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Disrupting the Code of Silence: Analyzing the Impact of the First Federal Anti-Hazing Law on the Psychological Drivers of Hazing — Abigail Nitzken

Making Children's Safety an Explicit Priority in Domestic Violence Cases: A Simple Solution with Immense Impact — Katelyn Holmstrom Riley

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DISRUPTING THE CODE OF SILENCE: ANALYZING THE IMPACT OF THE FIRST FEDERAL ANTI-HAZING LAW ON THE PSYCHOLOGICAL DRIVERS OF HAZING

Abigail Nitzken[*]

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I. INTRODUCTION

In the dark hours of October 10, 1873, Mortimer Marcellus Leggett was joining the Kappa Alpha fraternity at Cornell University, even then one of the nation's most prestigious schools.[1] Blindfolded and eager to be accepted by the fraternity, Leggett was led through dark, narrow trails to an open field, where further inducting rituals were to be performed.[2] Older members of Kappa Alpha helped him over a fence.[3] Fatigued and blindfolded, Leggett was led to lean against a lone hemlock tree.[4] With only moonlight to guide them, the older brothers could not see the danger that lay ahead.[5] Without his sight, Leggett had no idea where he was.[6] Leggett and two of the older members stepped toward the hemlock tree and suddenly sank through the leaves,[7] plunging more than forty feet to the bottom of a rocky gorge.[8] Landing headfirst, Leggett's impact was so violent and gruesome that it left an indentation in the stony clay the size and shape of his head.[9] Moaning, Legett pleaded, '"Take it[10] off; take it off!"[11] Unfortunately, "the exact meaning of [his] cry for help would soon die with Leggett."[12] Although the two older members would eventually recover,[13] at approximately 11:00 pm that evening, Leggett's eyes shut for the last time, and a sheet was pulled over him.[14] His parents had originally felt reassured that Leggett was safe at Cornell because the school "prided itself on religious education" and Leggett had mailed his father a letter saying "Cornell was hazing-free."[15] That reassurance disappeared when Leggett lost his life because of "reckless disregard and the absence

[1] Hank Nuwer, *6 Ill Met by Moonlight: The First Fraternity Hazing Death* 1, 2, https://www.hanknuwer.com/wp-content/uploads/Mortimer-Leggett-Cornell.pdf.
[2] *Id.* at 2-3.
[3] *Id.* at 3.
[4] *Id.* at 4.
[5] *Id.*
[6] *Id.*
[7] *6 Ill Met by Moonlight: The First Fraternity Hazing Death* at 4.
[8] *Id.* at 4-5.
[9] *Id.*
[10] Various sources speculate what "it" was; it could have been the blindfold, his coat, or that Leggett, in such a traumatic state, imagined a heavy weight on him. *Id.* at 6.
[11] *Id.*
[12] *Id.*
[13] *6 Ill Met by Moonlight: The First Fraternity Hazing Death* at 6.
[14] *Id.* at 7.
[15] *Id.* at 1.

of common sense."[16] Leggett's tragic story marks one of the first documented fraternity hazing deaths in U.S. history.[17]

Readers of this article probably do not know Mortimer Marcellus Leggett's name or this story. Or Max Gruver's. Or Timothy Piazza's. Or Charles Nagy's. Their names have disappeared into the anonymity of statistics, becoming just another number in a numbering cadence recording the tragic loss of one promising young life after another. And that's the problem, one that has persisted, unhalted for decades.

On December 23, 2024, the first federal anti-hazing legislation in United States history was signed into law, prompted in part by the advocacy of devastated parents and families. The Stop Campus Hazing Act (SCHA) amends the Higher Education Act of 1965, which now requires institutions participating in Title IV assistance programs to abide by two hazing reporting requirements, as well as to establish hazing education programs. Will the law finally provide an antidote to this seemingly unrelenting march of tragedy? To assess the likely impact of the Act on hazing, the causes of hazing must first be understood. Part I of this article discusses hazing stories, statistics, and the parental impact on legislation. Part II discusses the federal response to hazing, including the legislative journey of the SCHA, and an examination of the SCHA's reporting and educational programming requirements. Part III explores the various psychological theories underlying the causes of hazing, including ancestral need for connection, internal influences, and the impact of external controls, or the lack thereof. Part IV then predicts the direct and indirect impacts of the SCHA on the prevalence of hazing in the United States.

II. HAZING NECESSITATES FEDERAL ANTI-HAZING LAW

A. Motivated by Max

> "Something bad may happen to you, but it may happen because it will make you better." -Max Gruver[18]

Often described as a gentle giant, Max Gruver grew up in Roswell, Georgia.[19] Max was a kind-hearted, generous, and selfless

[16] *Id.* at 4.
[17] *Id.* at 7.
[18] MAX GRUVER FOUND., *About Max*, https://www.maxgruverfoundation.com/about-max (last visited Mar. 18, 2025).
[19] *Id.*

young man who was deeply loved by friends, family, and all who crossed paths with him.[20] Passionate about sports, Max coached his younger sister's basketball team, became a published sportswriter, and sought to pursue a career in journalism at Louisiana State University (LSU).[21] After graduating from high school in 2017, Max made a new home in Louisiana with the hopes of becoming a sports journalist.[22] Tragically, his dream would never come to fruition as his life was cut short by a horrific, senseless hazing ritual, mere weeks into his college journey.[23]

At LSU, Max joined the fraternity Phi Delta Theta.[24] On September 13, 2017, Max and his fellow pledges were summoned to participate in a hazing ritual, paradoxically known as "Bible Study."[25] This ritual included "compelled excessive consumption of alcohol by pledges, all of whom were under the lawful drinking age."[26] Max and the other pledges were tested on their knowledge of the fraternity and Greek alphabet, and if they answered incorrectly, they were forced to take a three to five-second "chug" of "Diesel," a 190-proof alcohol.[27] "Diesel," also known as Everclear,[28] is tasteless and "banned in 14 states" because it is "nearly 100% pure alcohol."[29] While other pledges were forced to take 3-4 pulls, Max was ordered to take 10-20.[30] By 11:30 pm, Max was incapacitated, in visible distress, and in need of emergency medical care.[31] However, fraternity members abandoned Max on a

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[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] MAX GRUVER FOUND., https://www.maxgruverfoundation.com (last visited Mar. 18, 2025).
[25] Gruver v. State through Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll., 654 F. Supp. 3d 539, 546 (M.D. La. 2023).
[26] Complaint at 8, Gruver v. State through Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll., 654 F. Supp. 3d 539 (M.D. La. 2023), 2019 WL 5597422.
[27] Gruver v. State, 654 F. Supp. 3d 539, 546-47 (M.D. La. 2023).
[28] *Id.* at 549.
[29] Sarah P. Roberts et al., *Brand preferences of underage drinkers who report alcohol-related fights and injuries*, 1, 9 (Apr. 2015), https://pmc.ncbi.nlm.nih.gov/articles/PMC4441549/pdf/nihms637001.pdf.
[30] *Compare* Complaint at 2, Gruver v. State through Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll.; 2019 WL 5597422 (M.D.La.) ("Max was ordered to take at least 10 to 12 [pulls]."), *with* GORDIE CTR., *Max Gruver*, MEMORIALS, https://gordie.studenthealth.virginia.edu/connect/memorials/max-gruver (last visited Apr. 3, 2025) ("Max was forced to take 18-20 'pulls' from the bottle in less than 90 minutes.") [hereinafter GORDIE CTR., Max Gruver Memorial].
[31] Complaint at 2, Gruver v. State, 654 F. Supp. 3d 539 (M.D. La. 2023); 2019 WL 5597422.

