Summer 2011

How House Bill 2063 and the Expansion of Access to Protective Orders Could Have Saved Yeardley Love's Life

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I. INTRODUCTION

Few Virginians are unfamiliar with the tragic story of Yeardley Love, the University of Virginia student who was beaten to death by her ex-boyfriend George Huguely.[1] Love's body was found in her bed in the early morning hours of May 2, 2010.[2] Soon afterwards Huguely confessed to attacking and shaking Love, repeatedly hitting her head against the wall.[3]

Both Love and Huguely played lacrosse for the University of Virginia and would have graduated later that year.[4] While Love's violent death was a terrible loss to the community, it did bring to the attention of the public and legislators alike how many battered women were slipping between the cracks of Virginia's intimate partner violence laws.[5] One in four women will experience some form of intimate partner violence during their lifetime.[6] There is no reason any of these women should meet the same fate as Love.

Love's death prompted a flurry of proposed legislation concerning protective orders for the 2011 Session of the Virginia General

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[1] L. Jon Wertheim, *Why Did Yeardley Love Have to Die?*, SI.COM, May 17, 2010, *available at* http://sportsillustrated.cnn.com/2010/magazine/05/11/virginia.lacrosse/index.html.

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] Brian McNeill, *Post-Love Death, Protective Order Legislation Revived*, THE DAILY PROGRESS, Sep. 25, 2010, *available at* http://www2.dailyprogress.com/news/2010/sep/25/post-love-death-protective-order-legislation-reviv-ar-525268/ [hereinafter McNeill, *Protective Order Legislation Revived*].

[6] U.S. DEP'T OF JUSTICE, NAT'L INSTITUTE OF JUSTICE, *Extent, Nature, and Consequences of Intimate Partner Violence*, Exhibit 1, (July 2000) *available at* http://www.ncjrs.gov/pdffiles1/nij/181867.pdf.

Assembly.[7] There were several bills introduced proposing expansion of protective orders, but only one ultimately became law.[8] Passed on February 26, 2011, House Bill 2063 and the identical Senate Bill 1222 sponsored by Senator George Barker (D- Fairfax County) were the fruit of those labors.[9]

Battered women often face an uphill battle in the legal system. In the 2011 session, the Virginia General Assembly added a new tool to these women's arsenal.[10] An amended version of House Bill 2063 sponsored by Delegate Rob Bell (R- Albemarle) passed the House and Senate unanimously on February 26, 2011.[11] This paper will examine Virginia protective order law before the enactment of House Bill 2063, how Yeardley Love's death was a catalyst for reform of the law, how the law will change under House Bill 2063, and possible future developments in legislative reform that could further help victims of intimate partner violence.

II. VIRGINIA'S CURRENT PROTECTIVE ORDER LAW

Under the old law, the remedy of a restraining protective order was only available to a small minority of battered women.[12] To obtain a protective order, the petitioner must have fallen into one of two main categories: (1) her relationship with the aggressor must have met the definition of family abuse, or (2) she must have met the even stricter criteria to file a stalking protective order.[13] Protective orders could be obtained to prohibit further acts of family abuse or violence and/or to prohibit future contact with the petitioner and her family and household members.[14]

Before House Bill 2063, section 16.1-228 of the Code of Virginia defined family abuse as "any act involving violence force or

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[7] *See* McNeill, *supra* note 5.
[8] *Capital Briefs for Saturday, Feb. 5*, THE RICHMOND TIMES-DISPATCH, Feb. 5, 2011, *available at* http://www2.timesdispatch.com/news/virginia-news/2011/feb/05/tdmain06-capitol-briefs-for-saturday-feb-5-ar-821973/.
[9] H.B. 2063, 2011 Gen. Assemb., Reg. Sess. (Va. 2011) (enacted); S.B. 1222, 2011 Gen. Assem., Reg. Sess. (Va. 2011) (enacted).
[10] *See* H.B. 2063, 2011 Gen. Assemb., Reg. Sess. (Va. 2011) (enacted).
[11] *Id.*
[12] VA. STATE CRIME COMM'N., PROTECTIVE ORDERS, 6–8 (Nov. 15, 2010) *available at* http://leg5.state.va.us/User_db/frmvscc.aspx?ViewId=918 [hereinafter *Protective Orders Study*].
[13] *Id.* at 7–8.
[14] VA. CODE ANN. §16.1-228 (2010); VA CODE ANN. § 19.2-152 (2010).

