplinary policy to respond to incidents.¹³⁵ One state law requires that the TDV policy be

130. DEL. CODE ANN. tit. 14, § 4112E(c) (2012); R.I. GEN. LAWS § 16-21-30 (Supp. 2011).

131. DEL. CODE ANN. tit. 14, § 4112E (2012); FLA. STAT. ANN. § 1003.42 (Supp. 2012); OHIO REV. CODE ANN. § 3313.60 (Supp. 2012); R.I. GEN. LAWS § 16-22-24 (Supp. 2011).

132. DEL. CODE ANN. tit. 14, § 4112E (2012) (requiring schools to establish a policy responding to teen dating violence and sexual assault); OHIO REV. CODE ANN. § 3313.666 (Supp. 2012) (requiring school districts to adopt “a dating violence prevention policy”); R.I. GEN. LAWS § 16-21-30(b) (Supp. 2011) (“dating violence reporting procedures, guidelines to respond to at school incidents of dating violence”).

133. Mass. Dep’t of Elementary & Secondary Educ., Guidelines for Schools on Addressing Teen Dating Violence (July 25, 2002), <http://www.doe.mass.edu/ssce/tdv/guidelines/tdv1.html> (providing recommendations for schools in developing a written school policy on TDV).

134. NEB. REV. STAT. § 79-2,141 (Supp. 2011); R. I. GEN. LAWS § 16-21-30(b) (Supp. 2011).

135. NEB. REV. STAT. § 79-2,141(2) (Supp. 2011); R.I. GEN. LAWS § 16-21-30(c) (2011).

incorporated into other school policies prohibiting harassment, intimidation, or bullying.¹³⁶

In addition, at least one “strong” statute provides that school policies should include protections (“accommodations”) for victims while on school grounds.¹³⁷ Although the statute fails to designate the types of accommodations, such protection might include provisions to enable the victim to avoid the abuser at school—perhaps a different locker assignment, work group assignment, schedule change, and assigned route for entrance into and exit from the building.¹³⁸

Fifth, “strong” states recognize that a comprehensive approach involves parent education.¹³⁹ As previously explained, parents are often ignorant of the extent of teen dating violence. “Strong” statutes adopt the view that parents need to be educated about the warning signs and characteristics of dating abuse in order to prevent and respond to TDV. Of course, states have no ability to mandate parental attendance at awareness training. However, “strong” states *recommend* that school districts offer such education to parents¹⁴⁰ and/or make sure that parents receive notice of the school’s policy on teen dating violence.¹⁴¹

Regrettably, the majority of states with TDV prevention laws have weak provisions. Statutes in these “weak” states *recommend*—rather than require—the teaching of teen dating violence prevention.¹⁴² In these states, school districts are “allowed” or “encouraged” to incorporate dating violence instruction.¹⁴³ Or, schools “may” include such instruction in their health education curricula.¹⁴⁴ Other “weak” laws fail to prescribe any instruction at all, but merely call for the *development of instructional*

136. OHIO REV. CODE ANN. § 3313.666 (West 2012).

137. FLA. STAT. ANN. § 1006.148 (Supp. 2012).

138. New York Civil Liberties Union, *State Law Guide on Teen Dating Abuse Education and School Policies* (May 2010), available at http://www.nyclu.org/files/publications/DatingViolence_StateLawGuide_2010.pdf (suggesting various accommodations).

139. NEB. REV. STAT. § 79-2,141(5) (Supp. 2011); R.I. GEN. LAWS § 16-21-30(e) (2011); TEX. EDUC. CODE ANN. § 37.0821 (2011) (“awareness education for students and parents”).

140. R.I. GEN. LAWS §§ 16-21-30 (2011) (“[i]t is strongly recommended that the school district provide parent awareness training”); TEX. EDUC. CODE ANN. § 37.0831(b)(1) (2011) (school district must adopt a policy that addresses “awareness education for students and parents”).