couch, instructing him to "sleep it off."[32] At some point in the night, Max choked on his own vomit.[33] Alone on the couch for nearly 10 hours, Max was unresponsive when fraternity members found him.[34] Yet, fraternity members still failed to seek emergency assistance and instead called the other pledges, who instructed them to take Max to the hospital.[35] Even worse, the fraternity members told the pledges to deceive hospital staff about the circumstances and say Max was found alone in his dorm room.[36] Max was pronounced dead at the hospital.[37] His blood alcohol content (BAC) was 0.495—more than six times the legal limit[38]—despite being taken at his autopsy a day and a half after his death.[39]

B. Hazing Prevalence

The same year Max lost his life, Timothy Piazza joined Beta Theta Pi at Penn State, where a night of hazing led to his death.[40] Timothy was hazed on his first night of pledging, which involved forced consumption of alcohol.[41] This included compelling Piazza to consume at least "18 drinks in 82 minutes."[42] Severely

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[32] GORDIE CTR., Max Gruver Memorial, *supra* note 30.
[33] *Id.*
[34] Complaint at 2, Gruver v. State, 654 F. Supp. 3d 539 (M.D. La. 2023); 2019 WL 5597422.
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] GORDIE CTR., Max Gruver Memorial, *supra* note 30. *Compare Alcohol Poisoning*, CLEV. CLINIC (Apr. 11, 2022) https://my.clevelandclinic.org/health/diseases/16640-alcohol-poisoning (noting BAC 0.30% to 0.40% likely indicates alcohol poisoning and that BAC over 0.40% is potentially fatal), *with Blood Alcohol Level*, MEDLINE PLUS (Aug. 12, 2025) https://medlineplus.gov/lab-tests/blood-alcohol-level/#:~:text=0.06%2D.,as%20difficulty%20walking%20and%20speaking (nothing that BACs over 0.31% are "especially dangerous and may even be fatal.").
[39] Complaint at 2, Gruver v. State 654 F. Supp. 3d 539 (M.D. La. 2023); 2019 WL 5597422. *See also* NAOMI GREENE, ET AL., *Variability in Antemortem and Postmortem Blood Alcohol Concentration Levels among Fatally Injured Adults*, 47 AM. J. DRUG AND ALCOHOL ABUSE 1, 84-91 (2021) (noting postmortem BACs were lower than antemortem BACs).
[40] *Timothy J. Piazza Antihazing legislation signed into Pennsylvania law*, PENN STATE NEWS, https://www.psu.edu/news/administration/story/timothy-j-piazza-antihazing-legislation-signed-pennsylvania-law (Feb. 1, 2019).
[41] GORDIE CTR., *Tim Piazza*, MEMORIALS, https://gordie.studenthealth.virginia.edu/connect/memorials/tim-piazza (last visited Apr. 3, 2025) [hereinafter GORDIE CTR., Tim Piazza Memorial].
[42] Colin Dwyer, *Penn State Student Given 18 Drinks in 82 Minutes Before Hazing Death, Prosecutors Say*, NPR (Nov. 13, 2017 5:19 PM),

intoxicated, Piazza fell multiple times, including a fall down 15 feet of the fraternity house stairs.[43] By 10:47 pm, Piazza was limp, bruised, and unresponsive; by 12:17 am, his BAC "was between 0.27 and 0.35."[44] Just like Max, fraternity members abandoned Piazza on a couch.[45] Throughout the night, fraternity members dumped liquid on Piazza's face, attempted to secure him to prevent him from rolling over, and slapped him.[46] One fraternity member told jurors that he "screamed at the brothers, telling them they needed to get help," and that Piazza needed to be taken to the hospital.[47] In response, the member advocating for Piazza was shoved into a wall and told that everything was under control.[48] Other members also recognized that Piazza was in need of help, as a message sent in a fraternity group chat at 11:53 pm read: '"Tim Piazza might actually be a problem. He fell 15 feet down a flight of steps, [head]-first, going to need help."'[49] However, despite Piazza's severe intoxication and obvious injuries, no one called for help until approximately 12 hours after his initial fall.[50] The Forensic Pathologist, testifying as an expert, stated that Piazza's chance of survival would have increased with earlier intervention.[51] Yet, fraternity members watched as Piazza twitched, vomited, rolled onto the floor, struggled to walk, and eventually "[members] covered [an unconscious] Piazza with a blanket, wiped his face and attempted to dress him."[52] When fraternity members finally called for help, they

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https://www.npr.org/sections/thetwo-way/2017/11/13/563840154/penn-state-student-given-18-drinks-in-82-minutes-before-hazing-death-prosecutors.

[43] Sarah Vasile, *Timeline: The Events from the Night Surrounding the Death of Timothy Piazza*, THE DAILY COLLEGIAN (May 5, 2017), https://www.psucollegian.com/news/crime_courts/timeline-the-events-from-the-night-leading-up-to-and-surrounding-the-death-of-timothy/article_b0cd4594-31d3-11e7-ab7e-1f8d2b2a1f24.html.

[44] Samantha Verrelli, *'Why didn't you call for help?' Parents of Timothy Piazza, Penn State community grapple with loss 5 years later*, THE DAILY COLLEGIAN (Feb. 6, 2022), https://www.psucollegian.com/news/campus/why-didn-t-you-call-for-help-parents-of-timothy-piazza-penn-state-community-grapple/article_680fc574-8562-11ec-b716-9be2589014b6.html.

[45] GORDIE CTR., Tim Piazza Memorial, *supra* note 41.

[46] Sarah Vasile, *supra* note 43.

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] Mikayla Corrigan, *Penn State frat death case Expert: Timothy Piazza may have survived with earlier intervention*, (Mar. 23, 2018), https://www.psucollegian.com/beta_theta_pi/penn-state-frat-death-case-expert-timothy-piazza-may-have-survived-with-earlier-intervention/article_3a7fbc88-2eb1-11e8-9563-ffd762517424.html.

[52] Sarah Vasile, *supra* note 43.

failed to tell the dispatcher that Piazza had fallen down the stairs.[53] Piazza unfortunately succumbed to his injuries (including "multiple abrasions . . . a lacerated spleen . . . a fractured skull . . . brain hemorrhaging and other internal bleeding"[54]) on February 4, 2017, at 1:23 am.[55]

Although Max's and Timothy's stories are undoubtedly tragic, their deaths were not isolated incidents.[56] Rather, hazing

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[53] *Id.*

[54] Mikayla Corrigan, *supra* note 51.

[55] Sarah Vasile, *supra* note 43.