threat . . . which results in bodily injury or places one in reasonable apprehension of bodily injury and which is committed by a person against such person's family or household member."[15] To obtain a family abuse protective order, the petitioner only had to prove by a preponderance of the evidence that there had been or was immediate danger of an act of family abuse.[16] The old statute did not require a pre-existing criminal warrant before filing for a protective order.[17]

There were no such relationship or status requirements for a stalking protective order under the old law, but the petitioner was required to meet a higher standard of proof.[18] Under the Code of Virginia, a police officer or the alleged victim of stalking, sexual assault, or another criminal offense could petition for a protective order.[19] The judge or magistrate could only issue the protective order, however, if there was also an existing criminal warrant.[20]

There have been several previous attempts to reform this system.[21] House Minority Leader, Delegate Ward Armstrong (D- Martinsville), said legislation has previously been introduced to expand protective orders to make them available to victims in unmarried couples.[22] But, in the twenty years Delegate Armstrong has served in the Virginia General Assembly, none of the previously proposed bills addressing the issue were ever passed.[23]

Only a year ago during the 2010 General Assembly Session, Virginia legislators introduced seven separate bills concerning protective orders.[24] The most pertinent, Senate Bill 208, sponsored by Senator Barker, would have expanded the definition of "family member" to include individuals in dating relationships for the purposes of obtaining a family abuse protective order.[25] Unfortunately, Senate

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[15] VA. CODE ANN. §16.1-228 (2010).
[16] VA. CODE ANN. § 16.1-253.2 (2010).
[17] VA. CODE ANN. §16.1-228 (2010).
[18] VA. CODE ANN. § 19.2-152.8 (2010).
[19] *Id.*
[20] *Id.*
[21] Anne Kaiser, *What Virginia Can Learn From North Carolina on 'Dating'*, VIRGINIA STATEHOUSE NEWS, July 13, 2010, *available at* http://virginia.statehousenewsonline.com/325/what-virginia-can-learn-from-north-carolina-on-dating/; *Protective Orders Study*, *supra* note 12, at 3.
[22] Kaiser, *supra* note 21.
[23] *Id.*
[24] *Protective Orders Study*, *supra* note 12, at 3.
[25] S.B. 208, 2010 Gen. Assemb., Reg. Sess. (Va. 2010) (as introduced Jan. 13, 2010).

Bill 208 was not passed.[26] Instead, it was referred to the Virginia State Crime Commission and continued for discussion during the 2011 session.[27]

A lot has happened since the end of the 2010 General Assembly Session. Yeardley Love's death in May of that same year sparked renewed interest in protective order legislation.[28] Months later, in December 2010, the Virginia State Crime Commission officially endorsed an overhaul of the old Virginia law to make protective orders available to more women.[29] After Senate Bill 208 failed, House Bill 2063 and its counterpart Senate Bill 1222 gave new hope to advocates for protective order expansion during the 2011 General Assembly Session.

III. YEARDLEY LOVE'S DEATH AS A CALL TO ACTION

In the wake of Yeardley Love's tragic death there was a widespread movement calling for reform of the laws that had failed to protect Love.[30] Further investigation revealed this was not the first time Huguely had exhibited violent, aggressive behavior.[31] Huguely's violent behavior had prompted the break-up, and he had allegedly sent Love numerous threatening e-mails.[32] Even if Love could have proved reasonable fear of an attack, she would not have been able to file for a protective restraining order against Huguely under Virginia law as it stood in 2010.[33] As recently as last year, Virginia was one