141. NEB. REV. STAT. § 79-2,141(5) (Supp. 2011); R.I. GEN. LAWS § 16-21-30(e) (2011).

142. See, e.g., ARIZ. REV. STAT. ANN. § 15-712.01 (2011) (“allows school districts to incorporate”); 105 ILL. COMP. STAT. ANN. § 110/3 (Supp. 2011) (Health Education Program “may include instruction”); MD. CODE ANN. EDUC. § 7-411.1 (2011) (“allows state board of education to encourage”); N.J. STAT. ANN. § 18A:35-4.23 (West 2012) (“allows board of education to teach”).

143. ARIZ. REV. STAT. ANN. § 15-712.01(A) (2011); CONN. GEN. STAT. ANN. § 10-220a(a)(10)(G)(2010); MD. CODE ANN., EDUC. § 7-411.1(a) (2011).

144. 105 ILL. COMP. STAT. ANN. 110/3 (2011); MASS. GEN. LAWS ANN. Ch. 69 § 1D (2012); MASS. GEN. LAWS ANN. Ch. 71, § 2C (2012).

*materials*¹⁴⁵ or *development of a program*¹⁴⁶ for the prevention of TDV. One watered-down approach requires that the state board of education merely “study” the benefits of mandatory education on teen dating violence.¹⁴⁷

“Weak” states lack many of the other core components of effective policies. Whereas “strong” states mandate training of school personnel, “weak” states tend to make such training voluntary¹⁴⁸ or, more frequently, fail to provide any staff training on TDV at all.¹⁴⁹ In addition, while “strong” states include the youngest victims of TDV in their educational mandates, “weak” states do not give any instruction to this particular age group.¹⁵⁰ Furthermore, “weak” states often neglect to include parental awareness in their recommendations.

To summarize, the most effective statutes include virtually all of the following components: mandatory education for students, mandatory training for teachers, all-encompassing programs that include younger as well as older students, intervention strategies that respond to incidents and reports of dating violence, and some level of parental involvement. As mentioned, only six of the twenty states that address TDV prevention education have such effective comprehensive policies.

Although the law reform movement on TDV prevention education rapidly swept the country, the crusade to enact *mandatory* TDV prevention education did not achieve universal success. In fact, the majority of states that enacted new laws tended to adopt “weak” legislation. What factors explain the lack of success? The nature of the law reform movement in Pennsylvania provides an answer.

In Pennsylvania, advocacy for mandatory TDV prevention education fell short of the mark. The law reform movement in Pennsylvania echoed a familiar refrain. In August 2007, in Monroeville, Pennsylvania, sixteen-year-old Demi Brae Cuccia was viciously murdered by her former boyfriend John Mullarkey.¹⁵¹ The victim’s parents, like many other parents, determined to pursue law reform in the wake of the tragedy to honor their daughter’s memory. Gary and Jodie Cuccia founded the Demi

145. IND. CODE ANN. § 20-19-3-10(a)(1) (2011); WASH. REV. CODE ANN. § 28A.300.185 (2011).

146. GA. CODE ANN. § 20-2-314 (2009).

147. 24 PA. STAT. ANN. §15-1553(b)(4) (2012).

148. MASS. GEN. LAWS ANN. CH. 69, § 1D (Supp. 2012); MASS. GEN. LAWS ANN. CH. 71, § 2D (Supp. 2012); 24 PA. STAT. ANN. §15-1553(c)(1) (2012).

149. 105 ILL. COMP. STAT. ANN. 110/3 (2011); IND. CODE ANN. § 20-19-3-10(b)(1) (2011); MD. CODE ANN. EDUC. § 7-411.1(a) (2011).

150. OR. REV. STAT. ANN. § 339.356(1) (West 2012); 24 PA. STAT. ANN. § 15-1553(d)(1) (2012); TEX. EDUC. CODE ANN. § 37.0831(a) (2011); WASH. REV. CODE ANN. § 28A.300.185 (West 2011).

151. Matthew Santoni, *Campaign Aims to Increase Dating Abuse Awareness*, PITTSBURGH TRIB. REV. (Feb. 9, 2012), http://triblive.com/x/pittsburghtrib/lifestyles/family/_780622.html#axzz25N7LrjUa, available at 2012 WLNR 2822343.