[56] 170 CONG. REC. 149 at 5707-5713 (2024) (Rep. McBath included in the record a list names of students who died from hazing-related activities. The list includes known deaths from 1847 to 2023, the name of each student, and the deceased student's institution [institution names omitted for concision]. 1847, Jonathan D. Torrence; 1873, Mortimer N. Leggett; 1884, Frederick Schwatka Strang; 1892, Wilkins Ruskin; 1899, Edward F. Berkeley; 1900, Hugh C. Moore; 1900, Oscar Booz; 1903, Martin Loew; 1905, Stuart L. Pierson; 1905, James R. Branch, Jr.; 1906, William Miller; 1908, Emil S. (Ernie) Gram; 1912, Isaac William Rand; 1913, Francis W. Obenchain; 1914, William R. Bowlus; 1915, Thurber Sweet; 1915, Eldridge Scott Griffith. 1915–1916, Ludwig Von Gerichten; 1916, Paul N. Blue; 1916, William Lifson; 1917, William Ashcom Bullock; 1919, Frank McCullough; 1921, Leighton Mount; 1922, William Duncan Saunders; 1923, Glenn Kersh; 1923, Ainsworth Brown; 1923, Louis Aubere; 1925, Reginald Stringfellow; 1928, Nolte McElroy; 1929, Orsa George Steinmetz Jr.; 1931, Lloyd Neuman Aune; 1934, Paul Kutch; 1935, Richard Wendell Beitzel. 1936, Willie B. Barkley; 1940, Hubert L. (Hugo) Spake Jr.; 1945, Robert G. Perry; 1948, James (Jim) Irvin Peterson; 1949, Hale Thompson Gehl; 1950, Gerald Loren Foletta; 1950, Dean J. Niswonger; 1951, Allen Kaplan; 1951, Thomas Kleppner; 1951, Fred E. Evens; 1953, Calvin Dougherty; 1954, Peter Mertz; 1956, Thomas Clark; 1956, Karl B. Bailey; 1956, Cecil William Carrol; 1957, Max Caulk; 1959, Richard Terrell Swanson. 1960, Harry Lamphier, Jr.; 1960, William Gustafson; 1960, William Kempfer; 1960, John Pauls; 1961, Joe Henry Derham, Jr.; 1964, Jose Manual Costa; 1965, Richard Winder; 1967, John E. Clifton; 1968, Michael L. DiBacco; 1968, Trent Ciarrochia; 1968, William Entinger; 1969, Scott Edward Graeler; 1970, Donna Bedinger; 1971, Wayne Kennedy; 1972, Fred Phillip Bronne; 1972, Brian Cursack; 1973, Mitchell (Mitch) Fishkin; 1974, Thomas Morgan Elliott. 1974, John Curtin; 1974, Rudolph Mion; 1974, Gary Gilliland; 1974, William E. Flowers; 1974, Michael James Bishop; 1975, Richard A. Gowins; 1975, David "Lumpy" Hoffmann; 1975, John Davies; 1975, John Asher; 1975, Theodore Ben; 1976, Samuel Mark Click; 1976, Thomas Fitzgerald; 1977, Robert J. Bazile; 1977, Randall Crustals; 1978, Stephen J. McNamara; 1978, Charles (Chuck) Stenzel; 1978, Nathaniel Swinson. 1979, Bruce Wiseman; 1979, Richard C. Fuhs, Jr.; 1979, Norsha Lynn Delk; 1979, Robert Etheridge; 1980, Kingsley Davidson; 1980, David Masciantonio; 1980, Curtis Huntley; 1980, Lex Dean Batson; 1980, Joseph (Joey) Parrella; 1980, Steve Call; 1980, L. Barry Ballou; 1981, Rick Cerra; 1982, Victor (Ricky) M. Siegel; 1982, Christopher Meigs; 1982, Brian H. McKittrick; 1984, Arnaldo Mercado Perez; 1983, Vann Watts; 1984, Brad Bing; 1984, Bruce Dean Goodrich. 1984, Jay Lenaghan; 1984, Jeffrey Franklin Long; 1985, Sherri Ann Clark; 1985, Richard "Rich" Allyn Butler; 1986, Harold Thomas; 1986, Mark Seeberger; 1987, Harry (Skip) Cline Jr.; 1987, Todd Alan Prince; 1987, David Dunshee; 1988, James Callahan; 1988,

Bryan Higgins; 1988, Matthew S. McCoy; 1988, Gregg Scott Phillips; 1988, Sean T. Hickey; 1989, Joel Harris; 1989, Steven Butterworth; 1990, Nick Haben. 1991, Mike Nisbet; 1991, John Moncello; 1991, Rolland C. Pederson; 1992, Jonathan S. McNamara; 1992, Gregory Batipps; 1992, J.B. (John B.) Joynt III; 1993, Chad Saucier; 1993, Leslie Ware; 1994, Terry Linn; 1994, Michael Davis; 1994, Justin Chambers; 1995, Gabriel Higgins; 1995, Brian Nicholas Cook; 1995, Matthew Garofolo; 1996, Todd Martin Cruikshank; 1997, Trey Walker; 1997, Brian T. Sanders; 1997, Brian Pearce; 1997, Steven Velazquez. 1997, Benjamin Wynne; 1997, Binaya Oja; 1997, Scott Krueger; 1998, John Laduca; 1998, Courtney Cantor; 1998, Dudley R. Moore IV; 1998, Jack L. Ivey, Jr.; 1999, Kevin Lawless; 1999, Stephen Petz; 1999, Donnie Lindsey Jr.; 2000, Adrian Heideman; 2000, Terry Ryan Stirling; 2000, Ben Folsom Grantham III; 2001, Seth Korona; 2001, Joseph T. Green; 2001, Chad Meredith; 2001, Ken Christiansen; 2001, Zachary Aaron Michael Mullins; 2002, Clay Warren; 2002, Ben Klein; 2002, Brian Nicholas Jimenez; 2002, Zachary Jacobs; 2002, Kenitha Saafir; 2002, Kristin High; 2002, Albert (A.J.) Santos; 2002, Daniel Reardon; 2002, Gregory (Greg) Randall Davis; 2003, Nicholas Grass; 2003, Kyle Burnat; 2003, Andrew Dwyer; 2003, Sean Fenton; 2003, Walter Dean Jennings; 2003, Jerry Hopkins; 2003, Kelly Nester; 2003, Robert Schmalz; 2004, Lynn Gordon "Gordie" Bailey Jr.. 2004, Blake Hammontree; 2004, Brent E. Johnson; 2005, Matthew Carrington; 2005, Kenny Luong; 2005, Phanta "Jack" Phoummarath; 2006, Tyler Cross; 2006, Zach Dunlevy; 2007, Nikolas Gallegos; 2007, Gary Louis DeVercelly, Jr.; 2008, Brett Griffin; 2008, Johnny D. Smith; 2008, Har-rison Kowiak; 2008, Michael Anthony; 2008, Carson Leonard Starkey; 2009, Arman Partamian; 2009, Donnie Wade Jr.; 2010, Samuel Mason; 2010, Victoria Carter; 2010, Briana Latrice Gather. 2011, George Desdunes; 2011, Robert Darnell Champion; 2012, William (Will) Torrance; 2012, Philip Dhanens; 2012, Everett Glenn; 2012, David R. Bogenberger; 2012, Preston Vorhauer; 2012, Marcus Thomas; 2012, Robert Eugene Tipton, Jr.; 2012, David Shannon; 2012, Jack Culolias; 2013, Marvell Edmondson; 2013, Jauwan Holmes; 2013, Peter Tran; 2013, Anthony Barksdale II; 2013, Chun "Mike" Deng; 2014, Marquise Braham; 2014, Armando Villa; 2014, Tucker W. Hipps. 2014, Trevor Duffy; 2014, Nolan M. Burch; 2014, Dalton Debrick; 2014, Clayton Real; 2015, Praneet Karki; 2015, Charlie Terreni, Jr.; 2016, Michael Anthony Walker; 2016, Ryan Abele; 2016, Jordan Taylor; 2016, Joe Dada; 2017, Timothy J. Piazza; 2017, Maxwell (Max) Gruver; 2017, Andrew Coffey; 2017, Matthew (Matt) Ellis,; 2017, Alasdair Russell; 2017, Harrison Carter Cole; 2017, Jordan Hankins; 2018, Joseph Little; 2018, Collin Wiant. 2018, Nicholas "Nicky" Cumberland; 2018, Tyler Hilliard; 2018, Alexander Levi Rainey Beletsis; 2019, Marlon Jackson; 2019, Noah Domingo; 2019, Sebastian Serafin-Bazan; 2019, Bea Castro; 2019, Samuel Martinez; 2019, Antonio (Anthony) Tsialas; 2019, Rahat Jalil; 2019, Justin King; 2019, Dylan Hernandez; 2020, Lauren Nicole Sawyer; 2021, James Gilfedder; 2021, Adam Jeffrey Oakes; 2021, Stone Justin Foltz; 2021, Lofton Hazelwood; 2021, Phat Nguyen; 2023, Luke Tyler.) (statement of Rep. McBath); *See also* NC STATE UNIVERSITY, *Hazing Statistics and Research*, RESOURCES https://hazing.dasa.ncsu.edu/resources/hazing-research/ (last visited Apr. 3, 2025).; *See also* Hank Nuwer, *U.S. Hazing Deaths One: 1838-1999*, https://www.hanknuwer.com/hazing-deaths/; Hank Nuwer, *U.S. Hazing Deaths Two: 2000-2025*, https://www.hanknuwer.com/hazing-destroying-young-lives/.