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[26] SB 208 Family or Household Member; Expands Definition, LEGISLATIVE INFORMATION SYSTEM, *available at* http://lis.virginia.gov/cgi-bin/legp604.exe?101+sum+SB0208 (last visited July 13, 2011).
[27] *Id.*
[28] McNeill, *supra* note 5.
[29] Brian McNeill, *Va. Commission Endorses Protective Order Law*, THE DAILY PROGRESS, Dec. 8, 2010, *available at* http://www2.dailyprogress.com/news/2010/dec/08/va-commission-endorses-protective-order-law-ar-704242/.
[30] McNeill, *supra* note 5.
[31] Jessica Bennett, *Turns Out, Yeardley Love Couldn't Have Gotten a Restraining Order If She Wanted To*, NEWSWEEK BLOG, (May 12, 2010), http://www.newsweek.com/blogs/the-human-condition/2010/05/12/turns-out-yeardley-love-couldn-t-have-gotten-a-restraining-order-if-she-wanted-to.html.
[32] Wertheim, *supra* note 1.
[33] *See* VA. CODE ANN. §16.1-253.4 (2010); VA. CODE ANN. § 16.1-228 (2010); VA. CODE ANN. §19.2-152.8 (2010).

of only eight states that did not allow unmarried couples to file for protective restraining orders against abusive partners.[34]

In fact, Virginia was one of ten states that received a failing grade for state laws to prevent teen dating violence from Break the Cycle, a national nonprofit organization which addresses the issue of teen dating violence.[35] The grade was partly based on the very limited group of individuals who could file for protective orders.[36] Virginia judges had the ability to grant protective orders for a narrow class of individuals in their discretion, but only if the abuser had actually physically attacked or threatened to physically attack the petitioner.[37] The law failed to account for other warning signs of intimate partner violence, like stalking and sexual abuse.[38] The report also called for several areas of immediate reform, including the expansion of protective orders to cover unmarried couples.[39]

In *The Huffington Post*, Break the Cycle's president Marjorie Gilberg explained the importance of protective orders: "Though civil protection orders are merely a piece of paper, they can ensure that otherwise normal behavior is criminalized and can sometimes mean the difference between life or death for an abuse victim."[40] She accused Virginia legislators of failing to keep up with the reality of modern intimate partner violence and urged them to expand the current law to make protective orders available to battered women who were not married to their abusers.[41] She referenced Love's murder, warning that if Virginia did not act promptly "we will hear this story again."[42]

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[34] Kaiser, *supra* note 21.
[35] *State Law Report Cards*, BREAKTHECYCLE.ORG, http://www.breakthecycle/content/teen-dating-violence-state-law-report-cards (last visited March 11, 2011).
[36] *Virginia 2010 State Law Report Card*, BREAKTHECYCLE.ORG, *available at* http://www.breakthecycle.org/system/files/pdf/Teen-Dating-Violence-State-Law-Report-Card-Virginia-2010.pdf.
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] Marjorie Gilberg, *Virginians Take Heed: Dating Violence Is Not Going Away*, HUFFPOST IMPACT, (May 11, 2010, 3:39 PM), http://www.huffingtonpost.com/majorie-gilberg/virginians-take-hee-dati_b_571910.html.
[41] *Id.*
[42] *Id.*

Virginia legislators did react to Love's death. First, they were shocked to find how many battered women could not file protective orders against their abusers under the current Virginia law.[43] Delegate Joe Morrisey (D- Highland Springs) admitted he had not realized the current law let so many battered women fall through "a crack in the law."[44] Under the old law, protective orders could only be obtained against abusers who were cohabiters, family members, or shared a child with the victim.[45] Inspired by Love's tragic murder, Delegate Morrissey called for new legislation to expand protective orders to cover "dating relationships" as well.[46]

