

It's Not Just Physical: Broadening Protections for “Domestic Abuse” in Iowa

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ABSTRACT: Society’s understanding of domestic violence has evolved since the Iowa Legislature enacted Chapter 236 in 1979. When domestic violence emerged as a prominent social issue, the focus was on physical abuse and its visible effects. However, contemporary research recognizes harassment and witnessing abuse as additional and significant forms of domestic violence. Despite this recognition, domestic violence laws have remained archaic, not fully encompassing these other forms of violence in the definition of “abuse.” Under current law, Chapter 236 enables domestic violence survivors to seek civil protective orders against physical abusers. Chapter 236 is currently inadequate to provide a remedy for all survivors because its definition of “domestic abuse” is limited to physical abuse and threats of physical abuse. This Note argues that the definition of “domestic abuse” in Chapter 236 needs to be redefined in order to better protect survivors of all forms of domestic violence. Further, the Iowa Legislature should incorporate a reasonableness standard of harassment in the definition of “domestic abuse” and provisions affording remedies for children that witness abuse. This updated definition will empower all survivors to seek civil protective orders and their remedies.

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INTRODUCTION

Since the 1970s, protecting domestic violence¹ survivors, particularly women, has increasingly emerged as a leading issue among community activists.² While this issue was previously believed to be a private familial matter, growing opposition caused the enactment of domestic violence laws.³ These laws provided civil remedies, such as civil protective orders, to survivors who were the direct targets of domestic violence.⁴ However, such laws were primarily geared towards physical abuse, largely ignoring other forms of domestic violence.

Over time, the understanding of abuse has changed, leading researchers and activists to broaden the definition of abuse.⁵ In particular, forms of harassment such as psychological and emotional abuse have been linked to adverse consequences as severe as physical abuse.⁶ Likewise, even just witnessing abuse has been shown to harm the development of young children.⁷

Chapter 236 of the Iowa Code is Iowa’s domestic violence law, also known as the Domestic Abuse Act.⁸ The Domestic Abuse Act empowers survivors of “domestic abuse” to obtain civil protective orders. The Act’s definition of domestic abuse aligns with the definition of assault in the criminal code.⁹

1. For purposes of this Note, “domestic violence” and “domestic abuse” will be used interchangeably. Generally, “domestic abuse” will be used when referring to Chapter 236 of the Iowa Code, while “domestic violence” is used to refer to the phenomenon more generally.

2. See Donileen R. Loseke, *Lived Realities and the Construction of Social Problems: The Case of Wife Abuse*, 10 SYMBOLIC INTERACTION 229, 230 (1987).

3. See MARK S. CADY ET AL., FINAL REPORT OF THE SUPREME COURT TASK FORCE ON COURTS’ AND COMMUNITIES’ RESPONSE TO DOMESTIC ABUSE 22 (1994).

4. See *infra* Section I.C.

5. See *infra* Sections II.B–.C.

6. See *infra* Section II.C.

7. See *infra* Section II.B.

8. See IOWA CODE § 236.1 (2024).

9. See *infra* Part I.

This definition does not capture these “new” forms of abuse that have been increasingly recognized as serious harms to domestic violence survivors.

This Note argues that legislation should redefine “domestic abuse” in Chapter 236 in order to protect survivors of all forms of domestic violence.¹⁰ Part I recounts the historical context of domestic violence laws. Part II examines the lasting consequences of harassment and witnessing abuse. Finally, Part III proposes that Chapter 236 should entitle survivors of all forms of domestic violence to the same remedies as survivors of physical domestic violence.

I. DOMESTIC VIOLENCE AND THE LAW

To effectively reevaluate the current state of the Iowa Domestic Abuse Act, this Part will explore common themes, the history of domestic violence intervention, and how the law treats domestic violence in criminal and civil legislation. First, this Part will review the various contextual definitions of domestic violence. Next, it will examine the history of domestic violence to set the stage for a discussion of domestic violence legislation. Finally, this Part will explore the differences between civil protective orders and criminal no-contact orders, how to obtain them, and the benefits of the civil system.

A. DOMESTIC VIOLENCE DEFINED

The definition of domestic violence varies depending on the context. In general, domestic violence can be defined in the context of criminal law, civil law, or social science.¹¹ Fundamentally, domestic violence is an assault between family members. In criminal law, there are traditional conceptions of assault involving an intent to cause pain or injury as well as more robust conceptions of assault which include acts intended to place another in fear of injury.¹² Iowa law defines assault as “[a]ny act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act.”¹³ In addition, Iowa law provides that assault includes “[a]ny act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.”¹⁴

Under the Domestic Abuse Act, domestic abuse is an assault (as defined in the criminal code above) under one of the following conditions: between

10. Chapter 236 defines domestic abuse as an assault on a “family or household member[.]” IOWA CODE § 236.2(2)(a). Under Chapter 236, “[f]amily or household members” does not include minor children of family or household members. *See id.* § 236.2(4). Therefore, even if the statute provided a cause of action for witnessing abuse, children would still be excluded from seeking a protective order due to this limitation. *See id.* This Note will not explore this provision because it is outside the scope of the harm this Note is seeking to remedy. Of course, including children in the definition of “family or household members” would be required before providing remedies for witnessing abuse. Therefore, it will not be discussed.

11. *See id.* § 236.2(2).

12. *See id.* §§ 236.2(2), 708.1.

13. *Id.* § 708.1(2)(a).

14. *Id.* § 708.1(2)(b).

family or household members residing together at the time of assault; “between separated spouses or persons divorced from each other and not residing together at the time of the assault”; between “parents of the same minor child”; between family or household members who have resided together within the past year; or between persons in an intimate relationship who have had contact within the past year.¹⁵ In effect, the Domestic Abuse Act couples the criminal definition of assault with a domestic relationship between the parties to establish a survivor’s basis for pursuing civil remedies under Chapter 236. Although an abuser abused a survivor under Chapter 236, the survivor is still a victim of a crime—assault.

However, there are also social science definitions of domestic violence that do not serve a distinct legal purpose.¹⁶ Generally, advocacy groups define domestic violence broadly as “a pattern of behaviors used by one partner to maintain power and control over another partner in an intimate relationship.”¹⁷ This “power and control” theory is a central focus of advocacy groups’ definitions.¹⁸ In contrast, the National Domestic Violence Hotline observes that domestic violence specifically “include[s] behaviors that physically harm, intimidate, manipulate, or control a partner . . . through physical violence, threats, emotional abuse, or financial control.”¹⁹ Likewise, public health organizations understand domestic violence to “take the form of physical assault, psychological abuse, social abuse, financial abuse, or sexual assault.”²⁰ However, domestic violence can extend beyond intimate partner violence and may occur between all members of the same family or household.²¹ Together, these definitions form a robust conception of violence.

In recognition of these developments, some states have adopted broad definitions of domestic violence. In California, the Domestic Violence Prevention Act does not limit abuse to “the actual infliction of physical injury or assault.”²² Rather, it observes that abuse also includes “disturbing the peace of the other

15. *Id.* § 236.2(2)(a)–(e).

16. See Ravneet Kaur & Suneela Garg, *Addressing Domestic Violence Against Women: An Unfinished Agenda*, 33 INDIAN J. CMTY. MED. 73, 73 (2008) (“Domestic violence can be described as the power misused by one adult in a relationship to control another. It is the establishment of control and fear in a relationship through violence and other forms of abuse.”).

17. *Understand Relationship Abuse: We’re All Affected by the Issue of Domestic Violence*, NAT’L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/identify-abuse/understand-relationship-abuse> [<https://perma.cc/DR48-RWBF>].

18. *Power and Control*, NAT’L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/identify-abuse/power-and-control> [<https://perma.cc/8EAG-R7N5>].

19. *Understand Relationship Abuse: We’re All Affected by the Issue of Domestic Violence*, *supra* note 17.

20. Kaur & Garg, *supra* note 16, at 73; *see also id.* (“[Domestic violence] affects women across the life span from sex selective abortion of female fetuses to forced suicide and abuse, and is evident, to some degree, in every society in the world.”).

21. See IOWA CODE §§ 236.2(2), 708.1(2)(a)–(b) (2024); *see also About Intimate Partner Violence*, U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/intimate-partner-violence/about> [<https://perma.cc/SBX4-WMRL>] (“Intimate partner violence (IPV) is abuse or aggression that occurs in a romantic relationship. Intimate partner refers to both current and former spouses and dating partners.”).