Brae Cuccia Memorial Foundation to educate youth, parents, communities, and school systems about TDV. The parents spent two years lobbying for legislation to mandate TDV education in middle and high schools.

Initially, the Pennsylvania House of Representatives approved a bill mandating teen dating violence education in grades seven to twelve. However, when the state legislature enacted the final version of the measure, it merely *recommended* teen dating violence education.¹⁵² The law targeted only *older* students in grades nine to twelve. And, it only *recommended* in-service training of school personnel. Demi Cuccia's parents were sorely disappointed. As her father commented, "It's kind of a bittersweet thing. . . . I am happy we're getting some language passed into law. I'm just concerned it's not going to be as effective as it should have been. I feel [the mandatory version] would create more awareness and have much more teeth to it."¹⁵³

One of the primary reasons for the failure of the mandatory education bill in Pennsylvania was the lack of state funding for the initiative. Some state legislators refused to support the original bill (mandating TDV prevention education) because that measure failed to authorize any funding for its implementation. For example, in legislative hearings on the mandatory bill, Pennsylvania Representative William Gabig castigated his fellow legislators for failing to authorize any funds to train school personnel on teen dating violence. He criticized:

[T]he problem . . . is a one-size-fits-all model [that] is going to be imposed on the school districts. All the school districts are going to have to do this. And what it is primarily is training. Every one of their personnel, they are going to have to get trained, and the rape crisis centers are going to have to do that training. . . . [T]hey are overworked and underfunded already. And then to put this mandate on them and to put this mandate on each school district from a statewide basis, which is basically an unfunded mandate, is, I do not think, the best way to try to address this issue. . . . I do not know why we have to come here and be a super school district and tell all the school districts what to do, especially when it is going to require funding and we are not giving them the necessary funding.¹⁵⁴

152. 24 PA. STAT. ANN. §15-1553(c)(1) (2012).

153. Heidi Dezayas, *Monroeville Parents Push for Mandatory Dating Violence Education*, Oct. 14, 2010, PITTSBURGH TRIB. REV., Oct. 14, 2010), <http://www.highbeam.com/doc/1P2-25626797.html>, available at 2010 WLNR 20554631.

154. 194 Legis. Journal 290-91 (Pa.) available at http://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2009&sind=0&body=H&type=B&bn=2026 (testimony of Rep. William Gabig at the Third Consideration of H.B. 2026 and its amendments).

Thus, concern about the lack of funding for mandatory instruction and training resulted in the passage of a much weaker law in Pennsylvania than reformers had advocated.

Teacher-activist Ann Burke foresaw the difficulties of securing state funding for TDV prevention education. She overcame that problem in her home state of Rhode Island by offering *volunteer* training to school personnel and *free* curricular materials to school districts (provided by her corporate sponsor).¹⁵⁵ She was well aware that this approach to the lack of funding might be easier to accomplish in Rhode Island because of the state's small size.¹⁵⁶ A different solution to the fiscal constraints would have to be found in other states. A federal solution, in the form of federal funding, is necessary to overcome this stumbling block to mandatory TDV prevention education.

IV. FEDERAL LEGISLATION

Teen dating violence prevention ultimately reached the federal policy level in 2005. In that year, Congress launched the first national campaign to increase public awareness by unanimously declaring one week of February as National Teen Dating Violence Awareness Week (TDVAW).¹⁵⁷ By 2010, the topic had achieved sufficient importance that Congress designated an entire *month* to promote TDV awareness and prevention.¹⁵⁸ In 2011, President Barack Obama issued a proclamation in support of Teen Dating Violence Awareness and Prevention Month that affirmed his Administration's commitment to the issue.¹⁵⁹ That same year, Congress held hearings on TDV in the Senate Judiciary Committee Subcommittee on Crime and Terrorism.¹⁶⁰

Federal awareness campaigns and presidential proclamations are important political statements, but law reformers like Ann Burke had loftier goals. She and other activists hoped to mandate TDV education prevention programs in every middle school and high school in the nation. The fundamental problem was how to fund that mandate. The wave of state law reform on TDV prevention comprised largely unfunded legislative