Love's death also prompted a Virginia State Crime Commission study to examine the current protective order law and possible areas for reform.[47] The November 2010 study examined the only two types of protective orders available under Virginia law: family abuse protective orders and stalking protective orders.[48] Family abuse protective orders were easier to obtain, but were only available to victims who fit a specific definition of "family or household member," which does not include those in dating or non-cohabiting relationships, like Love and Huguely.[49] Stalking protective orders are only available in certain cases of stalking or physical assault if a criminal warrant has already been issued.[50] It is difficult to fathom just how many at risk women were unprotected because they did not fall into either of these two very narrow categories. Based on its findings, the Virginia State Crime Commission endorsed reform of the system to make protective orders available to individuals with a reasonable fear of future physical violence.[51]

Delegate Bell, representing the constituents of Albemarle and other counties surrounding University of Virginia's home in Charlottesville, brought the protective order reform movement to a head. [52]

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[43] *See* McNeill, *supra* note 5.
[44] *Id.*
[45] VA. CODE ANN. § 16.1-228 (2010); *see Protective Orders Study*, *supra* note 12, at 6.
[46] Chris Davis and Sam Brock, *Virginia Delegate- We Must Reform Protective Order Law*, CBS 6 RICHMOND (May 25, 201), http://www.wtvr.com/news/wtvr-morrissey-protective-order100525,0,3749634.story.
[47] *See* Kaiser, *supra* note 21.
[48] *Protective Orders Study*, *supra* note 12, at 5.
[49] *Id.* at 6–7.
[50] *Id.* at 8.
[51] McNeill, *supra* note 29.
[52] *Id.*

The vice chairman of the Virginia State Crime Commission, Delegate Bell was outspoken in his advocacy for an overhaul of the old Virginia protective order law.[53] He sponsored House Bill 2063, which as enacted, will make protective orders an available remedy for more intimate partner violence victims.[54] Delegate Bell explained how Love's death brought the issue of protective order law reform to the forefront of the General Assembly's attention.[55] House Bill 2063 incorporated the other proposed legislation to reform protective order law.[56]

IV. VIRGINIA'S NEW PROTECTIVE ORDER LAW UNDER HOUSE BILL 2063

The enactment of House Bill 2063 was a huge overhaul of the old Virginia protective order law. The bill did not attempt to expand the definition of family member to include unmarried couples as Senator Barker had proposed in Senate Bill 208 during the 2010 General Assembly Session.[57] Instead, House Bill 2063 expanded access by broadening the types of conduct that could trigger a protective order.[58]

Senator Barker continued his legislative work to help protect victims of intimate partner violence, and sponsored Senate Bill 1222, which is identical to Delegate Bell's House Bill 2063.[59] The Virginia General Assembly unanimously passed both bills.[60] The issue of leg-

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[53] *Id.*
[54] *See* 2011 Va. Legis. Serv. 1075 (West) (codified at VA. CODE ANN. §16.1-253.1, §16.1-253.4, §16.1-279.1 (2011)); *Capital Briefs for Saturday, Feb. 5*, RICHMOND TIMES-DISPATCH, Feb. 5, 2011, *available at* http://www.2timesdispatch.com/news/virginia-news/2011/feb/05/tdmain06-capitol-briefs-for-saturday-feb-5-ar-821973/.
[55] McNeill, *supra* note 5.
[56] H.B. 2063, 2011 Gen. Assemb., Reg. Sess. (Va. 2011) (as reported by H. Comm. for Cts. of Just. on Feb. 4, 2011).
[57] S.B. 208, 2010 Gen. Assemb., Reg. Sess. (Va. 2010) (introduced Jan. 13, 2010).
[58] *See* H.B. 2063, 2011 Gen. Assemb., Reg. Sess. (Va. 2011) (enacted).
[59] S.B. 1222, 2011 Gen. Assemb., Reg. Sess. (Va. 2011) (enacted); H.B. 2063, 2011 Gen. Assem., Reg. Sess. (Va. 2011) (enacted).
[60] Associated Press, *Protective Order Expansion OK'd*, THE DAILY PROGRESS (Charlottesville, Va.), Feb. 26, 2011, *available at* http://www2.dailyprogress.com/news/2011/feb/26/protective-order-expansion-okd-ar-870214/.

islative reform to protect more victims of intimate partner violence transcended party lines.[61]