tragedies have become all too common in our society.[57] Since 1838, hazing has caused *at least* 304 deaths in the United States.[58] At least one person has lost his or her life in connection with hazing on a college campus each year between 1970 and 2008.[59] More recently, there have been 116 hazing deaths between 2000 and 2025,[60] equating to approximately 5 deaths each year. Despite the fact that over 50% of students in clubs, teams, or other organizations are subjected to hazing, only a mere 5% of those students reported the hazing.[61] Even more jarring than students failing to report, research shows that coaches or advisors with knowledge of hazing incidents failed to report 25% of the incidents.[62]

School administrators are supposed to provide reassurance for parents, ensuring that their child will be safe on their campus.[63] Knowing that some schools' faculty have been complacent in hazing practices,[64] parents may not know where to turn. The devastating loss of lives from such reckless behavior is an exceedingly difficult pill to swallow for parents, especially those who have lost their own children to hazing activities. If the people at the top cannot protect their child from such dangers, who are parents to turn to? Some parents, including Max's and Timothy's, have turned to legislators.[65]

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[57] 170 CONG. REC. 149 at 5707-5713 (2024).

[58] Hank Nuwer, *U.S. Hazing Deaths One: 1838-1999*, https://www.hanknuwer.com/hazing-deaths/; Hank Nuwer, *U.S. Hazing Deaths Two: 2000-2025*, https://www.hanknuwer.com/hazing-destroying-young-lives/.

[59] NC STATE UNIVERSITY, *supra* note 56.

[60] *See* Hank Nuwer, *U.S. Hazing Deaths Two: 2000-2025*, https://www.hanknuwer.com/hazing-destroying-young-lives/ (listing 116 deaths between 2000 and 2025).

[61] Elizabeth J. Allen & Mary Madden, *Hazing in View: College Students at Risk*, *Initial Findings from the National Study of Hazing*, at 2 (Mar. 11, 2008).

[62] NC STATE UNIVERSITY, *supra* note 56.

[63] *College campuses have a legal obligation to keep students safe*, (Nov. 15, 2024), https://www.reardonlaw.com/blog/2024/11/college-campuses-have-a-legal-obligation-to-keep-students-safe/#:~:text=There%20is%20a%20duty%20of%20care.%20Colleges,facilities%20are%20safe%20and%20free%20from%20hazards.

[64] *See* Complaint, Nagy v. Wheaton Coll., 2018 WL 1363254 (Ill.Cir.Ct.), *filed* (Mar. 16, 2018) (showing an example of school faculty—the football team coach—being complacent in hazing practices).

[65] *See* Maureen Downey, *Their Son Died from Hazing. Now Roswell Couple Tries to Save Others*, ATLANTA J.-CONST. (Mar. 2, 2020), https://www.ajc.com/blog/get-schooled/their-son-died-from-hazing-now-roswell-couple-tries-save-others/rDOjnC7JQM4x2FseHdHs2L/ ("The parents of Max Gruver tell Senate committee that Georgia needs stronger anti-hazing law").; Eric Stirgus, *U.S. House passes bill to stop hazing on college campuses*, ATLANTA J.-CONST. (Sept. 25, 2024), https://www.ajc.com/education/us-house-passes-bill-to-stop-hazing-on-college-campuses/ROFARWGPM5GEXJUTM7EGUHIC4I/

C. Parental Impact on Hazing Legislation

In hopes of preventing further horrific hazing incidents, Max's family spearheaded the Max Gruver Act in Louisiana and Georgia.[66] Max's parents, Rae Ann and Steve Gruver, both testified in support of Georgia's Max Gruver Act, encouraging Georgia legislators to draft a new law to prevent further hazing deaths.[67] The Georgia Max Gruver Act, passed in 2021,[68] prohibits hazing, prescribing that those who violate the Act "shall be guilty of a misdemeanor of a high and aggravated nature."[69] The Act further requires Georgia schools to establish policies on hazing and publicly disclose incidents of hazing.[70] This public disclosure must include the name of any involved school organization, the date(s) the hazing occurred, and a "description of the specific hazing related findings, sanctions, adjudications, and convictions for any person or school organization."[71] The public disclosure requirement also prohibits the inclusion of personal identifying information about any individual student.[72]

The Louisiana Max Gruver Act was passed in 2018[73] and also prohibits hazing.[74] In contrast to the Georgia legislation, the Louisiana Max Gruver Act imposes an additional penalty for those in violation, including expulsion, suspension, or dismissal from the educational institution.[75] Those individuals are further prohibited from returning to the institution "for at least one semester, quarter, or comparable academic period."[76] In addition, those violating the

("The Stop Campus Hazing Act is being pushed by the Roswell family of Max Gruver . . . also supported by the family of Timothy Piazza").

[66] GA. TECH, *"Max Gruver Act": The Georgia Anti-Hazing Act*, https://greek.gatech.edu/current-members/max-gruver-anti-hazing-act (last visited Apr. 6, 2025); LA. ST. UNIV., *Hazing Prevention*, https://www.lsu.edu/police/safety/hazing-prevention.php (last visited Apr. 6, 2025).

[67] Maureen Downey, *supra* note 65.

[68] GA. CODE ANN., § 20-1-30 (2024).

[69] *Id.*

[70] *Id.*; GA. CODE ANN. § 16-5-61 (2024) ("'Haze' or 'hazing' means to subject a student to an activity which endangers or is likely to endanger the physical health of a student or coerces the student through the use of social or physical pressure to consume any food, liquid, alcohol, drug, or other substance which subjects the student to a likely risk of vomiting, intoxication, or unconsciousness regardless of a student's willingness to participate in such activity.").

