

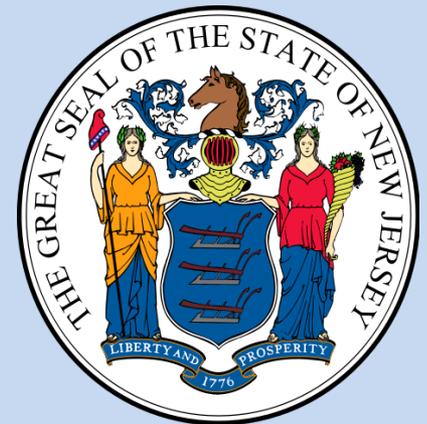
OLS CLE Presentation

New Jersey Law Revision Commission

The PDVA: Codification of Court Decisions

Presented by:
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The PDVA: Codification of Court Decisions

S.P. v. Newark Police Dept. — Facts

- 2013 Appellate Division Case
- S.P. moves into building two weeks before attack; S.P. and her attacker were only two residents on the same floor of a boarding house



S.P. v. Newark Police Dept. — Facts

- Attacker offers drink, rejected, then uses inappropriate language and touches S.P. without her consent; attempts to enter the locked bedroom
- S.P. calls police; attacker drunk

S.P. v. Newark Police Dept. — Facts



- Police respond
- “Are you a couple”
- Attacker admitted he touched S.P., attempted to enter her room, and was drinking
- S.P. was scared of attacker
- Just stay away; call us if he gives you any more problems
- Incident occurred approximately 12:30-1 A.M.

S.P. v. Newark Police Dept. — Facts

- 11:00 A.M. Next Morning: S.P. exits bathroom, is met with a naked-to-the-waist-down attacker
- Punched, choked, and then raped in the hallway
- Pushed into attacker's bedroom and then raped again until S.P. escapes to neighbor's house

S.P. v. Newark Police Dept.—Trial Court

- Attacker convicted



- S.P. sues City Police Dept., alleging, *inter alia*, officers were negligent, careless, and reckless in failing to arrest and remove her attacker pursuant to the PDVA after he groped her and propositioned her sexually, ***which would have prevented the subsequent sexual assault.***

S.P. v. Newark Police Dept.—Trial Court

- City's defenses
 - S.P. does not qualify as a “household member” within the meaning of that phrase in the PDVA
 - Police officers absolutely immune from liability for their failure to arrest Santiago pursuant to the Tort Claims Act
- Trial Court holds S.P. entitled to PDVA's protections as household member, officers not immune under TCA

S.P v. Newark Police Dept. — Appellate Division Holding

Tort Claims Act

- The TCA barred the suit, as the officers were immune from liability for failure to arrest.
- The PDVA's exception to general immunity did not apply.

PDVA

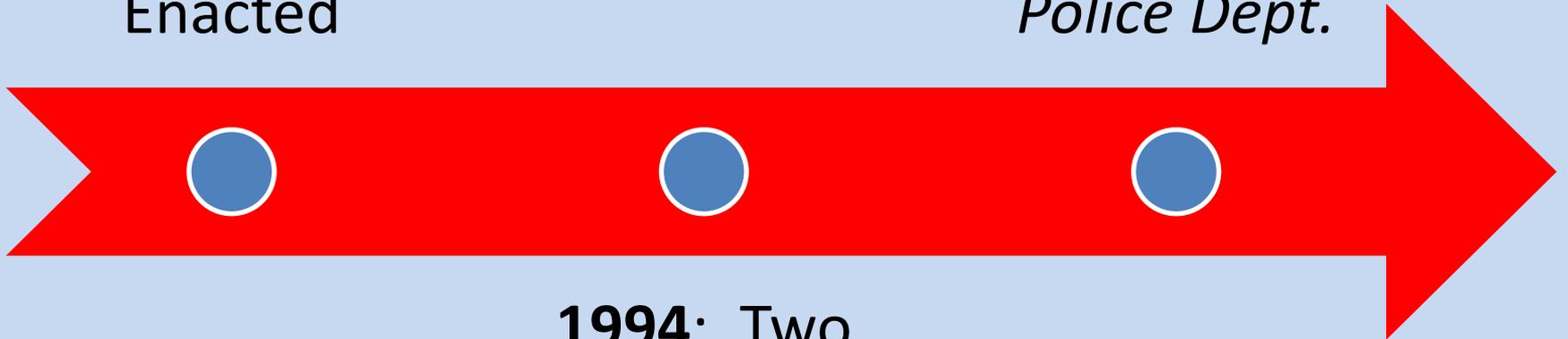
- The victim and her assailant met the definition of “household members” in the PDVA
- Used twenty years of decisional law interpreting the phrase

PDVA: Legislative History

1991:
Enacted

2013: *S.P. v.*
Newark
Police Dept.