155. Morelli, *supra* note 64.

156. *Id.*

157. H.R. Res. 483, 109th Cong. (2005) (enacted); S. Res. 275, 109th Cong. (2005) (enacted).

158. H.R. Res. 1081, 111th Cong. (2009); S. Res. 373, 111th Congress (2009).

159. Proclamation No. 8626, 76 Fed. Reg. 23, 6307-08 (Jan. 31, 2011).

160. *Preventing Teen Violence: Strategies for Protecting Teens from Dating Violence and Bullying, Hearing Before the Senate Judiciary Subcomm. on Crime and Terrorism*, 112th Cong. (2011). The events in Rhode Island had a profound impact on national policy. During these congressional hearings, the subcommittee chair Senator Sheldon Whitehouse (D-RI) lauded the pioneering role of Rhode Island in the law reform movement. *Id.* at 2. In addition, Senator Whitehouse introduced the three federal bills on TDV prevention as explained *infra*.

directives.¹⁶¹ Schools in states with TDV prevention education laws were expected to accomplish a number of goals without any additional funding. Yet, funding is essential to educate students about TDV prevention, train school personnel, formulate school policies, and implement response mechanisms. Funding has to be found to enable schools to achieve these goals.

Several pending federal bills, all introduced by U.S. Senator Sheldon Whitehouse (D-R.I.), respond to these concerns by providing federal funding for TDV prevention education. The first of these bills adds a new section that addresses TDV prevention to the Violence Against Women (VAWA) Reauthorization Act of 2011.¹⁶² The bill creates the Saving Money and Reducing Tragedies through Prevention Act (SMART Prevention Act), as Title IV of VAWA. Because of the sponsorship of Rhode Island Senator Whitehouse, the measure reflects the continuing influence of the Lindsay Ann Burke tragedy as well as the place of Rhode Island at the forefront of law reform. A second bill is a stand-alone measure that is identical to the SMART Prevention Act.¹⁶³ The third federal bill is an amendment to the Safe and Drug-Free Schools and Communities Act.¹⁶⁴

Although all of these federal bills provide funding for TDV prevention education, the bills accomplish that goal in different ways. The VAWA Reauthorization bill and its stand-alone twin (both called the SMART Prevention Act) authorize grants for teen dating violence education that can be used for several purposes.¹⁶⁵ First, SMART Prevention grants can be

161. See Press Release, *Crapo Legislation Increases Education About Teen Dating Violence*, U.S. SENATOR MIKE CRAPO (Aug. 29, 2011), http://www.crapo.senate.gov/media/newsreleases/release_full.cfm?id=333896&&year=2011&, available at 2011 WLNR 17144030 (noting that most states passed laws requiring or urging TDV prevention education "without additional funding"); FUTURES WITHOUT VIOLENCE, *Stop Abuse for Every (SAFE) Teen Act 2 Summary* (2012), <http://www.futureswithoutviolence.org/userfiles/file/Teens/SAFE%20Teen%20Act%20-%20Summary.pdf>.

162. Violence Against Women Reauthorization Act of 2012, H.R. 4970, 112th Cong. § 402 (2012), S. 1925, 112th Cong. § 402 (2012). At the time of this writing, VAWA still awaits reauthorization. In the past, reauthorization of VAWA has been a bipartisan effort. Although the Senate approved a bipartisan bill on April 26, 2012, by a 68-31 vote, the House approved its version on a partisan vote of 220 to 205, on May 16, 2012. The House version omits some of the protections for gay victims, illegal immigrants, and Native Americans that are included in the Senate's bill. Generally, a conference is the next step to resolve differences between various bills. Such a conference has not yet occurred.

163. Saving Money and Reducing Tragedies through Prevention Act of 2011, H.R. 3515, 112th Cong. §§ 1, 2 (2011), S. 1920, 112th Cong. §§ 1, 2 (2011). A "stand-alone" bill is a measure that is not part of a larger omnibus bill (i.e., not dependent on any other legislation for its enactment). Therefore, the bill has a better chance of passage.

