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Evaluating Legal Remedies for Teens in Abusive Dating Relationships

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Safety First

- Prior to taking any legal action, discuss with your teen client whether initiating a civil or criminal case is safe or is likely to result in a violent retaliation by the abuser. In some cases, non-legal action to keep the teen safe is a better option.
- If you do pursue a civil protection order or a criminal complaint, encourage your client to take extra safety precautions during the time period when the abuser is likely to be served with the protection order petition or arrested by the police.
- Caution your teen client that the abuser's friends and family may pose a danger to her as well.

Minor Parties

- Determine whether the civil domestic violence statute in your state permits the court to award a protection order to a minor petitioner and/or against a minor perpetrator and whether or not a minor can bring or defend an action for protection on her/his own behalf.
- If minors in your jurisdiction cannot proceed on their own, determine whether your client has a parent or other adult such as a social worker, teacher, or counselor available to bring or defend the case on their behalf.
- If no adult is available or the minor does not wish to involve an adult, determine whether there is a basis for seeking a declaration from the court that the minor is emancipated. If not, determine the procedure in your jurisdiction for appointment of a guardian *ad litem* (GAL) and/or a lawyer for the minor(s). When determining

whether to pursue appointment of a GAL or attorney for the minor, remember that in many jurisdictions, a GAL will represent the "best interests of the child," rather than the minor's actual wishes. An attorney for the minor will represent the minor directly and present the minor's position in the case whether or not the outcome the minor desires is in her/his best interest.

- Check local ethical rules and case law regarding whether or when a minor may retain his or her own lawyer and whether attorneys have any special ethical duties when representing teen clients. If the minor cannot contract for legal services, you may have to seek court appointment or parental consent to represent the minor.

Relationship Requirements

- Determine whether the civil domestic violence statute in your state applies to individuals in dating relationships. Most states allow individuals who have been in dating relationships to obtain civil protection orders. However, some states have relationship requirements that permit only an individual who is related to her/his abuser by blood or marriage, have a child in common, or a shared residence, to obtain a civil protection order. These requirements frequently exclude teenagers because many are simply dating and do not live with or have children in common with their abusers.
- If the statute in your state does protect individuals in dating relationships, determine whether your state's definition of a dating relationship includes the type of relationship your client has with her/his abuser. Many teens do not follow the same dating rituals as adults, particularly in the early stages of their relationships. They may not even call what they do "dating," but rather "talking" or "going together." They may refer to each other as "friends," rather than boyfriend and girlfriend. Your state's definition may not be broad enough to cover teens' more informal courting behaviors and dating relationships.
- If your state excludes individuals in dating relationships from civil protection order coverage or the definition of a dating relationship is too restrictive to include the teen victim's relationship, consider whether the teen is eligible to apply for some other form of relief instead. One option may be to request a civil restraining order, an underlying civil action (typically a tort claim for assault and/or battery, or emotional distress). In such cases an underlying civil complaint must be filed as well.

Teen-Tailored Relief

- If your teen client and her/his abuser attend the same school, include in your protection order petition a request for relief that will protect the teen during the school day. This could include an order that the abuser stay 10 or more feet away from the teen victim when they are at school or an order prohibiting the

abuser from participating in your client's club or sporting events. Make sure that the school principal and security personnel have copies of the order, know what to do if it is violated, and have a plan for keeping your client safe at school.¹

- Other appropriate relief might cover libraries, school events, after-school work places, parents' work places, third-party contact, cell phones, email and instant messages.

Child Welfare System Intervention

- Before going to court, familiarize yourself with the child abuse and neglect laws in your state. If your teen client is being physically abused by an adult partner, it may be considered child abuse. Moreover, the sexual relationship between a minor and an adult partner may constitute child abuse or sexual assault depending on your jurisdiction's treatment of "statutory rape." Finally, some jurisdictions consider a parent's "failure to protect" a teen from dating violence to be child neglect and similarly could find that a teen's parent was neglectful if the child was exposed to violence.²
- Before proceeding with any legal action for protection, discuss with your client any risk that court personnel would report her, her partner, or her parent or guardian to your state's child welfare agency.