1994: Two
Amendments



PDVA: Legislative History

- Legislature proclaimed “that domestic violence is a serious crime against society; that there are thousands of persons in this State who are regularly ***beaten, tortured and in some cases even killed by their spouses or cohabitants***.”
- Legislature declared its “intent . . . [t]o assure the victims of domestic violence the maximum protection from abuse the law can provide.”

PDVA: Who is Protected?

- “Victim of Domestic Violence”
- To be a “victim of domestic violence,” one must meet the definition in the statute
 - Any person 18 or older
 - who has been subjected to domestic violence by a spouse, former spouse, or any other person who is a **present or former household member.**

PDVA: 1994 Amendments

- “Victim of domestic violence” also includes any person, ***regardless of age***, who has been subjected to domestic violence by a person with whom the victim has [or anticipates having] a child in common [and] **any** person who has been subjected to domestic violence ***by a person with whom the victim has had a dating relationship.***

What Is . . . ?

- A “household member”
 - Economic definition?
 - Common sense?
 - Same apartment building, different floors?
 - College roommates? Suitemates?
- A “former household member”
 - Two former college roommates, but 16 years after?
 - Siblings, 60 years since the last time they lived in their parents’ (or any) residence together?



What Is . . . ?

- A “dating relationship”
 - A cup of coffee and a proposal to see a movie?
 - A night out on the town together?
 - One night stand?
 - A few dates?
 - A month-long courtship?
 - Kissing at a bar, one night, weeks before?
 - Something more substantial?
 - What matters?



L. 1991, c. 261, § 3

- “Victim of domestic violence” means a person protected under this act and shall include any person who is 18 years of age or older or who is an emancipated minor and who has been subjected to domestic violence by a spouse, former spouse, or any other person who is a present or former household member or a person with whom the victim has a child in common.

L. 1994, c. 93, § 1

- “Victim of domestic violence” also includes any person, **regardless of age**, who has been subjected to domestic violence by a person with whom the victim has had a dating relationship

L. 1994, c. 94, § 1

- “Victim of domestic violence” means a person protected under this act and shall include any person who is 18 years of age or older or who is an emancipated minor and who has been subjected to domestic violence by a spouse, former spouse, or any other person who is a present or former household member or. “Victim of domestic violence” also includes any person, regardless of age, who has been subjected to domestic violence by a person with whom the victim has a child in common, or with whom the victim anticipates having a child in common, if one of the parties is pregnant.

Current 2C:25-19(d) and Statutory Development

- d. “Victim of domestic violence” means a person protected under this act and shall include any person who is 18 years of age or older or who is an emancipated minor and who has been subjected to domestic violence by a spouse, former spouse, or any other person who is a present or former household member. “Victim of domestic violence” also includes any person, regardless of age, who has been subjected to domestic violence by a person with whom the victim has a child in common, or with whom the victim anticipates having a child in common, if one of the parties is pregnant. “Victim of domestic violence” also includes any person who has been subjected to domestic violence by a person with whom the victim has had a dating relationship.

Relationship Requirement

Crime

14 Predicate Crimes
Committed Against
Plaintiff?

Age

18 or older?
Emancipated
Minor?

Relationship

Spouse or former
spouse? Child in
common? Current
or former
household
member?

**Victim of
Domestic
Violence**

Dating Relationship

18 or older or
emancipated
minor

- Current/Former Household Member
- Spouse
- Child in Common

18 or
Younger

- **ONLY** Dating Relationship

ALA. CODE § 30-5-2: Definition Approach

- d. Has a dating relationship with the defendant. **A dating relationship means** a recent frequent, intimate association, primarily characterized by the expectation of affectionate or sexual involvement within the last six months. **A dating relationship does not** include a casual or business relationship.
 - “Casual”
 - “Business”
- e. Is a current or former household member. **A household member is** a person maintaining or having maintained a living arrangement with the defendant where he or she is in, or was engaged in, a romantic or sexual relationship.
- [NOTE]: Here arises the problem of having another definition without any factors. Factor-based approach of Mass. preferred over Alabama. Another definition, without factors, leads to more inconsistent case law.