[71] GA. CODE ANN., § 20-1-30 (2024).

[72] *Id.*

[73] Maureen Downey, *supra* note 65.

[74] LA. REV. STAT. ANN. § 17:1801 (2018).

[75] *Id.*

[76] *Id.*

Louisiana legislation may also be subject to criminal liability.[77] Once an institution receives a report of alleged hazing, the Louisiana Act requires the institution to report to law enforcement[78] all information and details related to the alleged incident, "with no information being redacted, including the names of all individuals alleged to have committed the act or acts of hazing identified in the report."[79] The institution must also "document in writing all actions taken with regard to the report including but not limited to: the date the report was received, reports made to law enforcement . . . and any other information relative to the institution's investigation, processing, and resolution of the incident."[80] Under Louisiana's legislation, the institution's Board of Regents is required to consult with education management boards to develop standardized reporting forms, standardized forms to document reports and reports to law enforcement (including the institution's internal procedures for investigating and resolving hazing incidents), and a public disclosure policy.[81]

The Gruver family's impact on both Georgia's and Louisiana's legislation was substantial. Prior to the Gruver's involvement, neither state had any hazing legislation. However, the journey toward eradicating hazing remains lengthy and necessitates broader participation from additional states. The Piazza family, like the Gruver family, led efforts to pass the Timothy J. Piazza Anti-Hazing Law in Pennsylvania.[82] Enacted in 2018, the Pennsylvania law holds individuals and organizations accountable for hazing and creates a "tiered penalty system with stricter punishments for hazing."[83] The Pennsylvania law also requires institutions to publish anti-hazing policies and report hazing violations.[84] Unlike Louisiana and Georgia, the Pennsylvania law additionally includes a safe harbor provision, granting immunity from prosecution under the anti-hazing law if the would-be defendant either was in need of

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[77] *Id.*; LA. REV. STAT. ANN. § 14:40.8 (2019).
[78] LA. REV. STAT. ANN. § 17:1801 (2018) (report to law enforcement as required by Louisiana's Criminal Hazing Statute: R.S. 14:40.8); *See also* LA. REV. STAT. ANN. § 14:40.8 (2019).
[79] LA. REV. STAT. ANN. § 17:1801 (2018).
[80] *Id.*
[81] *Id.*
[82] PENN. ATT'Y GEN., *Two Former Penn State University Students Sentenced for Roles in 2017 Fraternity Hazing Incident*, NEWS & MEDIA (Oct. 1, 2024), https://www.attorneygeneral.gov/taking-action/two-former-penn-state-university-students-sentenced-for-roles-in-2017-fraternity-hazing-incident/.
[83] *Timothy J. Piazza Antihazing legislation signed into Pennsylvania law*, PENN STATE NEWS, https://www.psu.edu/news/administration/story/timothy-j-piazza-antihazing-legislation-signed-pennsylvania-law (Feb. 1, 2019).
[84] *Id.*

medical assistance resulting from hazing or underage consumption of alcohol, or sought help for others.[85]

Despite years passing since the deaths of Max and Timothy, '"there has been no letting up on [the] pursuit of change.'"[86] After successfully influencing state legislative action, the Gruver and Piazza families joined forces, urging the federal government to create federal anti-hazing legislation.[87] Their efforts led to the adoption of a federal anti-hazing law for the first time in U.S. history.

III. THE FEDERAL RESPONSE: STOP CAMPUS HAZING ACT

A. Amending the Higher Education Act of 1965

Marking a "new era of campus safety," the federal Stop Campus Hazing Act (SCHA) serves to increase hazing transparency, accountability, and prevention.[88] The Act amends § 485 under Title IV of the Higher Education Act of 1965,[89] which already required eligible institutions[90] participating in Title IV student assistance programs to collect information regarding campus crime statistics and campus security policies.[91] Each institution was obligated to "prepare, publish, and distribute . . . an annual security report" containing such information.[92] These obligations were conditions on an institution's eligibility for Title IV student assistance programs.[93] These programs include federal Pell Grants, supplemental educational opportunity grants, payments to the States to assist in financial aid, special programs and projects, and assistance to institutions of higher education.[94] Institutions already participating in, or seeking to become eligible for, such programs are required to abide by the requirements of the Higher Education Act of 1965, and

[85] *Id.*; S.B. 1090, Gen. Assemb., Reg. Sess. (Pa. 2018).
[86] Samantha Verrelli, *supra* note 44.
[87] Eric Stirgus, *supra* note 65.
[88] *A Historic Step Forward: The Stop Campus Hazing Act Becomes Law*, STOP HAZING (Dec. 24, 2024), https://stophazing.org/2024/12/24/stop-campus-hazing-act-becomes-law/.
[89] *Id.*; Stop Campus Hazing Act, 138 STAT. 2597 (2024).
[90] The term "institution" does not include foreign institutes of higher education. Stop Campus Hazing Act, 138 STAT. 2597 (2024).
[91] Higher Educ. Act of 1965 § 485, 20 U.S.C. § 1092.
[92] *Id.*
[93] Higher Educ. Act of 1965 § 400, 20 U.S.C. §§ 1070, 1092.
[94] Higher Educ. Act of 1965 § 400, 20 U.S.C. § 1070.

failure to do so may result in the loss of student assistance programs.[95]

B. Legislative Journey of The Stop Campus Hazing Act

The SCHA became federal law on December 23, 2024,[96] following a strong bipartisan consensus.[97] Aiming to reduce the prevalence and dangers of hazing, the SCHA signals a "pivotal moment for student safety and well-being."[98] The House of Representatives considered and passed the SCHA on September 24, 2024, during National Hazing Prevention Week.[99] While under consideration, Representative McBath (the House Co-Lead)[100] honored 252 students known to have lost their lives to hazing incidents between 1847 and 2023, exposing the prevalence of hazing and its fatal consequences.[101] The Senate received the SCHA on September 25, 2024, and passed the Act on December 11, 2024.[102] The SCHA was then presented and signed into law by President Biden on December 23, 2024.[103]

The implementation of the SCHA began on January 1, 2025, by encouraging institutions to begin the collection of hazing statistics for their annual security report.[104] By June 23, 2025, institutions must have hazing policies in place, and processes for documentation of hazing violations must be established by July 1, 2025.[105] On the one-year anniversary of the SCHA (December 23,

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[95] Higher Educ. Act of 1965 §§ 400-528, 20 U.S.C. §§ 1070-1103(g).
[96] Committees - H.R.5646 - 118th Congress (2023-2024): Stop Campus Hazing Act, H.R.5646, 118th Cong. (2024), https://www.congress.gov/bill/118th-congress/house-bill/5646/committees.
[97] STOP HAZING, *supra* note 88.
[98] *Id.*
[99] 170 CONG. REC. 149 at 5708-5713 (2024).
[100] *The Stop Campus Hazing Act: A Milestone in Hazing Prevention*, CLERY CENTER, https://www.clerycenter.org/scha-introduction#:~:text=The%20Stop%20Campus%20Hazing%20Act%20(Senate%20Co%2DLeads%3A%20Senators,institutions%20to%20prevent%20and%20respond (last visited Apr. 19, 2025) ("The Stop Campus Hazing Act (Senate Co-Leads: Senators Amy Klobuchar (D-MN) & Bill Cassidy, M.D. (R-LA); House Co-Leads: Representatives Jeff Duncan (R-SC) & Lucy McBath (D-GA))").
[101] 170 CONG. REC. 149 at 5710-5711 (2024).
[102] Actions - H.R.5646 - 118th Congress (2023-2024): Stop Campus Hazing Act, H.R.5646, 118th Cong. (2024), https://www.congress.gov/bill/118th-congress/house-bill/5646/all-actions.
[103] *Id.*
[104] *The Stop Campus Hazing Act: What You Need to Know*, CLERY CENTER, https://www.clerycenter.org/scha-what-you-need-to-know (last visited Apr. 6, 2025).
[105] *Id.;* Stop Campus Hazing Act, 138 STAT. 2599 (2024).