22. CAL. FAM. CODE § 6203(b) (West 2023).

party,” referring to conduct that “destroys the mental or emotional calm of the other party.”²³ Likewise, California courts have interpreted this expansive definition broadly to accomplish its underlying purpose.²⁴

Conversely, other states continue to recognize a limited definition of domestic violence.²⁵ For example, Kentucky narrowly defines domestic violence and abuse to include physical injury, stalking, and sexual assault.²⁶ Kentucky law aims to “[a]llow victims to obtain effective, short-term protection against further wrongful conduct in order that their lives may be as secure and as uninterrupted as possible.”²⁷

Therefore, some states have adopted expansive definitions of domestic violence while others adhere to a narrower definition. Furthermore, it is clear that physical abuse is always understood as a form of domestic violence while psychological abuse is not.

B. HISTORY OF DOMESTIC VIOLENCE LAWS

Before the 1970s, commentators regarded violence against women as the result of personal troubles or indicative of other family problems.²⁸ Courts historically viewed marital violence as a private familial matter and refused to intervene in the “privacy” of a relationship.²⁹ This nonintervention “legitimiz[ed] and perpetuat[ed] male violence against women.”³⁰ In the late 1970s, women’s movement activists, researchers, social service providers, and mass media spotlighted the issue on the public stage.³¹ Sociologists, famously Donileen Loseke, explored the newly named social problem of “wife abuse.”³² Wife abuse became characterized as a serious everyday violence, transforming a previously acceptable behavior into a serious public problem.³³ Following this revelation, shelter services for “battered women” became prevalent in various communities.³⁴

23. *Id.* § 6320(c); *id.* § 6203(a)(4) (“[Abuse means engaging] in any behavior that has been or could be enjoined pursuant to Section 6320.”).

24. *In re Marriage of Nadkarni*, 93 Cal. Rptr. 3d 723, 734 (Ct. App. 2009) (finding that “[a respondent’s] conduct in destroying the mental or emotional calm of his former wife by accessing, reading, and publicly disclosing her confidential emails” constitutes abuse).

25. *See* IOWA CODE § 236.2(2) (limiting domestic abuse to assault between persons with some sort of relationship).

26. KY. REV. STAT. ANN. § 403.720(2)(a) (West 2023).

27. *Id.* § 403.715(1).

28. Loseke, *supra* note 2, at 230.

29. Beverly Balos, *Domestic Violence Matters: The Case for Appointed Counsel in Protective Order Proceedings*, 15 TEMP. POL. & C.R.L. REV. 557, 563 (2006).

30. *Id.*

31. Loseke, *supra* note 2, at 230.

32. *See, e.g.,* Tamara Kuennen, *Not All Violence in Relationships Is “Domestic Violence,”* 86 BROOK. L. REV. 43, 44 (2020).

33. *See id.*

34. *See id.* at 49.

In response, Congress enacted the Violence Against Women Act in 1994, the nation's first attempt at a federal response to domestic violence.³⁵ The Violence Against Women Act ("VAWA") authorized \$1.62 billion in federal funds to support domestic violence programs, shelters, and the National Domestic Violence Hotline.³⁶ "[T]he legislation ma[de] it a federal crime to cross state lines in order to commit domestic violence . . . [and] require[d] states to give full faith and credit to protection orders issued by other states."³⁷ Prior to VAWA, many states already adopted their own laws.

Although Iowa adopted its first Domestic Abuse Act in 1979,³⁸ recommendations were made to revise its provisions. At the first national conference on domestic abuse in 1993, activists called for each state in the nation to establish a comprehensive plan to confront family violence.³⁹ In response, the Iowa Supreme Court Task Force on Courts' and Communities' Response to Domestic Abuse presented its final report and recommendations to the Iowa Supreme Court in 1994.⁴⁰ The Chief Justice, Arthur A. McGiverin, "noted that domestic violence is a widespread social problem with vast consequences and that the Iowa courts need to consider new policies and practices to respond" to the uptick in domestic violence.⁴¹ The focus of these recommendations surrounded enforcement of civil protective orders.

C. WHY CIVIL PROTECTIVE ORDERS?

One of the key recommendations made by the Task Force was for courts to continue issuing civil protective orders to survivors but make sure violation of such orders is criminalized and enforced.⁴² Civil protective orders are "a civil order from the court instructing a person to stop abusing, harassing, or contacting another person for a period of time."⁴³ In general, upon finding domestic abuse, courts may restrict a respondent's access to firearms, access to the petitioner, temporary child custody, and rights with respect to abuse of the petitioner.⁴⁴ Protective orders are proven to be effective in reducing violence

35. Sally F. Goldfarb, *The Supreme Court, The Violence Against Women Act, and the Use and Abuse of Federalism*, 71 *FORDHAM L. REV.* 57, 64 (2002).

36. *Id.*

37. *Id.*

38. CADY ET AL., *supra* note 3, at 22 ("Starting in 1979 with the enactment of the first protective order legislation, Iowa has been among the country's leaders in passing progressive legislation mandating an increased role for the court and peace officers in criminal and civil domestic abuse cases.").

39. *Id.*

40. *Id.*

41. *Id.* at 1.

42. *See id.* at 64.

43. *Protective, No Contact, and Restraining Orders*, IOWA JUD. BRANCH, <https://www.iowacourts.gov/faq/protective-no-contact-and-restraining-orders> [<https://perma.cc/9FKY-V3XA>]; IOWA CODE § 236.4(2) (2024) ("The court may enter any temporary order it deems necessary to protect the plaintiff from domestic abuse prior to the hearing.").

44. IOWA CODE § 236.5(1)(b).

against women, and many women report that they experience lower levels of violence after seeking an order.⁴⁵

Protective orders are an important resource for domestic violence survivors. First, protective orders give survivors a tool to solicit help from peace officers. For example, a protective order may prohibit an abuser from being within a certain distance of the petitioner, thereby permitting law enforcement to arrest the violator without evidence of further abuse;⁴⁶ violation of the order can be sufficient. Further, protective orders give law enforcement a formal mechanism to deploy preemptively against domestic violence.⁴⁷ Violations can be punishable as a misdemeanor, and violators may be jailed for a minimum number of days.⁴⁸

Additionally, civil protective orders require a lower standard of proof than criminal proceedings, easing the burden on plaintiffs seeking orders.⁴⁹ For example, some courts issue emergency protective orders upon good cause shown in an *ex parte* proceeding.⁵⁰ Good cause requires present danger of domestic abuse to the plaintiff.⁵¹ Similarly, plaintiffs must prove the allegations of domestic abuse by a preponderance of the evidence in civil protective order hearings instead of beyond a reasonable doubt.⁵² Protective orders were created to offer a substitute for criminal prosecution because the criminal process has been ineffective in providing for victim safety and accountability.⁵³ As a matter of policy, lower standards can address the failure of the legal system to appropriately protect and assist victims.⁵⁴

Finally, civil protective orders provide an avenue for plaintiffs, lacking resources or otherwise unable to get assistance, to represent themselves and their interests *pro se*.⁵⁵ Iowa authorized *pro se* petitions for protection orders in 1991.⁵⁶ *Pro se* plaintiffs typically start the *pro se* process from the clerk of

45. See Balos, *supra* note 29, at 566 (“In another study seeking to measure the effectiveness of protection orders to prevent future violence, researchers found that a permanent protection order was associated with a significant decrease in subsequent police-reported physical violence.”).

46. See 750 ILL. COMP. STAT. 60/214(b)(3) (2023).

47. See IOWA CODE § 664A.7(3).

48. *E.g., id.*

49. See 750 ILL. COMP. STAT. 60/205(a). *But see* IOWA CODE § 664A.3(1)(a) (stating that a magistrate shall enter a no-contact order during criminal proceedings if there is probable cause and the defendant poses a threat to the alleged victim).

50. IOWA CODE § 236.6(1); *see also Ex Parte Definition and Legal Meaning*, BLACK’S LAW DICTIONARY (2d ed. 1910), <https://thelawdictionary.org/ex-parte> (on file with the *Iowa Law Review*) (“On one side only; by or for one party; done for, in behalf of, or on the application [sic] of, one party only.”).

51. IOWA CODE § 236.6(1).

52. *Id.* § 236.4(1); 750 ILL. COMP. STAT. 60/205(a).

53. See Balos, *supra* note 29, at 566.

54. See 750 ILL. COMP. STAT. 60/102(3) (“[T]he legal system has ineffectively dealt with family violence in the past, allowing abusers to escape effective prosecution . . .”).

55. IOWA CODE § 236.3A(1) (“The department shall prescribe standard forms to be used by plaintiffs seeking protective orders by proceeding *pro se* in actions . . .”).