MASS. GEN. L. ANN. 209A § 1: Factor-Based Approach

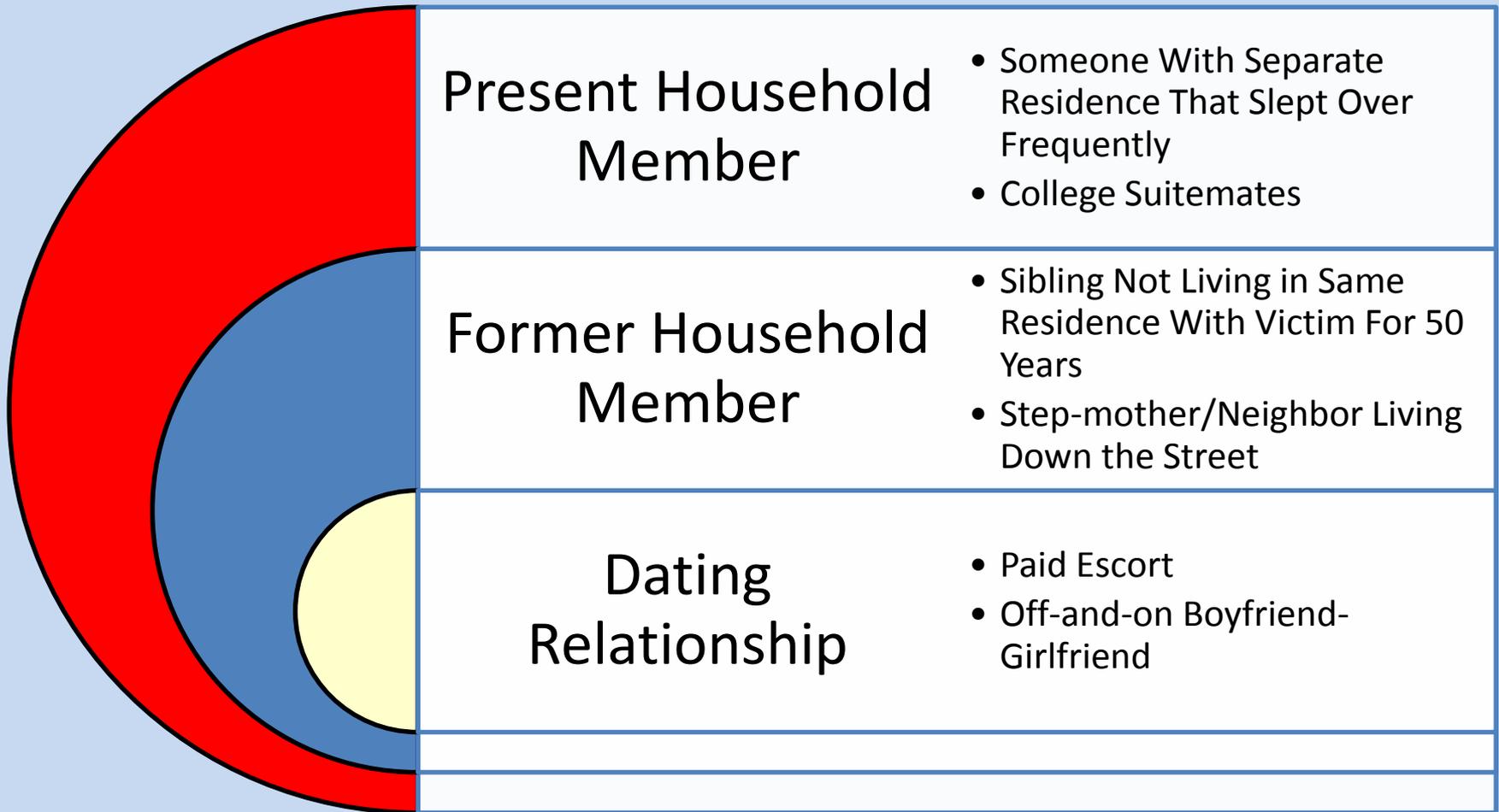
- **“Family or household members”**, persons who:
 - (a) are or were married to one another;
 - (b) are or were residing together in the same household;
 - (c) are or were related by blood or marriage;
 - (d) having a child in common regardless of whether they have ever married or lived together; or
 - **(e) are or have been in a substantive dating or engagement relationship, which shall be adjudged by . . . courts[']**
consideration of the following factors:
 - (1) the length of time of the relationship;
 - (2) the type of relationship;
 - (3) the frequency of interaction between the parties; and
 - (4) if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.