Delegate Bell explained the need to expand access to protective orders for victims in dating and other relationships: "Threats don't just come from within the family or household. The threat can come from a boyfriend, a colleague or a neighbor. I am hopeful that the new law will help keep crime victims safer in Virginia."[62] Recognizing the need for major changes, the General Assembly voted to enact the bill which will expand access to protective orders.[63]

Specifically, House Bill 2063 changes existing law for both family abuse and stalking protective orders.[64] The bill expanded the definition of family abuse to include acts or threats that cause reasonable apprehension of death or sexual assault in addition to bodily harm.[65] The bill also streamlined the general requirements and penalties for the violation of both types of protective orders to prevent confusion and ensure uniform enforcement.[66] More importantly, it also changed the requirements for stalking protective orders.

First, the bill struck the language labeling protective orders issued by the General District Court for other acts of violence as "stalking" protective orders.[67] House Bill 2063 also removed one of the biggest barriers to obtaining this type of protective order: the criminal warrant requirement.[68] Under the new law, any individual who suffers or has reasonable apprehension of bodily injury, including sexual assault or any criminal act resulting in bodily injury, can obtain a protective order.[69] Delegate Bell explains "[t]he language that has been proposed will cover people in a dating relationship, workplace violence, roommates that are just roommates. We're doing that by focusing on the conduct, not the relationship."[70]

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[61] *House Passes Del. Bell's Protective Order Bill*, NEWSPLEX.COM, Feb. 8, 2011, *available at* http://www.newsplex.com/home/headlines/House_Passes_Del_Bells_Protective_Order_Bill__115590889.html.
[62] *Id.*
[63] *Id.*
[64] 2011 Va. Legis. Serv. 1075 (West) (codified at VA. CODE ANN. §16.1-228, §18.2-60.4 (2011)).
[65] *Id.* (codified at VA. CODE ANN. §18.2-60.4 (2011)).
[66] *Id.* (codified at VA. CODE ANN. §(2011)).
[67] *Id.* (codified at VA. CODE ANN. §§19.2-152.8-152.10 (2011)).
[68] *Id.* (codified at VA. CODE ANN. §19.2-152.8 (2011)).
[69] *Id.* (codified at VA. CODE ANN. §§19.2-152.7:1, 19.2-152.8 (2011)).
[70] McNeill, *supra* note 29.

The new law will also impose harsher penalties for the violation of protective orders. The bill amends section 18.2-60.4 to require heavier penalties for subsequent violations of protective orders.[71] The new law will also require police officers to arrest the ag-aggressor if they have a reasonable belief that person has violated a protective order with an act of aggression.[72]

Many advocate groups have applauded the Virginia General Assembly for passing House Bill 2063 to make protective orders available to more people, but also to strengthen the force of protective orders. Speaking on behalf of the Virginia Sexual and Domestic Violence Action Alliance, Gena Boyle described the amendments to Virginia protective order law as "positive steps."[73] Another spokes woman said that while there were additional changes the organization would like to see in the future, they were "pleased" with the progress that had been made in the wake of Yeardley Love's murder.[74]

V. AREAS OF FUTURE LEGISLATIVE REFORM

While House Bill 2063 makes important improvements to existing Virginia law, critics argue it did not go far enough. The changes to state protective order law are based on the recommendations of the Virginia State Crime Commission. [75] While the Virginia State Crime Commission endorsed a complete overhaul of the current law, it declined to endorse specifically naming "dating relationships" as a situation eligible for protective orders.[76] While pleased with the definite improvement to the law, spokespersons from the Charlottesville-based Virginia Sexual and Domestic Violence Action Alliance were concerned with this omission.[77]

House Bill 2063 also sidestepped the issue of the definition of family member. Instead of expanding the definition of "family member" as Senate Bill 208 from the 2010 General Assembly Session would have done, House Bill 2063 focuses on conduct rather

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[71] 2011 Va. Legis. Serv. 1075 (West) (codified at VA. CODE ANN. §18.2-60.4 (2011)).
[72] *Id.*
[73] McNeill, *supra* note 29.
[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] *Id.*

than on specific relationships.[78] Delegate Bell described this approach as "going further" by expanding protective orders to dating, non-cohabiting couples.[79] This also allowed the General Assembly to avoid addressing other issues, like making a separate determination of whether or not intimate partner violence victims in same-sex couples can file for protective orders.