2025), institutions must make their Campus Hazing Transparency Reports publicly available.[106] October 1, 2026, marks the initial inclusion of hazing statistics in the annual security report.[107]

C. SCHA Reporting & Educational Program Requirements

The SCHA provides a definition for "hazing"[108] and adds three central components to the Higher Education Act of 1965, further requiring eligible institutions participating in Title IV to also: (1) include hazing statistics in their annual security reports; (2) implement hazing policies; and (3) create a Campus Hazing Transparency Report.[109] More broadly, the substance of the SCHA can be categorized as imposing reporting and educational programming requirements.[110]

Although institutional annual security reports were previously required under the Higher Education Act, the SCHA further imposes an additional requirement to disclose hazing incidents reported to campus security or local police.[111] In the hazing portion of the annual security report, institutions must

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[106] CLERY CENTER, *supra* note 104.
[107] *Id.*
[108] "'(vi) The term 'hazing', for purposes of reporting statistics on hazing incidents under paragraph (1)(F)(iv), means any intentional, knowing, or reckless act committed by a person (whether individually or in concert with other persons) against another person or persons regardless of the willingness of such other person or persons to participate, that—'(I) is committed in the course of an initiation into, an affiliation with, or the maintenance of membership in, a student organization; and '(II) causes or creates a risk, above the reasonable risk encountered in the course of participation in the institution of higher education or the organization (such as the physical preparation necessary for participation in an athletic team), of physical or psychological injury including—''(aa) whipping, beating, striking, electronic shocking, placing of a harmful substance on someone's body, or similar activity; '(bb) causing, coercing, or otherwise inducing sleep deprivation, exposure to the elements, confinement in a small space, extreme calisthenics, or other similar activity; '(cc) causing, coercing, or otherwise inducing another person to consume food, liquid, alcohol, drugs, or other substances; '(dd) causing, coercing, or otherwise inducing another person to perform sexual acts; '(ee) any activity that places another person in reasonable fear of bodily harm through the use of threatening words or conduct; '(ff) any activity against another person that includes a criminal violation of local, State, Tribal, or Federal law; and '(gg) any activity that induces, causes, or requires another person to perform a duty or task that involves a criminal violation of local, State, Tribal, or Federal law.'" Stop Campus Hazing Act, 138 STAT. 2598 (2024).
[109] CLERY CENTER, *supra* note 104.
[110] *See, e.g.*, *id.* (noting the "three primary components" of the SCHA: "Inclusion of hazing statistics in annual security reports . . . Implementation of hazing policies . . . [and] Compilation of a Campus Hazing Transparency Report").
[111] Stop Campus Hazing Act, 138 STAT. 2597 (2024).

include statements of current hazing-related policies and include information on how to report hazing incidents.[112] Institutions must also include the process used in hazing investigations, information on applicable hazing laws, and policies regarding hazing prevention and awareness programs.[113] Although a statement of the institution's policy regarding hazing prevention and awareness programs is required to be in the institution's annual security report, the actual substance of the programs is not prescribed by the SCHA.[114] The Act, however, imposes threshold requirements for hazing prevention and awareness programs.[115]

At the outset, the programs are mandated to be research-informed campus-wide prevention programs developed to reach students, staff, and faculty.[116] Similar to the hazing portion of the annual security report, programs must include a statement of current hazing[117] related policies and information on how to report hazing incidents.[118] Furthermore, the programs must contain the hazing investigation process and information on applicable local, State, and Tribal hazing laws.[119] Lastly, the programs must contain "primary prevention strategies intended to stop hazing before it occurs."[120] The SCHA provides some examples of primary prevention strategies, but the list is non-exhaustive.[121] Included on the list are: building skills for bystander intervention, providing information on ethical leadership, and promoting substitute methods for hazing, which strengthen group cohesion.[122] The annual security report containing the institution's policy on hazing prevention and awareness programs must be published and distributed to "all current students and employees, and to any applicant for enrollment or employment."[123] In comparison, the dissemination of the Campus

[112] *Id.* at 2598-2599.
[113] *Id.*
[114] *Id.* at 2599.
[115] *Id.*
[116] *Id.*
[117] Under this portion of the Act, the definition of "hazing" in the statement of current hazing related policies is prescribed by the institution. Stop Campus Hazing Act, 138 STAT. 2599 (2024).
[118] *Id.* at 2598-2599.
[119] *Id.* at 2599.
[120] *Id.*
[121] *See id.* (providing examples of hazing primary prevention strategies "which *may include* skill building for bystander intervention, information about ethical leadership, and the promotion of strategies for building group cohesion without hazing") (emphasis added).
[122] *Id.*
[123] Higher Educ. Act of 1965 § 485, 20 U.S.C. § 1092.

Hazing Transparency Report is broader, requiring institutions publish it on their public websites.[124]

As amended by the SCHA, Title IV now requires participating institutions to also develop a Campus Hazing Transparency Report,[125] summarizing findings of student organizations found in violation of the institution's hazing conduct standards.[126] This report must be updated at least biannually[127] and include the name of the involved organization, a general description of the incident, and relevant dates.[128] The relevant dates under the Act include: the date of the alleged incident, the date the investigation was initiated, the date the investigation concluded, and the date the institution provided notice to the involved organization.[129] Importantly, institutions are prohibited from including any personally identifiable information about any individual student.[130] This prohibition of personally identifiable information is an especially crucial safeguard, protecting those who report hazing, as research indicates that people may be discouraged from reporting if doing so would expose them to retaliation by an organization.[131]

Facially, these requirements imposed by the SCHA are a clear step in the right direction. At the very least, the federal government has now implemented legislation addressing the tragedy of dangerous hazing practices in higher education. At best, the Act may reduce the incidence of hazing. Obviously, the success of the Act must await implementation, enforcement, and modification of campus behaviors. Is it likely to alter the incidence of life-endangering hazing on college campuses? To make that prediction, it is necessary to understand what causes students to haze and what causes those who endure hazing to continue to do so.

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[124] CLERY CENTER, *supra* note 104.
[125] Higher Educ. Act of 1965 § 485, 20 U.S.C. § 1092.
[126] CLERY CENTER, *supra* note 104.
[127] *Id.* However, an institution is not required to develop the report until it has found a hazing violation, and is not required to update the report biannually if there has not been a hazing violation during that period. Stop Campus Hazing Act, 138 STAT. 2599 (2024).
[128] CLERY CENTER, *supra* note 104.
[129] *Id.*
[130] Stop Campus Hazing Act, 138 STAT. 2600 (2024).
[131] *See* Elizabeth J. Allen & Mary Madden, *supra* note 61 at 28-29.