NJ Statute v. NJ Courts

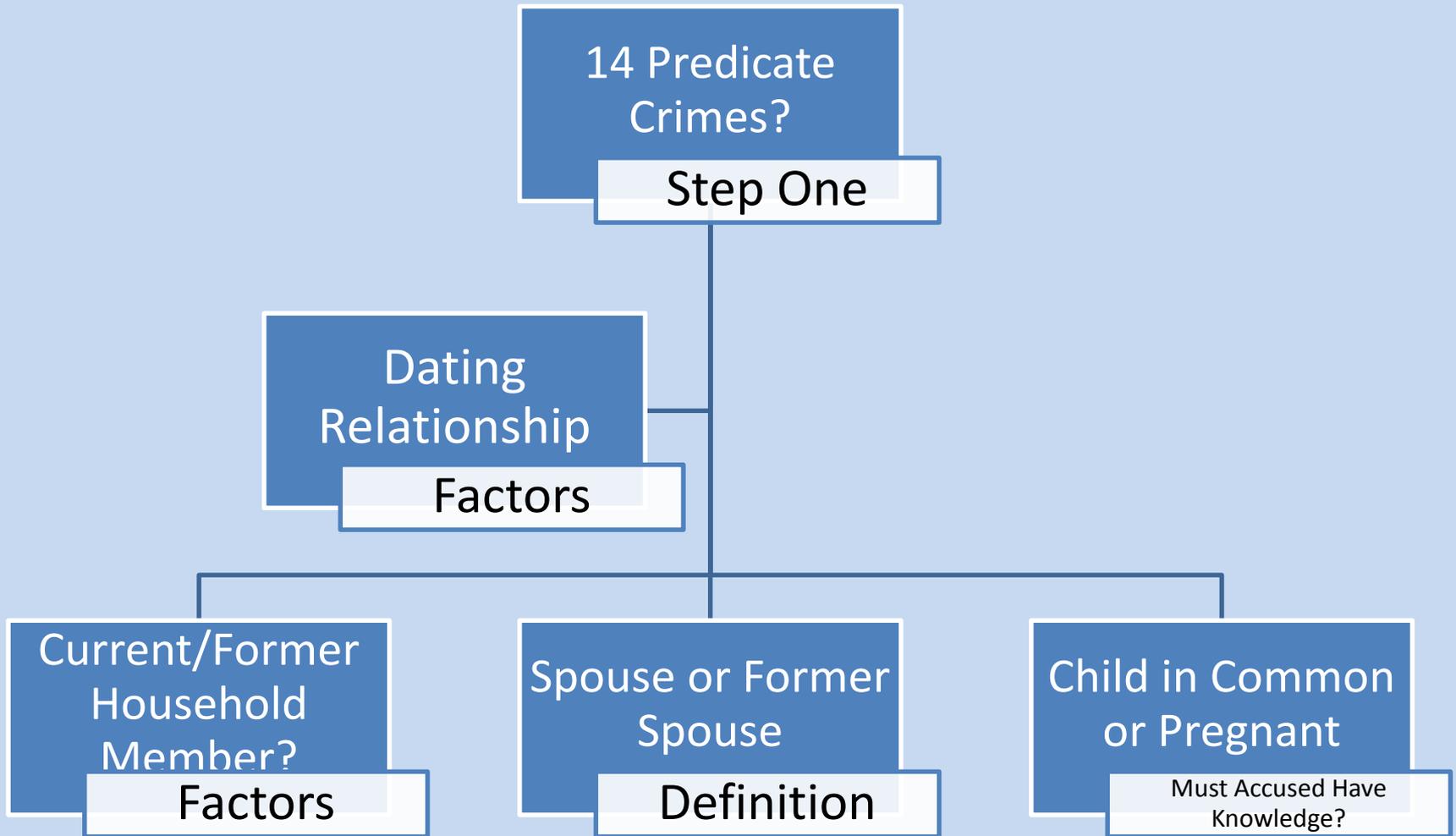
- New Jersey's PDVA looks like the Alabama statute
- Been Interpreted by NJ courts using a factor-based approach more similar to Massachusetts