56. See CADY ET AL., *supra* note 3, at 22.

court's office.⁵⁷ Many offices designate specialists to handle pro se filings under Chapter 236 in order to more effectively help pro se litigants.⁵⁸ In some jurisdictions, pro se appearances represented eighty percent of protective order hearings.⁵⁹ Unfortunately, despite increased access to the court system, many women who experience domestic violence and attempt to access the court for protection find that the abuser retaliates in response through verbal or physical abuse.⁶⁰ Further, accessing the judicial system is challenging for survivors because abusers may control financial resources and many survivors only seek court protection after experiencing abuse for an extended period of time.⁶¹

Without the pro se litigation process, how many of these plaintiffs would be unable to pursue protective orders? The parties most at risk for domestic violence and in need of protection are unlikely to have legal representation to guide them through the process.⁶² Even with the lower standard of proof in the civil setting, survivors that seek protective orders with legal representation are far more likely to be successful than those that proceed pro se.⁶³

Civil protective orders are designed to facilitate survivors' access to remedies, providing immediate and effective assistance.⁶⁴ Without them, survivors may be trapped in abusive situations by fear of retaliation, loss of a child, financial dependence, or loss of accessible housing or services.⁶⁵ Similarly, survivors may be required to wait until a criminal charge has been filed to receive protection.

D. RESTRAINING ORDERS: CIVIL OR CRIMINAL?

In Iowa, there are two primary legal devices domestic violence survivors can seek to prevent contact with their abusers: civil protective orders and criminal no-contact orders.⁶⁶ While both orders share similarities and can help domestic violence survivors, they differ in a material way.

1. Criminal No-Contact Orders

Courts issue criminal no-contact orders in criminal proceedings for alleged violations of any "public offense for which there is a victim."⁶⁷ There are two

57. *Id.* at 46.

58. *See id.* at 50.

59. Balos, *supra* note 29, at 567–68.

60. *Id.* at 568.

61. *See id.* at 567–68.

62. *Id.* at 569.

63. *See* PETER FINN & SARAH COLSON, NAT'L INST. OF JUST., U.S. DEP'T OF JUST., CIVIL PROTECTION ORDERS: LEGISLATION, CURRENT COURT PRACTICE, AND ENFORCEMENT 19 (1990), <https://www.ojp.gov/pdffiles1/Digitization/123263NCJRS.pdf> [<https://perma.cc/6A55-L5UD>].

64. *See* 750 ILL. COMP. STAT. 60/102(2) (2023).

65. *See id.* 60/102(4).

66. *See Protective, No Contact, and Restraining Orders, supra* note 43 ("A protective order is a civil order . . ."); *id.* ("A no contact order is a court order issued in a criminal case . . ."); *id.* (stating that "restraining order" is a phrase "used to describe protective or no contact orders").

67. IOWA CODE § 664A.2(1) (2024).

general kinds of criminal no-contact orders: temporary and permanent.⁶⁸ After authorities arrest or take a person into custody for a public offense,⁶⁹ a magistrate must enter a temporary no-contact order if they find (1) probable cause exists that a public offense has occurred, and (2) contact with the defendant poses a threat to the safety of the alleged victim, persons residing with the alleged victim, or members of the alleged victim's family.⁷⁰ After receiving notice of the order, the terms of the order are enforceable, and the defendant "is subject to arrest for violating the no-contact order."⁷¹

However, a court may amend a no-contact order. If a defendant is convicted of, receives a deferred judgment for, or pleads guilty to a public offense, the court is required to either terminate or modify the temporary no-contact order.⁷² A court may modify and continue the temporary no-contact order already in effect up to five years.⁷³ Conversely, if the court terminates a no-contact order already in effect, the court may enter a permanent no-contact order for a period of five years.⁷⁴

Primarily, courts may require defendants to avoid contact with alleged victims, persons residing with the victim, or members of the alleged victim's family.⁷⁵ Orders may bar more than contact and also prohibit harassment of any type.⁷⁶ But what happens when no criminal charge has been filed against an abuser?⁷⁷

2. Civil Protective Orders

In Iowa, when no criminal charge has been filed,⁷⁸ survivors of domestic violence may turn to the civil protective order regime under Chapter 236.⁷⁹ Domestic abuse is an assault under one of the following conditions: between family or household members residing together at the time of assault; "between separated spouses or persons divorced from each other and not residing together at the time of assault"; between parents of the same minor child; between family or household members who have resided together within

68. See *id.* §§ 664A.3(1), 664A.5.

69. *Id.* § 664A.1(3) ("Victim" means a person who has suffered physical, emotional, or financial harm as a result of a public offense, as defined in section 701.2, committed in this state.").

70. *Id.* § 664A.3(1)(a)–(b).

71. *Id.* § 664A.4A(4)(c).

72. *Id.* § 664A.5.

73. *Id.*

74. *Id.*

75. *Id.* § 664A.1(1).

76. *Id.*

77. No-contact orders are issued after a criminal charge is filed. If no criminal charge has been filed against the abuser, survivors must turn to civil protective orders. See *Protective, No Contact, and Restraining Orders*, *supra* note 43.

78. It is important to recognize that criminal charges may not be filed against an abuser for a variety of reasons.

79. See *Protective, No Contact, and Restraining Orders*, *supra* note 43 ("If no criminal charge has been filed . . . [survivors] may still be eligible for a civil protective order.").

the past year; or between persons in an intimate relationship⁸⁰ who have had contact within the past year.⁸¹

There are three kinds of orders that may be entered under Chapter 236: permanent orders, temporary orders, and emergency orders.⁸² A person may seek relief⁸³ from domestic abuse by filing a verified petition⁸⁴ in the district court.⁸⁵ Plaintiffs may proceed pro se at this stage, unlike criminal no-contact orders which require criminal charges against the defendant.⁸⁶ When the court is unavailable, a judge may grant an emergency order for relief if the judge deems it necessary to protect the plaintiff from domestic abuse when good cause is shown in an ex parte proceeding.⁸⁷ Emergency orders expire seventy-two hours after they are issued, and a plaintiff may seek a temporary order from the court.⁸⁸

Before a hearing, the court may enter temporary orders it finds necessary to protect the plaintiff from domestic abuse.⁸⁹ Like emergency orders, temporary orders require good cause.⁹⁰ Unlike emergency orders, courts can extend temporary orders upon a continuance of a hearing.⁹¹ Temporary orders may contain the same remedies as permanent orders so long as there is a present danger of domestic abuse to the plaintiff.⁹²

During a hearing, a court may enter a permanent protective order upon finding that the defendant has engaged in domestic abuse as stated in section 236.2(2).⁹³ Unlike criminal no-contact orders, the court can do more than just order the defendant to “stay away” from the victim.⁹⁴ The court may grant a protective order that requires the defendant to cease abuse of the plaintiff, possession of firearms and ammunition, or contact with the plaintiff at enumerated locations.⁹⁵ It may also grant the plaintiff exclusive possession

80. IOWA CODE § 236.2(2)(e)(1) (stating persons may be in an intimate relationship by looking at the “duration of the relationship,” “frequency of interaction,” “whether the relationship has been terminated,” “the nature of the relationship,” and “expectation of sexual or romantic involvement”).

81. *Id.* § 236.2(2)(a)–(e).

82. *See id.* §§ 236.4–6.

83. All remedies under section 236.5 are available in permanent orders, temporary orders, and emergency orders. *See id.* § 236.5.

84. *Id.* § 236.3(1)(a)–(h) (requiring petitions to state plaintiff’s information, defendant’s contact information, relationship of the plaintiff to the defendant, nature of the alleged domestic abuse, name and age of each child whose welfare may be affected, description of pets, and desired relief, including requests for temporary or emergency orders).

85. *Id.* § 236.3(1).

86. *See supra* Section I.C.

87. IOWA CODE § 236.6(1).

88. *Id.* § 236.6(2).

89. *Id.* § 236.4(1)–(2).

90. *Id.*

91. *See id.* § 236.4(5).

92. *See id.* § 236.4(2).

93. *Id.* § 236.5(1).

94. *See id.* §§ 236.5(1), 664A.1(1).