164. Safe and Drug Free Schools and Communities Act, 20 U.S.C. § 7101 (2006).

165. The provisions of the VAWA Reauthorization Act that address teen dating violence are contained in the Violence Against Women Reauthorization Act of 2012, H.R. 4970, S. 1925, Title IV (Violence Reduction Practices), § 402. Identical provisions in the stand-alone bill are found in the Saving Money and Reducing Tragedies through Prevention Act of 2011, S. 1920, H.R. 3515, § 2.

used to develop, maintain, and improve schools' educational programs that focus on the prevention of dating violence.¹⁶⁶ Grantees are instructed that such programs should be directed at changing attitudes and behaviors regarding the acceptability of dating violence; should be age- and developmentally appropriate; and should teach skills about building healthy relationships.¹⁶⁷ Schools have discretion regarding the type of prevention programs (evidence-based, evidence-informed, or innovative) that they adopt. Further, grantees are instructed that programs must include the development of school-based policies and protocols on TDV.¹⁶⁸

Second, SMART Prevention Act funds can be used for training purposes. A specific provision in the grantee requirements specifies that applicants must ensure that all persons who provide programming (such as educators) have completed or will complete training.¹⁶⁹ The bill broadly defines the recipients of such training—those persons “who influence young individuals.”¹⁷⁰ A subsequent provision clarifies that these persons might include “parents, teachers, coaches, healthcare providers, faith-leaders, older teens, and mentors.”¹⁷¹ This provision ensures that awareness training will be directed at a broad range of adults, including school officials as well as parents, who are most likely to be able to intervene to help victims of dating violence.

Third, the SMART Prevention Act recognizes the early onset of dating violence by specifically targeting the youngest victims. Students as young as age eleven are included within the statutory definition of “youth” who will receive prevention education.¹⁷² A subsequent statutory provision reinforces the idea that *middle schools* as well as high schools may be settings for the training of school personnel and also for the development and implementation of prevention and intervention policies.¹⁷³

Fourth, SMART Prevention Act funds can be used to establish collaborations between schools and community-based organizations that

166. H.R. 4970 § 402, *supra* note 165; S. 1925 § 402, *supra* note 165; S. 1920 § 2, *supra* note 163; H.R. 3515, § 2, *supra* note 163.

167. H.R. 4970 § 402, *supra* note 165; S. 1925 § 402, *supra* note 165; S. 1920 § 2, *supra* note 163; H.R. 3515, § 2, *supra* note 163.

168. H.R. 4970 § 402, *supra* note 165; S. 1925 § 402, *supra* note 165; S. 1920 § 2, *supra* note 163; H.R. 3515, § 2, *supra* note 163.

169. H.R. 4970 § 402, *supra* note 165; S. 1925 § 402, *supra* note 165; S. 1920 § 2, *supra* note 163; H.R. 3515, § 2, *supra* note 163.

170. H.R. 4970 § 402, *supra* note 165; S. 1925 § 402, *supra* note 165; S. 1920 § 2, *supra* note 163; H.R. 3515, § 2, *supra* note 163.

171. H.R. 4970 § 402, *supra* note 165; S. 1925 § 402, *supra* note 165; S. 1920 § 2, *supra* note 163; H.R. 3515, § 2, *supra* note 163.

172. H.B. 4970, 112th Cong. § 1002(37), *supra* note 165; S. 1925, 112th Cong. § 3, *supra* note 165 (“The term ‘youth’ means a person who is 11 to 24 years old.”).

173. H.B. 4970, § 302, *supra* note 165; S. 1925, § 302, *supra* note 165 (“Creating Hope through Outreach, Options, Services, and Education for Children and Youth”).

address domestic violence and sexual violence.¹⁷⁴ These collaborations ensure that victims receive appropriate services that cannot be provided by school systems. Such services might include mental health counseling and/or legal assistance (such as help with petitions for restraining orders).

In sum, the SMART Prevention Act (both the VAWA version and the stand-alone twin) would provide funding for all of the core components of comprehensive TDV prevention policies. Thereby, the Act would fulfill all of the objectives of state law reformers, including: (1) instruction for students; (2) training for school personnel; (3) development of policies and protocols to respond to reports of dating violence; (4) a broad scope that targets the youngest victims, and (5) parental involvement.