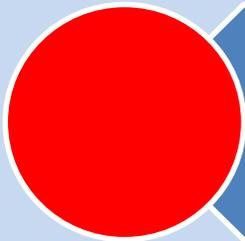
Victims Covered by NJ Courts



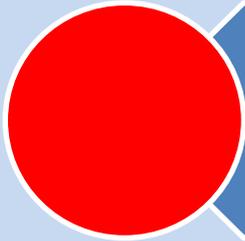
Stylistic Changes: No Substantive Change



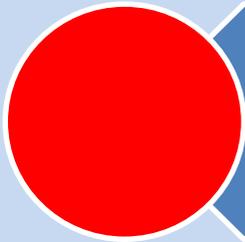
Why Not . . .



Factor-based approach



Stylistic Changes



Codify Judicial
Interpretation

Stylistic Changes to (d): No Substantive Change

- d. “Victim of domestic violence” means a person protected under this act and shall include
 1. any person who is 18 years of age or older or who is an emancipated minor and who has been subjected to domestic violence by
 - a) a spouse,
 - b) a former spouse, or
 - c) any person who is present or was a former household member.
 2. any person, regardless of age, who has been subjected to domestic violence by a person
 - a) with whom the victim has a child in common
 - b) with whom the victim anticipates having a child in common, if one of the parties is pregnant; or
 - c) any person who has been subjected to domestic violence by a person with whom the victim has had a dating relationship.

Who is Helped?

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graph LR; A[Law Easier to Understand] --> B[Websites, Flyers, Common Methods of Information Distribution Clearer]; B --> C[Victims Understand Their Right to Protection];
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Law Easier to Understand

Websites,
Flyers,
Common
Methods of
Information
Distribution
Clearer

**Victims
Understand
Their Right
to
Protection**

Who is Helped?

Women Ages 20-24

- Greater risk of nonfatal intimate partner violence
- Bureau of Justice Statistics, *Intimate Partner Violence in the U.S. 1993-2004* (2006).

People With Income Below \$25,000

- Three times higher risk than people with income above \$50,000
- Less likely to have resources to pursue a case, but more likely to report acts of violence
- More likely to self-help than victims with extensive financial resources
- Bureau of Justice Statistics, *Intimate Partner Violence in the U.S. 1993-2004* (2006).

New Subsection?

- ❖ For purposes of this section,
 - a. “Present household member” means . . .
 - b. “Former household member” means . . .
 - c. “Dating Relationship” means . . .