95. *Id.* § 236.5(1)(b).

of the residence.⁹⁶ The court may also order temporary custody of children or modify existing orders awarding custody.⁹⁷ Additionally, the court may order the plaintiff, defendant, or children to receive professional counseling.⁹⁸

In general, orders are set for a fixed period of time, not exceeding one year.⁹⁹ However, the court can indefinitely amend or extend an order any time a party files a petition.¹⁰⁰ The court may extend or amend the order when it finds “the defendant continues to pose a threat to the safety of the victim, persons residing with the victim, or members of the victim’s immediate family.”¹⁰¹

After the court enters its order, peace officers are required to “use every reasonable means to enforce an order,” whether it be civil or criminal.¹⁰² When a police officer has probable cause to believe that a defendant has violated an order, they are required to take the defendant into custody.¹⁰³ In addition to enforcing orders, peace officers are required to use all reasonable means to prevent further abuse, including remaining on the scene, assisting abused persons with medical treatment, and providing notice of the person’s rights.¹⁰⁴

In summary, civil protective orders are an important tool for domestic violence survivors that help prevent future abuse.¹⁰⁵ Orders impose clear obligations on the courts, officers, and defendants to protect the abused.¹⁰⁶ Finally, civil protective orders give litigants the opportunity to pursue remedies pro se without reliance on formal charges in the criminal justice system.¹⁰⁷

II. THE INADEQUATE DEFINITION OF ABUSE IN CHAPTER 236

This Part will examine how the definition of abuse in Chapter 236 is too narrow as it excludes certain kinds of survivors from pursuing Chapter 236 remedies. Further, Iowa courts have narrowly construed the definition, exacerbating the problem. Recent developments, such as the COVID-19 pandemic and its effect on domestic violence, had the potential to accelerate harms created by Iowa’s limited definition of abuse. The pandemic’s effect on domestic violence incited a response from the Iowa Legislature. While the Iowa Legislature passed new domestic violence legislation in 2023,¹⁰⁸ there are still two primary harms unrecognized by Chapter 236’s narrow definition of abuse. First, this Part will explore the harm to (1) children who witness abuse and (2) victims of harassment. Next, this Part will illustrate how the gaps in

96. *Id.* § 236.5(1)(b)(3).

97. *Id.* § 236.5(1)(b)(5)(a)–(c).

98. *Id.* § 236.5(1)(a).

99. *Id.* § 236.5(3).

100. *Id.*

101. *Id.*

102. *Id.* § 236.11(1).

103. *Id.*

104. *See id.* § 236.12(1)(a)–(c) (stating the rights of domestic abuse survivors).

105. *See supra* Section I.D.

106. *See supra* Section I.D.

107. *See supra* Section I.C.

108. *See infra* note 133 and accompanying text.

the definition of abuse in Chapter 236 may fail to mitigate another spike in domestic violence.

A. SPIKES IN DOMESTIC VIOLENCE

During the COVID-19 pandemic, gender-based domestic violence against women surged.¹⁰⁹ Reports following the beginning of the COVID-19 lockdowns tend to show an increase in incidents of intimate partner violence.¹¹⁰ However, researchers struggled to gather data on the frequency of abuse during the pandemic because of the practical difficulties for survivors to make reports.¹¹¹ Still, it is understood that domestic violence remained a global problem that was accelerated by the pandemic.¹¹²

As early as April 2020, the World Health Organization was concerned about the pandemic placing children at increased risk of sexual exploitation, violence, and maltreatment.¹¹³ These concerns materialized in Iowa; the state saw seventeen domestic violence fatalities in 2020 and twenty fatalities in 2021.¹¹⁴ The Iowa Coalition Against Domestic Violence reported a sharp increase in victim hotline calls in 2020 and 2021 compared with 2019.¹¹⁵ State officials from the Attorney General's Crime Victim Assistance Division attributed these spikes "to the stresses on families during the . . . pandemic."¹¹⁶ Additionally, Iowa families were met with fewer options for survivors to cope with unsafe relationships.¹¹⁷

Increased incidents of domestic violence were not unique to Iowa; the pandemic fueled violence across the nation. Nationwide, there were over 669 murder–suicide incidents where the offender had a history of domestic violence in 2022.¹¹⁸ While Iowa saw a decline in domestic violence fatalities in

109. See SARA K. ANDREWS, JEAN GABAT, GEORGIA JOLINK & JENI KLUGMAN, RESPONDING TO RISING INTIMATE PARTNER VIOLENCE AMID COVID-19: A RAPID GLOBAL REVIEW 3 (2021).

110. See *id.* at 4 ("While the circumstances accompanying COVID-19 have made it even harder for women to report IPV and seek assistance, there is growing consensus that the pandemic has exacerbated IPV around the world.").

111. See *id.*

112. See generally *id.*

113. *Joint Leaders' Statement - Violence Against Children: A Hidden Crisis of the COVID-19 Pandemic*, WORLD HEALTH ORG. (Apr. 8, 2020), <https://www.who.int/news/item/08-04-2020-joint-leaders-statement—violence-against-children-a-hidden-crisis-of-the-covid-19-pandemic> [<https://perma.cc/DQE4-EWPG>].

114. William Morris, *Domestic Violence Deaths Down from 2021, with 12 Killed in Iowa Through August*, DES MOINES REG. (Oct. 5, 2022, 6:31 AM), <https://www.desmoinesregister.com/story/news/crime-and-courts/2022/10/05/iowa-domestic-violence-deaths-down-from-2021-attorney-general-taboo-cornerstone-church/69537165007> [<https://perma.cc/PD4X-5VFR>].

115. *Intimate Partner Violence: The Facts*, IOWA COAL. AGAINST DOMESTIC VIOLENCE, <https://ww.wicadv.org/dvfacts> [<https://perma.cc/PB3U-WVHP>].

116. Morris, *supra* note 114.

117. *Id.*

118. Lindsey Burrell, *Iowa Ranks Second for Domestic Violence, and Legislation Is Looking to Help Assess Homicide Threat*, WHO13 (Feb. 20, 2023, 6:41 AM), <https://who13.com/news/iowa-ranks-second-for-domestic-violence-and-legislation-is-looking-to-help-assess-homicide-threat> (on file with the *Iowa Law Review*).

2022, largely due to increased access to services and support following the decline of pandemic restrictions,¹¹⁹ incidents of domestic violence fatalities remain elevated in the state.¹²⁰ In early 2023, commentators suggested that Iowa ranked second in the nation for domestic violence incidents.¹²¹

However, the issue of domestic violence, although aggravated by the pandemic, is nothing new. Financial hardships, such as unemployment, have been known to contribute to domestic violence.¹²² Domestic violence is a persistent issue that affects millions of people in the United States every year.¹²³ “As many as one in four women and one in nine men are [survivors] of domestic violence.”¹²⁴ This form of violence knows no boundaries and occurs without cultural, socioeconomic, education, religious, sex, age, racial, or geographic limitation.¹²⁵ Domestic violence is so prevalent, that it is estimated to have a national economic cost of over twelve billion dollars annually.¹²⁶

Iowa is not an exception. Nearly a third of Iowans experience intimate partner physical violence, intimate partner sexual violence, and/or intimate partner stalking in their lifetime.¹²⁷ Since 1995, over three hundred Iowans have been killed in domestic violence incidents.¹²⁸ As of 2022, sixty-nine of these murders were bystanders, including victims’ dating partners, parents, and strangers.¹²⁹ While these numbers are staggering, support programs, such as shelter services and hotlines, provide insight into daily domestic violence incidents. On one day in 2022, Iowa hotline staff received 427 contacts—an average of eighteen contacts per hour.¹³⁰ In that same day, Iowa domestic violence programs reported that over one thousand survivors were given

119. Morris, *supra* note 114.

120. *See id.*

121. Burrell, *supra* note 118.

122. Martin R. Huecker, Kevin C. King, Gary A. Jordan & William Smock, *Domestic Violence*, NAT’L LIBR. OF MED. (Apr. 9, 2023), <https://www.ncbi.nlm.nih.gov/books/NBK499891> [<https://perma.cc/WH3W-JAQQ>].

123. *Id.* (“Family and domestic violence is a common problem in the United States, affecting an estimated [ten] million people every year.”).

124. *Id.*

125. *See id.*

126. *Id.*

127. NAT’L COAL. AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE IN IOWA 1 (2020), http://assets.speakcdn.com/assets/2497/ncadv_iowa_fact_sheet_2020.pdf [<https://perma.cc/VD6Q-8GMP>].

128. IOWA ATT’Y GEN.’S OFF. CRIME VICTIM ASSISTANCE DIV., DOMESTIC VIOLENCE FATALITY CHRONICLE 2 (2022), https://publications.iowa.gov/40880/1/DV_FATALITY_CHRONICLE_MARCH_2022_C1Bo72091479D.pdf [<https://perma.cc/GA9D-2GRT>].