The third federal bill that addresses teen dating violence is the Stop Abuse for Every Teen Act (SAFE Teen Act)¹⁷⁵ amending the Safe and Drug-Free Schools and Communities Act (SDFSCA).¹⁷⁶ The Safe Teen Act is targeted at violence prevention in the schools—a goal of federal law since Congress reauthorized the Elementary and Secondary Education Act (ESEA) in 1994 to create the SDFSCA.¹⁷⁷ SDFSCA authorizes funding for federal, state, and local programs to assist schools' violence prevention programs and substance abuse education.¹⁷⁸

The SAFE Teen Act addresses TDV prevention in several ways. First, it expressly authorizes the use of existing grant funding (presently limited to drug and violence prevention) to permit funding for teen dating violence prevention. It accomplishes this objective by amending the term "violence" throughout the SDFSCA to include "dating violence."¹⁷⁹ The Act thereby expands the uses of existing grant funding to allow for TDV prevention education without authorizing any new federal funds.

Second, the bill makes TDV prevention part of specific programs that are funded under the SDFSCA. For example, the SAFE Teen Act permits the use of funds under the Safe Schools, Healthy Students (SS/HS) Initiative to implement a coordinated, comprehensive, community-based plan of programs and services that focus on preventing violence and

174. H.R. 4970, § 402, *supra* note 165; S. 1925, § 402, *supra* note 165; S. 1920, § 2, *supra* note 163; H.R. 3515, § 2, *supra* note 163.

175. S. 1447, 112th Cong. (2011); H.R. 2689, 112th Cong. (2011). The Safe Teen Act was referred to the House Subcommittee on Early Childhood, Elementary, and Secondary Education on September 8, 2011, and the Senate Committee on Health, Education, Labor, and Pensions, on July 28, 2011.

176. Safe and Drug Free Schools and Communities, 20 U.S.C. § 7101 (2006).

177. The reauthorization in 1994 of the ESEA, Improving America's Schools Act, Pub. L. No. 103-382, 108 Stat. 4029, served to integrate the Drug-Free Schools and Communities portion of the ESEA with the Safe Schools Act, resulting in the Safe and Drug-Free Schools and Communities Act of 1994 (SDFSCA), 20 U.S.C. § 7101 (2006). Thereafter, the SDFSCA targeted not only drugs and weapons, but also violent behavior.

178. Safe and Drug Free Schools and Communities, 20 U.S.C. § 7131(a) (2006).

179. S. 1447, 112th Cong., *supra* note 175; H.R. 2689, 112th Cong., *supra* note 175.

substance abuse.¹⁸⁰ Pursuant to this initiative, the Act authorizes the use of funds to develop and evaluate innovative TDV prevention programs.¹⁸¹ It also encourages grants for the development of innovative strategies for the training of school personnel, parents, and community members on TDV prevention.¹⁸²

Third, the bill supports evaluation of model educational programs on TDV prevention. The bill would authorize the establishment of a Teen Dating Violence Prevention Innovation Fund to improve TDV prevention education by supporting practices for the “replication, refinement, and test of model strategies and projects directed to youth to prevent and respond to dating violence.”¹⁸³ In addition, the Innovation Fund supports strategies that encourage the involvement of parents and caregivers in the prevention of, and early intervention in, dating and sexual violence.¹⁸⁴ Such strategies are encouraged to prioritize projects that focus on youth ages eleven to fourteen.¹⁸⁵ Finally, the bill authorizes the collection and dissemination of data on the incidence of dating violence (as well as other forms of intimate partner violence) among individuals ages eleven to nineteen¹⁸⁶ to enhance the understanding of the problem of teen dating violence.

Both the SMART Prevention Act and the SAFE Teen Act address the core components of a comprehensive TDV prevention education initiative. Both bills provide funding for TDV prevention education and training. Both emphasize the importance of targeting the youngest victims. And, both encourage the involvement of parents in TDV prevention. The SMART Prevention Act accomplishes these purposes by means of additional Congressional appropriations for VAWA, whereas the SAFE Teen Act achieves these ends by expanding the uses for *existing* violence prevention funding.