- **What authority do we look toward to find the meaning of such terms????**

The Factor-Based Approach: Codification of Court Cases

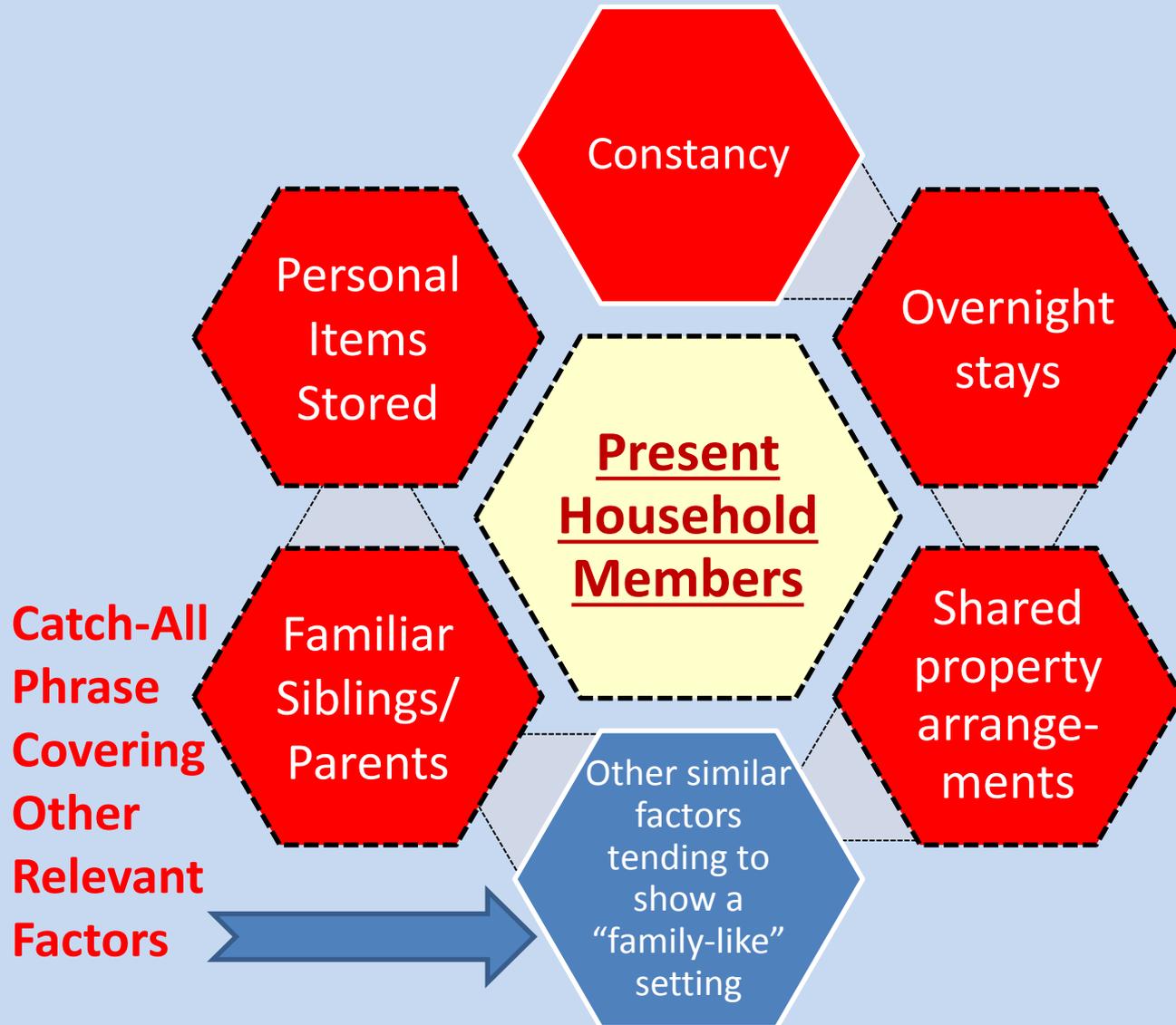
- *Desiato v. Abbott*, 261 N.J. Super. 30, 34 (Ch. Div. 1992) → Interpreting “household members”
- *N.G. v. J.P.*, 426 N.J. Super. 398 (App. Div. 2012) → Interpreting “former household members”
- *S.K. v. J.H.*, 426 N.J. Super. 230, 234–35 (App. Div. 2012) → Interpreting “dating relationship”

Present Household Members

1. Constancy of the relationship.
2. Overnight stays at each other's residences.
3. Personalty items stored at each other's residences.
4. Shared property arrangements.
5. Familiarity with each other's siblings and parents socially in dining or entertainment activities together, and/or attendance together at extended family functions such as weddings.

❖ *Desiato v. Abbott*, 261 N.J. Super. 30, 34 (Ch. Div. 1992).

Present Household Members



Former Household Members

1. The nature and duration of the past relationship.
2. Whether the past domestic relationship provides a special opportunity for abuse and controlling behavior.
3. The pass of time since the end of [the cohabitation].
4. The extent and nature of any intervening contacts.
5. The nature of the precipitating incident.
6. The likelihood of ongoing contact or relationship [that is undesirable to the victim].

➤ Coleman v. Roman, 388 N.J. Super. 342, 351–52 (Ch. Div. 2006).