129. *Id.*

130. NAT’L NETWORK TO END DOMESTIC VIOLENCE, 17TH ANNUAL DOMESTIC VIOLENCE COUNTS REPORT: IOWA SUMMARY (2023), <https://nnev.org/wp-content/uploads/2023/03/17th-Annual-Domestic-Violence-Counts-Report-IA-Summary.pdf> [<https://perma.cc/S72G-6HBH>].

assistance.¹³¹ These services included emergency shelter, transitional housing, hotels, and other housing provided by local domestic violence programs.¹³²

In response, the Iowa Legislature made recent efforts to address the issue of domestic violence. In early 2023, the Iowa Legislature introduced House File 112.¹³³ House File 112 altered Chapter 708's (criminal code) handling of subsequent domestic abuse assault offenses.¹³⁴ Before House File 112, Chapter 708 provided that convictions and deferred judgements of domestic abuse assault occurring more than twelve years before the date of the offense are not considered for purposes of establishing a subsequent domestic abuse assault offense.¹³⁵ House File 112 eliminated this "look-back provision," thereby allowing all convictions and deferred judgments to be considered in a subsequent offense.¹³⁶ In effect, a second offense of domestic abuse assault constitutes a serious misdemeanor to a Class D felony.¹³⁷ The punishments range up to five years imprisonment.¹³⁸

During discussion, State Senators Meyer and Wessel-Kroeschell exchanged comments on House File 112.¹³⁹ In opposition to the bill, Wessel-Kroeschell voiced concerns about the Iowa Coalition Against Domestic Violence's neutrality on the bill.¹⁴⁰ In a statement summarizing 2023 domestic violence legislation, the Iowa Coalition Against Domestic Violence stated "[bills] that increase criminal penalties for violent crime . . . are [not] effective at deterring violence. . . . [These bills] are not what 'supporting victims or preventing violence' looks like."¹⁴¹ The Senator emphasized House File 112 was not a priority for domestic violence advocacy groups because their energies are best focused elsewhere.¹⁴² Nevertheless, the Iowa Coalition Against Domestic Violence viewed House File 112 as an opportunity to expand understanding among policymakers, ultimately improving the well-being of survivors and communities.¹⁴³

131. *Id.* The National Network to End Domestic Violence conducts an annual twenty-four hour survey to collect data on the prevalence of domestic violence and support efforts by domestic violence programs. *Id.*

132. *Id.*

133. H.F. 112, 90th Gen. Assemb., Reg. Sess. (Iowa 2023).

134. *Id.*

135. *Id.*

136. *See id.*

137. JENNIFER ACTON, LEGIS. SERVS. AGENCY, FISCAL NOTE: HF 112, at 1 (2023), <https://www.legis.iowa.gov/docs/publications/FN/1374020.pdf> [<https://perma.cc/g2SK-BPJA>].

138. *Id.*

139. *House Video (2023-02-02)*, IOWA LEGIS., [https://www.legis.iowa.gov/dashboard?view=video&chamber=H&clip=h20230202095755859&dt=2023-02-02&offset=481&bill=HF%20112&st](https://www.legis.iowa.gov/dashboard?view=video&chamber=H&clip=h20230202095755859&dt=2023-02-02&offset=481&bill=HF%20112&status=i&ga=90) [<https://perma.cc/5MSL-HHNQ>].

140. *Id.*

141. *ICADV State Legislative Summary 2023*, IOWA COAL. AGAINST DOMESTIC VIOLENCE (May 6, 2023), https://www.icadv.org/_files/ugd/88018b_466ae2d6f3a74b49af5523b2e4427334.pdf [<https://perma.cc/X7L8-5NK9>].

142. *House Video (2023-02-02)*, *supra* note 139.

143. *See ICADV State Legislative Summary 2023*, *supra* note 141.

Despite some uncertainty, Governor Reynolds signed House File 112 into law in May of 2023.¹⁴⁴ Although it is unclear whether House File 112 will prove an effective tool in addressing the issue of domestic violence, the State legislature’s increased awareness of the issue provides a unique opportunity to revisit the state’s civil protective order scheme. Therefore, now is a good time to amend the definition of abuse in Chapter 236, so that it effectively protects survivors and addresses the issue of domestic violence.

B. “ABUSE” AND CHILDREN

When one thinks of domestic violence, the first thing they think of may be intimate partner violence between spouses. The next thing one thinks of may be child abuse. Generally, the first kind of abuse people think of is probably physical abuse, maybe psychological abuse. However, there are other kinds of violence affecting children such as witnessing abuse.

1. Violence Against Children

In the last thirty years, thirty-four children were killed as a result of domestic violence in Iowa.¹⁴⁵ Fathers killed twenty-one of these children, including five in-utero.¹⁴⁶ Although the number of children killed in the course of domestic violence is significant, children growing up in violent homes are also severely impacted by witnessing abuse.¹⁴⁷ Abused children are not the only victims—children are victims of domestic violence when they witness it in their own homes.¹⁴⁸ More than fifteen million children in the United States live in homes where domestic violence has occurred at least once.¹⁴⁹ Most of these children directly witness abuse of a parent.¹⁵⁰ In addition to directly witnessing adult-to-adult physical violence, children indirectly hear and experience the aftermath of incidents.¹⁵¹ This is referred to as “indirect exposure.”¹⁵² Children exposed to domestic violence, whether directly or indirectly, are often “called the ‘silent,’ ‘forgotten,’ and ‘unintended’ victims of . . . domestic violence.”¹⁵³

144. H.F. 112, 90th Gen. Assemb., Reg. Sess. (Iowa 2023).

145. IOWA ATT’Y GEN.’S OFF. CRIME VICTIM ASSISTANCE DIV., *supra* note 128, at 5.

146. *Id.*

147. See Nancy Ver Steegh, *The Silent Victims: Children and Domestic Violence*, 26 WM. MITCHELL L. REV. 775, 776 (2000).

148. See *id.* at 779.

149. *Effects of Domestic Violence on Children*, OFF. ON WOMEN’S HEALTH (Feb. 15, 2021), <https://www.womenshealth.gov/relationships-and-safety/domestic-violence/effects-domestic-violence-children> [<https://perma.cc/W8G4-N92W>].

150. See Ver Steegh, *supra* note 147, at 779.

151. Ericka Kimball, *Edleson Revisited: Reviewing Children’s Witnessing of Domestic Violence 15 Years Later*, 31 J. FAM. VIOLENCE 625, 625 (2016).

152. *Id.*

153. Jeffrey L. Edleson, *Children’s Witnessing of Adult Domestic Violence*, 14 J. INTERPERS. VIOLENCE 839, 839 (1999).

Since 1995, over 294 children in Iowa were minors at the time a parent was murdered, and 103 were present at the scene.¹⁵⁴ However, “[m]ost children do not witness the murders of a parent.”¹⁵⁵ Rather, the more prevalent harm in the state is to children who witness nonfatal abuse.¹⁵⁶ While it is hard to estimate an exact figure, some studies suggest that at least 3.3 million children are at risk of witnessing domestic violence in the United States every year.¹⁵⁷ Children may witness domestic violence in multiple ways such as forcing a child to watch abuse against a parent, forcing them to participate in abuse, or using a child to psychologically abuse a parent.¹⁵⁸

The cycle of abuse that begins through childhood exposure often continues “into their adult relationships and finally to the care of the elderly.”¹⁵⁹ Exposure to domestic violence has been shown to influence children’s attitude towards the use of violence; in effect, many “[c]hildren who witness violence between parents [are] at greater risk of being violent in their future relationships.”¹⁶⁰ Boys who are exposed to violence at a young age in particular have more positive attitudes towards it.¹⁶¹ “For example, a boy who sees his mother being abused is [ten] times more likely to abuse his female partner as an adult.”¹⁶² Additionally, girls who grow up in a home where her father abuses her mother are six times more likely to be sexually abused than girls who grow up in nonabusive homes.¹⁶³

Children who witness domestic violence are also at serious risk for long- and short-term physical and psychological problems.¹⁶⁴ Generally, witnessing violence causes neurobiological changes in children.¹⁶⁵ Younger children may react to interparental violence by becoming anxious or regressive in their behavior.¹⁶⁶ This behavior may include increased aggression, anger, and unpredictability¹⁶⁷ and may result in more serious mental health conditions

154. IOWA ATT’Y GEN.’S OFF. CRIME VICTIM ASSISTANCE DIV., *supra* note 128, at 34.

155. Edleson, *supra* note 153, at 841.

156. *Id.*

157. *See id.* at 842.

158. *See id.* at 841.

159. Huecker et al., *supra* note 122.

160. *Effects of Domestic Violence on Children*, *supra* note 149.

161. Kimball, *supra* note 151, at 626.

162. *Effects of Domestic Violence on Children*, *supra* note 149.