IV. PSYCHOLOGICAL DRIVERS OF HAZING

> "[W]e did not have to teach the actors how to play their roles. Society had done that for us."[132]

Before addressing the impact of the SCHA on the prevalence of hazing, it is essential to consider a fundamental threshold question: Why does hazing exist? Time will tell whether the federal anti-hazing law will be impactful. However, it is possible to assess whether the law is equipped in a manner that addresses the root causes of hazing.

Because "hazing is a multifaceted phenomenon that almost certainly lacks a single, causal explanation," it produces theoretical complexity.[133] Nonetheless, the answer may lie in psychology. Experts in psychology face the challenge of articulating the psychological drivers behind hazing, and the vast complexity and scope of its causes lead to a multitude of theories.[134] For example, organizations may engage in hazing to increase group solidarity, weed out uncommitted members, or uphold traditions.[135] These reasons may point to the innate psychological need for human connection or internal dynamics of psychological influences.[136] Hazers may perpetuate hazing to make new members suffer what they previously experienced, to establish or enforce power and control, or because they enjoy humiliating and intimidating others.[137] These reasons may be explained by internal dynamics of psychological influences and lack of external controls.[138] Victims of hazing may subject themselves to the practice due to perceived benefits of personal achievement or the desire to gain acceptance within the larger group.[139] These reasons may also be explained by

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[132] PHILIP G. ZIMBARDO ET AL., *Reflections on the Stanford Prison Experiment: Genesis, Transformations, Consequences,* in OBEDIENCE TO AUTHORITY 192, 202 (Thomas Blass ed., 1999).
[133] Aldo Cimino, *The Evolution of Hazing: Motivational Mechanisms and the Abuse of Newcomers*, 11 J. COGNITION & CULTURE 241, 245 (2011).
[134] Aldo Cimino & Benjamin J. Thomas, *Does hazing actually increase group solidarity? Re-examining a classic theory with a modern fraternity*, 43 EVOLUTION & HUMAN BEHAV. 408, 408 (2022).
[135] *Why Do People Haze?*, GEO. UNIV., https://stophazing.georgetown.edu/prevent/why-do-people-haze/ (last visited Apr. 13, 2025).
[136] *See* Aldo Cimino, *supra* note 133; *See also* Elon Univ., *Why do groups haze members?*, HAZING THEORIES & RSCH., https://www.elon.edu/u/hazing/facts/theories-research/ (last visited Apr. 6, 2025).
[137] *Why Do People Haze?*, *supra* note 134.
[138] *See* Aldo Cimino, *supra* note 133 at 244.; *See also* Elon Univ., *supra* note 136.
[139] *Why Do People Haze?*, *supra* note 134.

internal dynamics of psychological influences and lack of external controls.[140] A variety of psychological theories have been proposed, each offering clues toward the answer for "why." These diverse but fascinating theories discuss the interplay between the ancestral need for connection, internal influences, and external controls.

A. Ancestral Need for Connection

Ethnographies[141] propose that hazing is linked to numerous cultural concerns.[142] Ancestrally, humans survived through the formation of groups with strong bonds.[143] As a consequence, humans are inherently social creatures.[144] Intrinsic human needs for connection and preservation may contribute to the perpetuation of hazing practices under the guise that hazing may strengthen group connection.[145] This need for connection is driven by the innate desire for reassurance from others to enhance self-esteem.[146] Some psychological theories posit that self-esteem is a pervasive component of human motivation, often correlating with favorable outcomes.[147] However, the pursuit of self-esteem can also yield negative consequences, including maladaptive behavior.[148] After all, most conflicting forms of human behavior (e.g., love and hatred) are deeply rooted in the innate desire to see oneself as valuable, or otherwise increase self-esteem.[149] By joining an organization, an individual may seek internal reassurance from other members within the organization and external reassurance from outsiders' opinions of the collective organization.[150] If individuals desire such

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[140] *See* Tom Pyszczynski et al., *Why Do People Need Self-Esteem? A Theoretical and Empirical Review*, 130 PSYCH. BULL. 435, 435 (2004).; *See also* Elon Univ., *supra* note 136.
[141] Ethnographies are descriptive works produced from the study and systematic recording of human cultures. *Ethnography*, MERRIAM WEBSTER DICTIONARY, https://www.merriam-webster.com/dictionary/ethnographies.
[142] Aldo Cimino et al., *Cross-Cultural and Cross-Organizational Evidence for an Evolved Hazing Motivation*, 17 EVOLUTIONARY PSYCH. 1, 2 (2019).; Gregory S. Parks & Jasmine Burgess, *Hazing in the United States Military: A Psychology and Law Perspective*, 29 S. CAL. INTERDISC. L. J. 1, 23 (2019) ("Hazing may also have evolutionary origins, which make it fruitful for group cohesion.").
[143] Elon Univ., *supra* note 136.
[144] *Id.*
[145] *Id.*
[146] *Id.*; Gregory S. Parks & Jasmine Burgess, *Hazing in the United States Military: A Psychology and Law Perspective*, 29 S. CAL. INTERDISC. L. J. 1, 23 (2019).
[147] Tom Pyszczynski et al., *supra* note 140.
[148] *Id.*
[149] *Id.*
[150] Gregory S. Parks & Tiffany F. Southerland, *The Psychology and Law of Hazing Consent*, 97 MARQ. L. J. 1, 44 (2013).

reassurance, they tend to be strongly influenced by outsiders' opinions of the organization due to their dependence on positive evaluations and the attention of others.[151] Thus, those joining organizations to obtain reassurance of self-worth are likely to be guided by both external and internal influences.[152]

B. Internal Influences

Humans naturally internalize the feelings associated with how others perceive them.[153] One variable associated with this is intrinsic valuation, which refers to an individual's willingness to make unmonitored decisions favoring themselves or allies.[154] When an organization encounters new members, it is confronted with the uncertainty of how the new members perceive the organization.[155] Attempting to mitigate the uncertainty, organizations may aim to select new members with a higher willingness to make decisions that favor the group.[156] To determine whether a new member has such willingness, organizations may engage in hazing practices, which often involve new members "enduring some ordeal that has little direct benefit for the hazer."[157] When new members participate in hazing, they may indicate to the hazer that they are willing to suffer for the organization and hope their suffering is rewarded with admission to the organization.[158] Thus, older members may use hazing to force new members to prove their allegiance and willingness to prioritize the organization.[159] This aligns with Commitment Macro-Theory, which posits that hazing activities serve to distinguish between devoted, committed new members and indifferent, uncommitted new members.[160] Thus, internal dynamics—like the idea that new members must prove their allegiance to the organization—can influence hazing practices.

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[151] *Id.*
[152] *Id.*
[153] Aldo Cimino, *supra* note 133 at 247.
[154] *Id.*
[155] *Id.* at 247-248.
[156] *Id.* at 258; GEO. UNIV., *supra* note 135.
[157] Aldo Cimino, *supra* note 133 at 248.
[158] *Id.*
[159] GEO. UNIV., *supra* note 135.
[160] Aldo Cimino, *supra* note 133; Gregory S. Parks & Jasmine Burgess, *Hazing in the United States Military: A Psychology and Law Perspective*, 29 S. CAL. INTERDISC. L. J. 1, 24 (2019) ("Commitment macro theory says that hazing is a way for initiates to prove their desire to benefit the group.") (citing to Aldo Cimino *supra* note 133 at 245.)