Dating Relationship

1. Was there a minimal social interpersonal bonding of the parties over and above a mere casual fraternization?
2. How long did the alleged dating activities continue prior to the acts of domestic violence alleged?
3. What were the nature and frequency of the parties' interactions?
4. What were the parties' ongoing expectations with respect to the relationship, either individually or jointly?
5. Did the parties demonstrate an affirmation of their relationship before others by statement or conduct?
6. Are there any other reasons unique to the case that support or detract from a finding that a dating relationship exists?
 - S.K. v. J.H., 426 N.J. Super. 230, 234–35 (App. Div. 2012).

Two Common Factors

“The alleged perpetrator’s past domestic relationship with the alleged victim provides a special opportunity for abusive and controlling behavior.”

- Special Consideration for the Court
- Provides the Basis for Domestic Violence Characterization of a Non-Intimate Relationship

“Family-like”
setting

- Found in “Legislative Findings and Declaration” Section of PDVA
- Provided Evidence of Legislative Intent to Courts That Extended the Law’s Protection

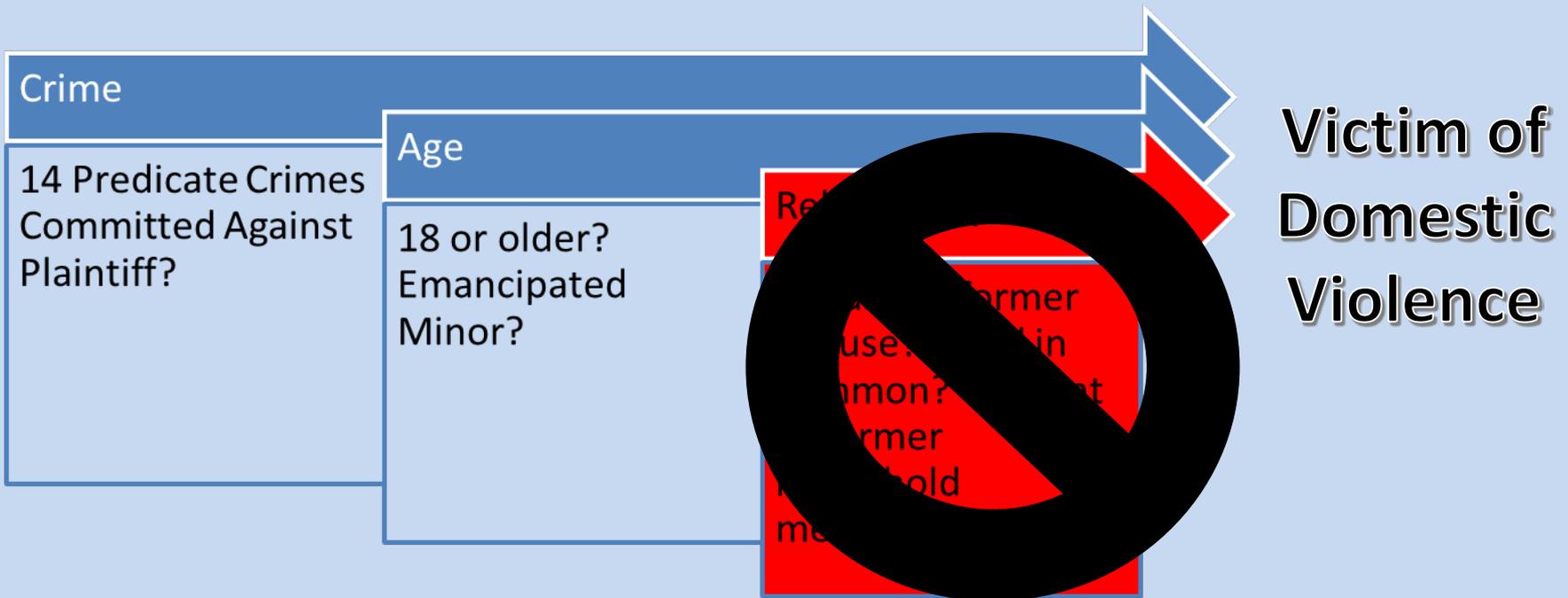
Non-Legislative Impact

- Division of Criminal Justice and the Administrative Office of the Courts must create and update a training course and produce a manual for police
- Current manual tracks the current statute
- No factors, no decisional law
- Newark Police Department asked “are you dating?”
- Amendment to statute might prompt change to the domestic violence manual
- N.J.S. § 2C:25-20b(3).