163. *Id.*

164. *Id.*

165. See Areti Tsavoussis, Stanislaw P.A. Stawicki, Nicoleta Stoicea & Thomas J. Papadimos, *Child-Witnessed Domestic Violence and Its Adverse Effects on Brain Development: A Call for Societal Self-Examination and Awareness*, FRONTIERS PUB. HEALTH 3 (Oct. 9, 2014), <https://www.frontiersin.org/journals/public-health/articles/10.3389/fpubh.2014.00178/full> [<https://perma.cc/X8RR-8EC3>].

166. Michele Lloyd, *Domestic Violence and Education: Examining the Impact of Domestic Violence on Young Children, Children, and Young People and the Potential Role of Schools*, FRONTIERS PSYCH. 3 (Nov. 18, 2018), <https://www.frontiersin.org/journals/psychology/articles/10.3389/fpsyg.2018.02094/full> [<https://perma.cc/D5AQ-QGQD>].

167. *See id.* at 4.

such as clinical depression and anxiety.¹⁶⁸ Besides the potential psychological consequences of witnessing abuse, exposing children to domestic violence increases their risk of developing diabetes, obesity, and heart disease as adults.¹⁶⁹ However, the effects of witnessing domestic violence as a child are not limited to health problems.

Childhood exposure to violence substantially impacts academic performance. When children are indirectly affected by domestic violence, it can disrupt schooling, learning, and educational outcomes.¹⁷⁰ Exposure to violence impacts academic performance when children are hypervigilant of their surroundings as a result of abuse.¹⁷¹ Child witnesses of domestic violence are also prone to developing post-traumatic stress disorder (“PTSD”),¹⁷² which can interfere further with academic performance and language skills.¹⁷³ These mental challenges may create a barrier to learning by negatively affecting cognitive skills such as attention and concentration.¹⁷⁴ Besides the factors impairing educational attainment, exposure to domestic violence negatively impacts social behavior at school as well.

Finally, young children exposed to violence have a restricted ability to cope with trauma due to age, thereby reacting through psychological and behavioral disengagement from themselves and others.¹⁷⁵ Besides disengaging, a strong indication that a child has been exposed to domestic violence is risk-taking in criminal behavior and disaffection with education.¹⁷⁶ Affects may also manifest through engaging in unprotected sex and abusing alcohol or drugs at a young age.¹⁷⁷ Some children “may [also] start fights or bully others.”¹⁷⁸

Children who witness abuse suffer from health problems, impaired academic performance, and deviant social behavior. In effect, the consequences of witnessing domestic violence as a child are significant. However, limited efforts have been made to address this issue through civil protective orders—despite evidence of its harmful effects to children and society.

2. Witnessing Abuse Is Not “Abuse” in Chapter 236

Even though witnessing domestic violence impacts children as if they were a victim of violence, the definition of abuse in Chapter 236 does not recognize this phenomenon. Returning to the definition of “domestic abuse”

168. *Effects of Domestic Violence on Children*, *supra* note 149.

169. *Id.*

170. Lloyd, *supra* note 166, at 1. *But see* Kimball, *supra* note 151, at 626 (stating researchers “did not find any research support for differences in academic abilities between exposed and non-exposed [children]”).

171. Lloyd, *supra* note 166, at 4.

172. *See* Tsavoussis et al., *supra* note 165, at 2.

173. *Id.*

174. Lloyd, *supra* note 166, at 4.

175. *Id.* at 3.

176. *Id.* at 4.

177. *Effects of Domestic Violence on Children*, *supra* note 149.

178. *Id.*; Lloyd, *supra* note 166, at 4.

for purposes of Chapter 236, it is assault, as defined in Section 708.1, between family or household members.¹⁷⁹ Section 708.1 defines assault as (1) an act which is intended to cause pain, injury, or intended to result in *physical* contact; or (2) an act which is intended to place another in fear of *physical* contact.¹⁸⁰ In effect, the inquiry into domestic abuse is primarily focused on physical assault or a threat of physical assault. Is there space in the *fear* of physical assault to include children who witness it?

The Iowa Supreme Court has grappled with this question before. In *D.M.H. by Hefel v. Thompson*, the court held that children who witnessed their stepfather abuse their mother were not afforded a right of action under Chapter 236 to seek a protective order against their stepfather.¹⁸¹ *Thompson* illustrates the problem with “abuse” in Chapter 236. In *Thompson*, there was a mother of three children, D.M.H., T.J.M., and T.J.T., each with different fathers.¹⁸² All the children lived with their mother and T.J.T.’s father.¹⁸³

In 1996, the mother “filed a petition for relief from domestic abuse” against the stepfather.¹⁸⁴ The court entered a temporary order, restraining the stepfather from “entering, residing, or being present in the household.”¹⁸⁵ However, the mother dismissed her domestic abuse petition, thereby terminating the temporary order that prevented the stepfather from being present in their home.¹⁸⁶ The fathers of D.M.H. and T.J.M. sought their own protective orders against the stepfather, alleging that their children were harmed when they witnessed the physical and verbal abuse between their mother and stepfather.¹⁸⁷ The court determined that “chapter 236 simply does not contemplate a situation in which minor children witness domestic abuse.”¹⁸⁸

The failure of Chapter 236 to contemplate conduct that harms children indirectly demonstrates its shortcomings. Children likely witness domestic

179. See IOWA CODE § 236.2(2) (2024).

180. See *id.* § 708.1(2)(a)–(b).

181. *D.M.H. by Hefel v. Thompson*, 577 N.W.2d 643, 646 (Iowa 1998). However, it is worth noting that the court was primarily concerned with the definition of “family or household member” in Chapter 236. See *generally id.* Under Chapter 236, “[f]amily or household members” does not include minor children of family or household members. See IOWA CODE § 236.2(4). Therefore, even if the statute provided a cause of action for witnessing abuse, children would still be excluded from seeking a protective order due to this limitation. See *id.* However, *Thompson* did not address whether a child that is a direct victim of assault could meet the definition of “family or household member” as the court was primarily concerned with the witness issue. See *A.R. v. Ochoa*, No. 21-0126, 2021 WL 5106433, at *2 (Iowa Ct. App. Nov. 3, 2021). One reason children may be excluded from seeking protective orders is that other statutory provisions are seen as sufficient to protect children who witness domestic abuse between family or household members. See *D.M.H. by Hefel*, 577 N.W.2d at 647.

182. *D.M.H. by Hefel*, 577 N.W.2d at 644.

183. *Id.*

184. *Id.*

185. *Id.*

186. See *id.* When questioning why the mother terminated her petition for protective order, it is worth mentioning that many survivors struggle to leave their abusers.

187. *Id.*

188. *Id.*

violence frequently, and many victims are left without civil recourse due to the limitations of the Domestic Abuse Act. This is problematic because of the serious adverse impact that witnessing abuse may have on child development, including the threat to learning outcomes and perpetuating abuse. But this is not its only limitation.

C. HARASSMENT

Harassment, more subtly, flies under the radar because it is easier to identify when someone has witnessed *physical* abuse. It is more challenging to identify when an aggressor engages in emotional and psychological abuse.¹⁸⁹ Emotional abuse is a foundation for other kinds of abuse as it is used to erode the survivor's self-esteem and create dependency on the abusive partner.¹⁹⁰

1. The Harms of Psychological Abuse and Harassment

Emotional and psychological abuse include "non-physical behaviors" that "control, isolate, or frighten" victims.¹⁹¹ Unlike physical abuse, there is often not an isolated incident or clear physical evidence of abuse, but a pattern that permeates the entire relationship.¹⁹² Harassment of this kind may present as threats, insults, manipulation, humiliation, intimidation, and excessive monitoring.¹⁹³ Generally speaking, some kinds of harassment such as name-calling and yelling are easier to identify.¹⁹⁴ For example, humiliating a partner in front of others, calling them insulting names, and threatening to harm oneself are more obvious forms of harassment.¹⁹⁵ In contrast, acting jealous, gaslighting a partner, and making someone's needs or feelings seem unimportant or less important are less obvious forms of harassment.¹⁹⁶ While these forms of abuse are unlikely to leave physical evidence, they can still have an impact and leave long-lasting trauma.¹⁹⁷

While most studies have traditionally focused on the impact of physical violence in relationships, a few have examined the impact of psychological/

189. See *What Is Emotional Abuse*, NAT'L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/resources/what-is-emotional-abuse> [<https://perma.cc/H2J4-RM9P>].

190. *Id.*

191. *Id.* But see *Emotional and Psychological Abuse*, WOMENSLAW.ORG (Sept. 8, 2021), <https://www.womenslaw.org/about-abuse/forms-abuse/emotional-and-psychological-abuse> [<https://perma.cc/ZC2E-L3BY>] ("There is no clear agreement among experts in the field whether there is a meaningful difference between emotional and psychological abuse. There is some research that suggests that there are slight differences between the two.")