Both bills are valuable measures to help schools fulfill legislative directives to promote TDV prevention education. Additional funding

180. S. 1447, 112th Cong. § 5, *supra* note 175; H.R. 2689, 112th Cong., *supra* note 175, §§ 4, 5 (amending 20 U.S.C. § 7131).

181. S. 1447, § 5, *supra* note 175 (amending 20 U.S.C. § 7131(a)(2)). The Safe Teen Act also incorporates several new provisions as permissible “federal [grant] activities,” that would include TDV prevention education and skill-building programs about healthy relationships. S. 1447, H.R. 2689 (amending 20 U.S.C. § 7131 by the addition of sections (9) and (10)).

182. S. 1447, § 5, *supra* note 175 (amending 20 U.S.C. § 7131 (a)(1)).

183. S. 1447, § 8, *supra* note 175; H.R. 2689, § 8, *supra* note 175. These model projects must emphasize “age-appropriate” and “culturally competent” strategies and projects pursuant to the grantee instructions.

184. S. 1447, 112th Cong. § 8(d)(1), *supra* note 175; H.R. 2689, 112th Cong. § 7(b)(2), *supra* note 175.

185. S. 1447, 112th Cong. § 8(d), *supra* note 175; H.R. 2689, 112th Cong. § 7(c)(2), *supra* note 175.

186. S. 1447, 112th Cong. § 4, *supra* note 175; H.R. 2689, 112th Cong. § 4, *supra* note 175. Note that the VAWA Reauthorization Bill also authorizes funds for data collection. *See* S. 1925, H.R. 4970, 112th Cong., § 401 (2012).

provided by congressional reauthorization of VAWA would augment schools' limited budgets. However, VAWA alone cannot be counted on to accomplish TDV prevention education. VAWA has been consistently underfunded by Congress since its inception.¹⁸⁷ The recent economic downturn has heightened VAWA's inability to fund family violence programs, producing an "alarming gap" in services for victims.¹⁸⁸ The perpetual battle to fund VAWA fully comes as no surprise given the broad scope of VAWA's mandate to provide a large array of social and legal services to victims of domestic violence. Unfortunately, the reauthorization of VAWA is presently mired in congressional gridlock. To accomplish the goals of law reform on TDV prevention education, the SMART Prevention Act (either the VAWA version or its stand-alone twin) as well as the SAFE Teen Act should be enacted.

V. CONCLUSION

A wave of educational policy reform on teen dating violence prevention has swept the nation's school systems. A growing number of state legislatures enacted statutes reflecting a proactive approach to teen dating violence prevention. These reforms have the potential to prevent the occurrence of TDV, improve school safety, and prevent the adverse behaviors that often accompany TDV. Further, these reforms hold considerable promise to reduce the rate of adult intimate partner violence.

However, the success of comprehensive school reform depends on a number of factors. First, TDV prevention curricula must be *available* for schools to adopt and implement. In fact, a number of TDV prevention education programs already exist.¹⁸⁹ Second, these curricula must contain *effective* strategies for changing behavior. Numerous studies have evaluated the various TDV prevention programs and concluded that they

187. Patricia Schroeder, *Stopping Violence Against Women Still Takes A Fight: If in Doubt, Just Look at the 104th Congress*, 4 J.L. & POL'Y 377, 378 (1996).

188. CAMPAIGN FOR FUNDING TO END DOMESTIC AND SEXUAL VIOLENCE, FY 2013 APPROPRIATIONS BRIEFING BOOK 11 (March 2012), *available at* http://www.nnedv.org/docs/Policy/FY_13_Briefing_Book.pdf.