Alternative Remedy Statute

- Known as “Peace Order” in Maryland
- Maryland is one of the best examples
- Victim cannot obtain peace order if the victim qualifies for protection under the State’s domestic violence statute, or children
- Can get an interim, temporary, then final peace order
- MD. CODE ANN., CTS. & JUD. PROC. §§ 3-1501–1510

Alternative Remedy Statute



Alternative Remedy Statute

Interim Peace Order

2 B
days

A red arrow pointing downwards, indicating a transition from the Interim Peace Order to the Temporary Peace Order.

Temporary Peace Order

30
days

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Final Peace Order

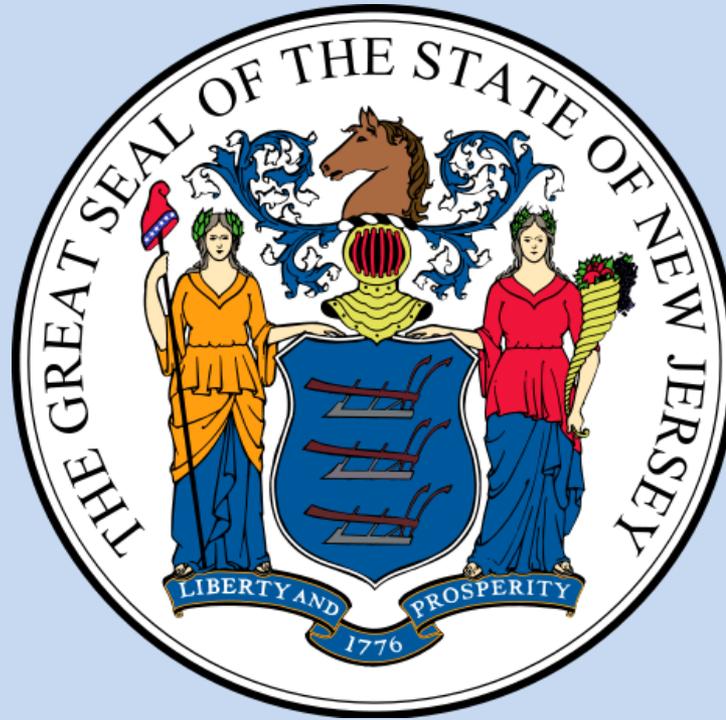
Alternative Remedy Statute

Acts alleged in petition

(a) A petitioner may seek relief under this subtitle by filing with the court, or with a commissioner under the circumstances specified in § 3-1503.1(a) of this subtitle, a petition that alleges the commission of any of the following acts against the petitioner by the respondent, if the act occurred within 30 days before the filing of the petition:

- (1) An act that causes serious bodily harm;
- (2) An act that places the petitioner in fear of imminent serious bodily harm;
- (3) Assault in any degree;
- (4) Rape or sexual offense under §§ 3-303 through 3-308 of the Criminal Law Article or attempted rape or sexual offense in any degree;
- (5) False imprisonment;
- (6) Harassment under § 3-803 of the Criminal Law Article;
- (7) Stalking under § 3-802 of the Criminal Law Article;
- (8) Trespass under Title 6, Subtitle 4 of the Criminal Law Article; or
- (9) Malicious destruction of property under § 6-301 of the Criminal Law Article.

New Jersey Law Revision Commission



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Frank N. Ricigliani, M.A., B.A.

Legislative Extern

New Jersey Law Revision Commission

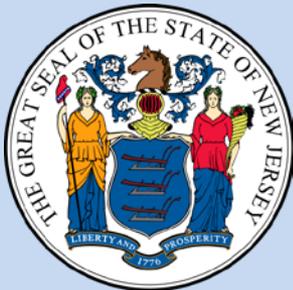
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F. Ricigliani Speaker Bio

- Frank Ricigliani joined the Commission in January 2014 as a student extern. He is a third-year student at Seton Hall University School of Law, where he serves as a Submissions Editor of the Seton Hall Law Review and is an active volunteer in the New Jersey Law & Education Empowerment Project.
- Prior to entering law school, Mr. Ricigliani earned a Master's Degree in International Relations and a Bachelor's Degree in Government & Politics. He hopes to one day practice in the field of labor law.