192. *Emotional and Psychological Abuse*, *supra* note 191.

193. *What Is Emotional Abuse*, *supra* note 189.

194. *Id.*

195. See *Emotional and Psychological Abuse*, *supra* note 191.

196. *Id.* ("The term 'gaslighting' is used to describe a pattern of behavior in which the abuser intentionally denies that acts or events happened in the way that [the survivor] know[s] that they happened.")

197. *Id.*

emotional violence alone.¹⁹⁸ In one study, the incidence of anxiety and depression symptoms were tested in women who experience physical and psychological abuse in comparison with those only experiencing psychological abuse.¹⁹⁹ Researchers learned emotional abuse has severe short- and long-term effects on physical and mental health.²⁰⁰ Among long-term mental health consequences, it causes PTSD, depression, and anxiety.²⁰¹ In fact, psychological domestic violence is shown to be “as detrimental to . . . mental health as is physical violence.”²⁰² In light of these harmful consequences, does Chapter 236 contemplate remedies for survivors of psychological abuse?

2. Harassment Is Not “Abuse” in Chapter 236

Despite the significant damages psychological abuse creates for its survivors, Chapter 236 does not truly recognize it as a basis for domestic abuse. Another Iowa case illustrates how the lack of recognition of harassment, psychological violence, and emotional violence as domestic violence impedes survivors from pursuing civil remedies. For example, in *Shannon v. Baumgartner*, the plaintiff filed a petition seeking relief from domestic violence against her ex-husband.²⁰³ The plaintiff asserted in her petition that the defendant had a violent and threatening history against her, and she was scared for her safety when he makes comments such as “I should have finished you off then” and “you know what happens when you cross me.”²⁰⁴ Mirroring the definition of assault as described in section 708.1,²⁰⁵ the plaintiff claimed these statements caused her “fear of injury.”²⁰⁶ The district court issued a domestic abuse civil protective order, concluding that the defendant committed domestic abuse against the plaintiff when the plaintiff “received threats of physical harm.”²⁰⁷

On appeal, the court reversed.²⁰⁸ The court agreed with the district court’s finding that the plaintiff had a claim of “fear,” but disagreed with its application of the definition of “abuse” under Chapter 236.²⁰⁹ The statute requires an “act which is intended to place another in fear of immediate

198. See Maria A. Pico-Alfonso et al., *The Impact of Physical, Psychological, and Sexual Intimate Male Partner Violence on Women’s Mental Health: Depressive Symptoms, Posttraumatic Stress Disorder, State Anxiety, and Suicide*, 15 J. WOMEN’S HEALTH 599, 600 (2006).

199. See *id.* at 608.

200. *Emotional and Psychological Abuse*, *supra* note 191.

201. *Id.*; Pico-Alfonso et al., *supra* note 198, at 609 (stating psychological and emotional abuse “hav[e] independent effects on depressive and anxiety symptoms”).

202. Pico-Alfonso et al., *supra* note 198, at 609.

203. *Shannon v. Baumgartner*, No. 14-1650, 2015 WL 4935711, at *1 (Iowa Ct. App. Aug. 19, 2015).

204. *Id.*

205. See *supra* Part I.

206. *Shannon*, 2015 WL 4935711, at *1.

207. *Id.* at *2.

208. *Id.* at *4.

209. See *id.* at *2.

physical contact” to prove assault.²¹⁰ Thus, the court found that the plaintiff was unable to demonstrate the defendant’s intent “to place her in fear of *immediate* physical contact” because there was a lack of immediacy between the comments and potential assault.²¹¹ The court reasoned that mere words do not constitute an assault, and “the fact that the words were spoken over the telephone . . . negat[es] the theory of assault.”²¹² Furthermore, the court stated “a claim of ‘fear’ standing alone and absent an assault, does not give rise to a claim for protection under chapter 236.”²¹³ Consequently, there was no evidence of an assault to support the issuance of the protective order.²¹⁴ In effect, *Shannon* demonstrates how harassment, such as making unreasonable and insulting comments over the phone, is insufficient to constitute abuse in Chapter 236.

D. RISKS OF PHYSICAL VIOLENCE

Even if the evidence of physical and mental harms precipitated by harassment and witnessing abuse are insufficient to convince legislators of a problem, the propensity for both forms of abuse to evolve into physical violence alone warrants revisiting Chapter 236’s definition of abuse. In most instances of physical violence, survivors experienced psychological abuse previously.²¹⁵ In effect, prior psychological aggression is a risk factor for subsequent physical violence.²¹⁶ Witnessing abuse has similarly been linked with a greater risk of physical assault.²¹⁷ Additionally, child witnesses of abuse are at a greater risk of perpetuating the cycle of abuse through their own actions.²¹⁸ Therefore, while both of these harms have their own effects, they also signal an increase in physical abuse, a harm legislators are already focused on.

III. ADOPT LEGISLATION MODIFYING THE DEFINITION OF “ABUSE”

This Part will examine two legislative solutions that could protect survivors from further harm after witnessing abuse or experiencing nonphysical harassment, as well as the harm itself. As a neighboring state, Illinois is a useful model for redefining “abuse” under Chapter 236. The Illinois Domestic Violence Act includes provisions that provide civil remedies for survivors of both kinds of abuse. Iowa should revise the definition of abuse for the purpose of civil remedies to reflect our modern understanding of domestic violence.

210. IOWA CODE § 708.1(2)(b) (2024).

211. *Shannon*, 2015 WL 4935711, at *3.

212. *Id.* (quoting *Kramer v. Ricksmeier*, 139 N.W. 1091, 1091 (Iowa 1913)).

213. *Id.* at *3 (citing *Owens v. Owens*, No. 08–1374, 2009 WL 606590, at *3 (Iowa Ct. App. Mar. 11, 2009)).

214. *Id.* at *4.

215. Kris Henning & Lisa M. Klesges, *Prevalence and Characteristics of Psychological Abuse Reported by Court-Involved Battered Women*, 18 J. INTERPERS. VIOLENCE 857, 866 (2003) (“[T]he majority of women (80%) . . . have also been previously psychologically abused by their spouse/partner.”).

216. *Id.*

217. Elsie Yan & Thanos Karatzias, *Childhood Abuse and Current Intimate Partner Violence: A Population Study in Hong Kong*, 35 J. INTERPERS. VIOLENCE 233, 242 (2020).

218. See *supra* Section II.B.

A. INTIMIDATION OF A DEPENDENT

The first step in providing remedies for children who witness abuse is to reflect the harm it inflicts in the definition of “abuse.” One viable piece of legislation that could be borrowed from a neighboring state is the Illinois Domestic Violence Act’s intimidation of a dependent provision. In Illinois, for the purposes of obtaining civil protective orders, “[a]buse” includes “physical abuse, harassment, *intimidation of a dependent*, interference with personal liberty or willful deprivation.”²¹⁹ One intimidates a dependent by subjecting them to participation in or *witnessing* abuse.²²⁰ Dependence can occur through “age, health or disability.”²²¹ Thus, one abuses a child by intimidating them with physical abuse against another, “regardless of whether the abused person is a family or household member.”²²²

Under the Illinois scheme, a child survivor of this form of abuse can seek similar civil protective order remedies as in the Iowa Domestic Abuse act.²²³ Most relevantly to children, an order of protection can prohibit “intimidation of a dependent.”²²⁴ Additionally, parents can allocate care and possession of minor children when necessary “to protect the minor child from [intimidation].”²²⁵

For example, in *In re Marriage of Evans*, the court considered evidence of a child who witnessed their father abuse their mother and sibling.²²⁶ The court found when the father spanked the child’s sibling to the point of bruising and shoved their mother against a counter, the father intimidated their dependent.²²⁷ In effect, the court held that a court may protect the child “from intimidation of a dependent under the [Illinois Domestic Violence Act].”²²⁸ In another case, a petitioner established a prima facie case for intimidation of a dependent.²²⁹ The court found intimidation when a dependent witnessed the physical confinement of another when the defendant grabbed another child and took them into a house while the dependent was screaming and crying.²³⁰ However, this provision is not without its limitations. In another case, the court did not

219. 750 ILL. COMP. STAT. 60/103(1) (2023) (emphasis added).

220. *See id.* 60/103(10).