189. Two evidence-based, scientifically tested curricula are: (1) the Safe Dates Prevention Program for Dating Abuse and Violence, designed for middle and high school students that consists of nine class sessions, a play, and poster contest; (2) the Fourth R: Relationship-Based Violence Prevention, a curriculum program designed for middle and high school students that includes instruction on relationship skills as well as other health-related skills. Another program for high school students that has not been as widely tested is: Love is Not Abuse: A Teen Dating Violence Prevention Curriculum, a three-lesson plan created by the Education Development Center, Inc., Break the Cycle, and Liz Claiborne, Inc., to be taught in English, Health Education, and Language Arts classes by using literature as a springboard to raise awareness about relationship violence. Moreover, in 2009, Blue Shield of California Foundation and the Robert Wood Johnson Foundation, in collaboration with Futures Without Violence, launched "Start Strong," an \$18-million initiative to identify and evaluate innovative prevention models that can be implemented in middle and high schools (and in other youth programs) to address teen dating violence.

are successful in increasing knowledge, improving attitudes, reducing aggressive behavior, and improving teens' propensity to seek intervention.¹⁹⁰

Third, TDV prevention must be a component of a broad response that entitles teen victims to the *same legal protections* as adult victims of intimate partner violence receive. For example, teen victims need access to restraining orders to protect them from physical and sexual abuse, stalking, and harassment. Unfortunately, some states limit protection orders to adult victims or deny standing to minor victims who are under the age of seventeen.¹⁹¹ To address the onset of teen dating violence, protection orders should be available to any minor as young as age eleven. In addition, teens in some states need parental consent to petition for protective orders.¹⁹² As we have seen, parents often are unaware of dating abuse. As a result, minors should have standing to pursue protection orders on their own behalf. To improve teens' access to these legal protections, these statutory problems must be remedied.

Finally, and most important, we need to commit *funding to prevent* teen dating violence. Adequate funds must be available to implement educational programming, training of teachers and parents, and the development of policies/protocols on TDV. As previously explained, state law reforms on TDV prevention tended to be unfunded directives. The implementation of TDV prevention education programs will require a substantial allocation of financial resources in those states that presently require or encourage TDV prevention education. Funding also will be necessary to incentivize legislatures in the remaining states to enact new laws, preferably strong comprehensive laws.

Unfortunately, the state law reform movement is occurring at the same time as schools are receiving diminished state funding.¹⁹³ Recent cuts in state funding to education undermine the reform initiatives that many states are undertaking to improve school safety. Schools will be unable to

190. See, e.g., Vangie A. Foshee, *An Evaluation of Safe Dates, an Adolescent Dating Violence Prevention Program*, 88 AM. J. PUB. HEALTH 45, 50 (1998); Arlene N. Weisz & Beverly M. Black, *Evaluating a Sexual Assault and Dating Violence Prevention Program for Urban Youths*, 25 SOC. WORK RESEARCH 89, 98 (2001); Daniel J. Whitaker et al., *A Critical Review of Interventions for the Primary Prevention of Perpetration of Partner Violence*, 11 AGGRESSION & VIOLENT BEHAV. 151, 160 (2006).

191. Lisa Vollendorf Martin, *What's Love Got to Do With It: Securing Access to Justice for Teens*, 61 CATH. U. L. REV. 457, 473–74 (2012). See also Pamela Saperstein, *Teen Dating Violence: Eliminating Statutory Barriers to Civil Protection Orders*, 39 FAM. L.Q. 181, 189 (2005) (explaining that some statutes apply only to teenagers age sixteen and older).

192. Martin, *supra* note 191, at 482–83 (explaining that seven states deny standing to all minors in protection-order proceedings and require that designated adults petition for orders on behalf of these minors).

193. PHIL OLIFF & MICHAEL LEACHMAN, CTR. ON BUDGET & POL'Y PRIORITIES, NEW SCHOOL YEAR BRINGS STEEP CUTS IN STATE FUNDING FOR SCHOOLS 1 (Oct. 7, 2011), <http://www.cbpp.org/files/9-1-11sfp.pdf>.

implement the necessary TDV prevention reforms in the face of workforce reductions and cuts to existing academic/extracurricular programs.

In an era when schools face severe budgetary constraints, federal funding takes on particular importance. Prevention of domestic violence is a national priority. In order to make the nation a safer place for our youngest victims of dating abuse, it is imperative that the federal government facilitate the efforts of school districts to implement TDV prevention education. In the words of Ann Burke, "This issue is too important to wait."¹⁹⁴

194. Morelli, *supra* note 64 (quoting Ann Burke).