Criminal Prosecution

- Explore options for criminal prosecution. Regardless of whether or not your minor client is eligible to obtain a civil protection order, the violent, threatening, or stalking behavior at issue is most likely criminal behavior. Work with your local police and prosecutors to bring criminal charges or a juvenile delinquency petition against the perpetrator.
- If the abuser is a minor, determine whether the court can hold the minor in criminal contempt if he or she violates the civil protection order. In some states, a civil protection order against a minor must be enforced in juvenile delinquency court. Be aware that if an action is brought in juvenile court, confidentiality rules governing juvenile proceedings may exclude you and your client from attending

¹ Schools may be liable for failure to protect teens from dating abuse at school. See Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 Harv. Women's L.J. 351 (2003).

² Historically, child welfare agencies have not always responded appropriately to the intersectional issues of domestic violence and child maltreatment. See *Nicholson v. Williams*, 203 F. Supp. 2d 182 (E.D.N.Y. 2002). Fortunately, significant progress is being made in many jurisdictions. See Susan Schechter and Jeffrey L. Edleson, Family Violence Department, The National Council of Juvenile and Family Court Judges, *Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice* (1998).

the hearings in the case and/or limit your access to information about the progress or outcome of the case.

Non-Legal Remedies for Addressing Teen Dating Violence

- Explore the community resources available to assist minor victims and perpetrators of dating violence. Some shelters are beginning to accept teens seeking protection from abuse; other communities are establishing shelters especially for teen victims. Counseling programs may be available to assist teen victims and perpetrators. Review the laws in your jurisdiction to determine what medical, counseling, and healthcare services are available to minors with and without parental consent. Also review with your client the concerns about possible reports of child neglect discussed above.
- Help your adolescent client develop a plan for how to stay safe at home, work, school, and in the community. Many teen victims attend the same schools as their abusive partners. Utilize school counselors, teachers, principals, security guards, coaches, board members and students as appropriate to protect your client's safety. Teen partners may also have grown up in and continue to live in the same neighborhood. In that case, it is important to help your client think creatively about how she/he can stay safe at home and how she will respond if she bumps into her/his abuser on the street.
- Help your teen client to think about how she will explain to her peers her actions to end the abusive relationship and get legal protection. Peer pressure is extremely powerful for teens. Without advanced thinking about how she/he will answer her peers' questions, your client may be pressured into resuming the relationship or dropping her criminal case or order of protection. Help her to identify those friends and family members who will support her decisions so that she feels less isolated if other friends turn away.
- Initiate domestic violence prevention and intervention programs with middle and high school students in your area. If domestic violence is addressed at an earlier age, potential victims will know their options sooner and potential batterers may be stopped from perpetrating a lifetime of abuse.

Tips on Overcoming the Challenges of Working with Teens

- As you may recall from your own youth, teenagers often are distrustful of adults, including their lawyers. Build trust with your teen clients by showing them respect, letting them make their own decisions, not pretending that you understand what they are going through, and not trying too hard to be “cool.” Be willing to laugh at yourself and ask your client to explain if you don't understand her/his slang.

- Ask specifically whether your teen clients have ever been pushed, grabbed, or blocked from leaving a room because teens tend not to identify these less severe assaults as abuse.
- Do careful safety planning with your teen clients because teens tend to minimize the danger they are in even when there is a high risk for lethality.
- Teens are very focused on the present. Be prepared to spend a fair amount of time helping your teen clients think through long-term decisions including long-range safety planning and decisions about custody and visitation through the term of the protection order and beyond. Get as much done for your client as you can as quickly as possible without making rash decisions because teens often don't have the patience to stick with protracted legal cases once their crises have passed.
- Teens, especially abused teens who have not been allowed to make their own decisions, may need a lot of help weighing the pros and cons of alternative courses of action. Be prepared to guide them patiently through the decision-making process. Avoid the temptation to push your opinion as to the best course of action on your teen clients. You can design better protections, and your clients will be more likely to maintain their orders, if the remedies are well thought out and chosen by your clients.
- Help teen clients arrange for safe transportation to court hearings, meetings with you, and other important appointments related to your case. Teens often don't have cars and may not have money for public transportation.
- Be flexible about meeting times for teens because they often do not control their daytime schedules. Reminder calls are likely to increase the likelihood that your teen clients will keep their appointments and show up for hearings as many teens are not in the habit of writing appointments down or keeping a calendar.
- Be clear with the teen's parents that you represent the teen.
- Maintain consistent boundaries with your teen clients and be clear about what you can and cannot do for them. Help them to connect with people who can meet the needs that you cannot.

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