221. *Id.*

222. *Id.* Note how intimidation of a dependent is limited to the witnessing of “physical force,” “physical confinement,” and “restraint” of another under the Illinois Domestic Violence Act. *See id.*

223. *Compare id.* 60/214(b) (describing remedies such as stay away orders, exclusive possession of the residence, and cease of domestic abuse), with IOWA CODE § 236.5 (2024) (describing remedies such as cease of domestic abuse, exclusive possession of the residence, and ordering the defendant to “stay away”).

224. *See* 750 ILL. COMP. STAT. 60/214(b)(1).

225. *See id.* 60/214(b)(5).

226. *In re Marriage of Evans*, No. 5-20-0426, 2021 WL 2170414, at *9 (Ill. App. Ct. May 26, 2021).

227. *Id.*

228. *Id.* (“The *res judicata* doctrine simply does not prohibit the circuit court from protecting A.E. from intimidation of a dependent under the Act . . .”).

229. *Rock v. Rock*, No. 3-14-0114, 2015 WL 1143179, at *5 (Ill. App. Ct. Mar. 12, 2015).

230. *Id.*

find intimidation of a dependent when the defendant broke a dependent's phone and accused her of theft.²³¹

In Iowa, it is unlikely these cases would have a similar outcome. Without a provision protecting children that witness abuse, a child who witnesses their father abuse their mother and sibling would be left without any civil protective remedy. Likewise, a child who witnesses their father grab another child and force them inside of a home is left without a remedy. In Iowa, there are limited mechanisms to stop an abuser from intimidating a dependent in the future. Under the Illinois Domestic Violence Act, the child in *D.M.H. v. Thompson* who witnessed the abuse of their mother would likely be afforded a remedy because they witnessed the physical abuse of another.

However, there is some potential opposition to adopting these amendments. First, one might argue that a child who witnesses abuse is not physically abused. In effect, they should not be able to obtain a civil remedy against an abuser simply because they watched them abuse someone else. However, this argument fails to recognize the harms that precipitate from witnessing abuse.²³² These forms of abuse are a clear direct harm to children and society.²³³

Another challenge to Iowa adopting a "witnessing abuse" provision is that there are benefits from excluding children as protected parties for protective orders. Some legislatures have recognized the concept that parents should be able to "direct" and discipline their children.²³⁴ If children can obtain protective orders against their parent, it would be burdensome for parents to discipline their children. Of course, even if parents are able to direct their children at times, there does not need to be an all or nothing approach to respecting this feature of parenting. For example, the Illinois Domestic Violence Act excludes "reasonable direction of a minor child by a parent."²³⁵ It is unlikely that exposing a child to witnessing abuse would ever be seen as "reasonable direction." Therefore, permitting children to petition for protective orders would not subvert reasonable discipline by their parents.

Finally, there are other statutory schemes aimed at protecting children from witnessing abuse.²³⁶ Opponents may suggest that because these other statutes exist in Iowa, it is unnecessary to create another mechanism for children to seek protection from witnessing abuse. For example, child protection statutes such as Chapter 726 make it a crime to endanger children.²³⁷ Under Chapter 726, it is a crime for a person having custody over a child to "create[] a substantial risk to a child or minor's physical, mental or emotional health or

231. *Henderson v. Henderson*, No. 3-10-0668, 2011 WL 10468193, at *4 (Ill. App. Ct. May 19, 2011) ("Petitioner did not offer any evidence to establish respondent harassed, intimidated, or interfered with his daughter's personal liberty as defined by the Act.").

232. *See supra* Section II.B.

233. *See supra* Section II.B.

234. 750 ILL. COMP. STAT. 60/103(1) (2023).

235. *Id.*

236. *See D.M.H. by Hefel v. Thompson*, 577 N.W.2d 643, 646 (Iowa 1998) ("This . . . does not mean that these children have no protection against domestic abuse.").

237. *See* IOWA CODE § 726.6(1) (2024).

safety.”²³⁸ However, the statute is limited to criminal remedies, such as no-contact orders, instead of civil remedies. This is unsatisfactory because criminal remedies are burdensome on survivors since they require formal charges to be brought by the state and have a greater burden of proof.²³⁹ Allowing a civil remedy for witnessing abuse under Chapter 236 would promote increased access to remedies by imposing lower burdens on pro se plaintiffs.

B. HARASSMENT AND UNREASONABLE CONDUCT

Finally, a modification to the definition of abuse in Chapter 236 should include a provision for harassment to protect victims of psychological and emotional abuse. The Illinois Domestic Violence Act includes “harassment” in its definition of abuse.²⁴⁰ In Illinois, for purposes of seeking a protective order, abuse includes “physical abuse [and] harassment.”²⁴¹ Harassment is defined as “knowing conduct which is not necessary to accomplish a purpose that is reasonable under the circumstances; would cause a reasonable person emotional distress; and does cause emotional distress to the petitioner.”²⁴²

The act includes examples of conduct that is “presumed to cause emotional distress” such as “creating a disturbance at [the] petitioner’s place of employment or school,” “repeatedly telephoning [the] petitioner’s place of employment, home or residence,” and threatening to conceal a minor child from the petitioner.²⁴³ However, this list is not exhaustive, as other kinds of conduct may be unreasonable under the circumstances.

For example, in *In re Marriage of Bush*, a husband placed physical signs at the petitioner’s place of employment and got into a “heated” argument with their child’s school principal.²⁴⁴ The court held that such behavior was sufficient to constitute harassment within the meaning of the Illinois Domestic Violence Act.²⁴⁵ The court reasoned that even if it was reasonable for the husband to want police to perform a well-being check on their child, placing signs at his wife’s place of employment and arguing with the school principal were unreasonable ways to accomplish such purpose under the circumstances.²⁴⁶

Applying the Illinois harassment provision to the case of *Shannon v. Baumgartner* would likely result in a different outcome. In *Shannon*, “comments like ‘I should have finished you off then’” were held not to constitute abuse under Chapter 236.²⁴⁷ However, by adopting Illinois’s “harassment” in the definition of abuse, it is likely that it is unreasonable to talk about nonimmediate threats

238. *Id.* § 726.6(1)(a).

239. *See supra* Section I.C.

240. *See* 750 ILL. COMP. STAT. 60/103(1).

241. *Id.*

242. *Id.* 60/103(7).

243. *Id.*

244. *In re Marriage of Bush*, No. 1-20-1035, 2020 WL 6301786, ¶ 29 (Ill. App. Ct. Oct. 26, 2020).

245. *Id.* ¶¶ 27, 31.

246. *See id.* ¶¶ 27–29.

247. *Shannon v. Baumgartner*, No. 14-1650, 2015 WL 4935711, at *1, *3 (Iowa Ct. App. Aug. 19, 2015).

against one’s spouse under the circumstances of an argument. The *Shannon* court would have reached a different outcome under Illinois’s definition.

A potential challenge to recognizing “harassment” in the definition of abuse is that there are already anti-harassment laws in Iowa. As the court stated in *Shannon*, the plaintiff’s testimony of her husband’s comments “may support a finding of harassment . . . [And] [r]emedies for such conduct may be available.”²⁴⁸ The court was referring to Chapter 708, which criminalizes harassment.²⁴⁹ In Iowa, one “commits harassment when the person . . . has personal contact with another person, with the intent to threaten, intimidate, or alarm that other person.”²⁵⁰

However, such remedies for harassment under Chapter 708 are limited to criminal no-contact orders.²⁵¹ A criminal charge must be filed—unlike remedies under Chapter 236 where a plaintiff can seek civil remedies pro se.²⁵² By incorporating harassment into the definition of abuse under Chapter 236, Iowa law will empower harassment survivors to seek civil remedies pro se under Chapter 236. As previously discussed, this will also afford survivors with a lower burden of proof to prove their need for a protective order.²⁵³

CONCLUSION

In conclusion, Iowa should amend Chapter 236 to encapsulate harassment and children witnessing abuse as “domestic abuse.” When domestic violence emerged as a prominent social issue, the focus was on physical abuse and its visible effects. Contemporary research and increased awareness of the harm of harassment and witnessing abuse has led to the recognition of these harms as serious forms of domestic violence. Chapter 236 is inadequate to provide a remedy for these survivors because its definition of “domestic abuse” is limited to physical abuse and threats of physical abuse. To empower current and future survivors, the Iowa Legislature should adopt a more robust definition of abuse. Incorporating these other forms of violence in Chapter 236’s definition will empower all survivors to seek civil protective order remedies. And as a result, survivors will no longer have to rely on criminal orders when they want to protect themselves.

248. *Id.* at *3 (citations omitted).

249. IOWA CODE § 708.7 (2024).

250. *Id.* § 708.7(1)(b).

251. *See supra* Section I.D.1.

252. *See supra* Section I.D.2.

253. *See supra* Section III.A.