While House Bill 2063 specifies incidents of reasonable apprehension of sexual assault fits under the violent acts or threats that can trigger a protective order, there is no mention of emotional or mental abuse.[80] Under the new law, battered women will still have to prove to a judge by a preponderance of the evidence either that a violent act had already occurred or they have reasonable fear of bodily injury.[81] This could be problematic. Studies have shown emotionally abusive or controlling behavior is often closely linked or gives rise to intimate partner violence.[82]

House Bill 2063 is a huge improvement to Virginia protective order law, especially since the issue had not been addressed for such a long time.[83] Protective orders, however, are only a small part of any long-term solution for the intimate partner violence problem. There are still a large number of victims who, for a variety of reasons, do not report incidents of intimate partner violence to the authorities.[84] The National Institute of Justice recommended specific education and training for members of the criminal justice community to make them aware of safety concerns and other issues specific to intimate partner violence victims.[85] While legislative reform is a good start, intimate partner violence prevention has to be on a wider scale to be effective. Protective orders can be a useful tool for battered women, but are only a small band-aid over a much deeper problem.

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[78] *Id.*; S.B. 208, 2010 Gen. Assemb., Reg. Sess. (Va. 2010) (introduced Jan. 13, 2010).
[79] McNeill, *supra* note 29.
[80] 011 Va. Legis. Serv. 1075 (West) (codified at VA. CODE ANN. §19.2-152.7:1 (2011)).
[81] *Id.* (codified at VA. CODE ANN. §19.2-152.9:D (2011))
[82] NAT'L INST. OF JUST., U.S. DEP'T. OF JUST., *Extent, Nature, and Consequences of Intimate Partner Violence*, 56 (July 2000) *available at* http://www.ncjrs.gov/pdffiles1/nij/181867.pdf [hereinafter *Consequences of Intimate Partner Violence*].
[83] Kaiser, *supra* note 21.
[84] *Consequences of Intimate Partner Violence*, *supra* note 82, at 49, exhibit 16.
[85] *Id.* at 57.

VI. CONCLUSION

Yeardley Love may not have been married to or lived with George Huguely, but there is no doubt her relationship with Huguely cost Love her life. Love's tragic death put a face on a serious problem with the former Virginia law. Under the new law, Huguely's conduct alone would have been enough to give Love access to protective orders because of past incidents of violence and a reasonable apprehension of future violence.[86]

Love also put a face on the plight of the many nameless female victims of intimate partner violence. While one in four women experience intimate partner violence during their lifetime, many of these incidents go unreported.[87] Intimate partner violence affects all types of women. It transcends all socio-economic, racial, and cultural lines. It is not limited to couples that are married or live together. It is important for legislators to recognize the changing realities of intimate partner violence and give these women as many tools as possible to protect themselves and bring their abusers to justice.

House Bill 2063 is a step in the right direction. Further expansion of legal protections is necessary for victims of all forms of intimate partner domestic violence. Other forms of abuse can be part of the intimate partner violence cycle and be early warning signs of future physical abuse.[88] Increased awareness of the prevalence and dangers of emotional abuse in addition to other forms of intimate partner violence will help pave the road to providing battered women with more resources and remedies.

Love's tragic death is responsible for legislation that could save the lives of many other Virginia women. Future legislative reform will be necessary to continue working to prevent intimate partner violence. It should not cost another life to continue the work that lies ahead.

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[86] *See* 2011 Va. Legis. Serv. 1075 (West) (codified at VA. CODE ANN. §19.2-152.8:B (2011)).
[87] *Consequences of Intimate Partner Violence*, *supra* note 82, at 49, exhibit 16.
[88] NANCY K.D. LEMON, DOMESTIC VIOLENCE LAW 42 (3rd. ed. 2009).