Closely related, Solidarity Macro-Theory postulates the concept that hazing leads to increased group unity.[161] This theory is commonly applied using cognitive dissonance theory.[162] Cognitive dissonance arises when an individual experiences mental discomfort resulting from subjection to situations involving conflicting beliefs, attitudes, or behaviors.[163] The individual then subsequently alters his or her own beliefs or behaviors in an effort to quell the mental discomfort and "restore balance."[164] Those who perpetuate hazing may view hazing as valuable, rather than detrimental, merely because they "chose to engage in it, and thus seek to validate their own 'choice' in doing so."[165] Similarly, those who are subjected to hazing may attempt to justify the process and restore balance by increasing their attachment to the group.[166] Research indicates that students "recognize hazing as part of campus culture," and that hazing "may be perceived as a normal, or expected, aspect of campus life."[167] As such, although some organization members may internally oppose hazing practices, the same individuals may feel an obligation to submit passively to hazing.[168] Individuals may also be reluctant to speak up if they have a mistaken belief that they are alone in believing hazing is wrong.[169] Thus, instead of voicing an unwelcome prospective that hazing new members is trivial, illogical, or unethical, they may "reluctantly perpetuate these practices," based on the assumption that others believe hazing practices "are the right things to do."[170]

These "deficient group decision-making processes that [have] a high probability of producing poor decisions with disastrous consequences," are commonly referred to as Groupthink.[171] Some researchers have even modified the term "groupthink" to become "greekthink," referring to how fraternities "engage in reckless rituals, put newcomers in danger, and demonstrate post-incident denial in the face of clear evidence that

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[161] Aldo Cimino & Benjamin J. Thomas, *supra* note 134 at 409; GEO. UNIV., *supra* note 135.
[162] Aldo Cimino, *supra* note 133 at 244.
[163] Saul McLeod, *What Is Cognitive Dissonance Theory?*, SIMPLY PSYCH. (Oct. 24, 2023), https://www.simplypsychology.org/cognitive-dissonance.html.
[164] *Id.*
[165] Gregory S. Parks & Jasmine Burgess, *Hazing in the United States Military: A Psychology and Law Perspective*, 29 S. CAL. INTERDISC. L. J. 1, 30 (2019).
[166] Aldo Cimino, *supra* note 133 at 244.
[167] Elizabeth J. Allen & Mary Madden, *The nature and extent of college student hazing*, 24 INT'L J. OF ADOLESCENT MED. & HEALTH 1, 5-6 (2012).
[168] Elon Univ., *supra* note 136.
[169] *Id.*
[170] *Id.*
[171] Gregory S. Parks & Tiffany F. Southerland, *supra* note 150 at 28.

they have made a mistake."[172] Accordingly, individuals may nevertheless conform to actual or fictitious group pressure, causing changes in beliefs about or behavior toward a group.[173] Conforming to hostile treatment, however, may lead individuals to act in a "zombie-like fashion," and eliminate individuality.[174] This blind conformity may be heightened when some individuals are rewarded for their submission.[175] At the other end of the spectrum, victims who attempt to rebel against the situation may be ostracized.[176] Instead of being honored for speaking up or otherwise defending victims, those speaking out may end up excluded from or blacklisted by the organization, or even despised by fellow victims.[177] Thus, even when individuals desire to avoid hazing activities, they may nonetheless engage in hazing out of fear of facing retaliation or disapproval.[178] Under actual or fictitious pressure to accept hazing rather than voice concerns, those involved in hazing tend to suffer in silence, keeping the issues in the dark, which may further enforce a code of silence.[179]

Other psychological theories propose that the central objective of hazing is to cultivate dependence and to encourage the victims to have a more favorable perception of the hazer, mirroring the concept of "Stockholm Syndrome."[180] Stockholm Syndrome is

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[172] Elon Univ., *supra* note 136, (citing HANK NUWER, WRONGS OF PASSAGE: FRATERNITIES, SORORITIES, HAZING, AND BINGE (Ind. Univ. Press, 2001); Illustrating attempts of post-incident denial, in at least one instance, a fraternity member deleted security footage of a hazing ritual because he "knew the footage would be damaging [for the organization]." Samantha Verrelli, *supra* note 44. Despite the member's clear understanding that the hazing footage would be detrimental to the organization, the member nonetheless engaged in the hazing and subsequently erased the clear evidence that the organization made a mistake.
[173] Gregory S. Parks & Katherine E. Wenner, *Making the Band: Hazing and an Analysis of Interpersonal Dynamics*, 18 VA. SPORTS & ENT. L. J. 35, 71 (2018).
[174] PHILIP G. ZIMBARDO ET AL., *supra* note 132 at 199.
[175] *See id.*
[176] Christina Maslach, *An Outsider's View of the Underside of the Stanford Prison Experiment*, *in* PHILIP G. ZIMBARDO ET AL., *Reflections on the Stanford Prison Experiment: Genesis, Transformations, Consequences,* in OBEDIENCE TO AUTHORITY 192, 211 (Thomas Blass ed., 1999).
[177] *Id.*
[178] Elon Univ., *supra* note 136.
[179] *See* Susan Lipkins, *Why*, INSIDE HAZING: UNDERSTANDING HAZARDOUS HAZING, https://www.insidehazing.com/definitions-why (last visited Apr. 7, 2025).
[180] Aldo Cimino, *supra* note 133 at 244; The term "Stockholm Syndrome" originated from a bank robbery in Stockholm, Sweden in 1973. The robbery spanned six days, and those held captive became sympathetic towards the robbers, leading some of the captives to refuse testifying against the robbers and going so far as to raise money for the robber's defense. *Stockholm Syndrome*, CLEV. CLINIC

a "psychological response to being held captive…[where captives] form a psychological connection with their captors and begin sympathizing with them."[181] Applying Stockholm Syndrome to hazing, victims of hazing may have a psychological response to hazing practices, causing them to sympathize with the hazing perpetrator.[182] Although shared trauma can undoubtedly foster human connection, not all hardships "manifest in a way that is highly conducive to such bonding."[183]

Enduring psychologically or physically painful experiences with others may promote more trusting interpersonal relationships than experiences devoid of pain.[184] Whether hazing conclusively creates stronger bonds, however, is up for debate.[185] Some research indicates that those undergoing severe hazing rituals "perceived the group as being significantly more attractive than did those who underwent mild initiation or no initiation."[186] However, more recent research reveals that hazing practices have little, if any, impact on group solidarity.[187] Aldo Cimino, a prominent hazing researcher, investigated whether hazing *directly* transforms those subjected to hazing into "intrinsically dedicated members."[188] Examining prior literature and research, as well as conducting his own research, Cimino concluded that hazing practices have mixed and unreliable impacts on group solidarity.[189]

Internal influences on hazing may also include stereotypical views of masculinity (which may or may not be judged as incorrect or overbroad), which stress "physical and mental toughness, obedience to superiors, and the value of force as a means of accountability."[190] Although hazing impacts both males and females, males are at the highest risk for dangerous hazing

(Feb. 14, 2022), https://my.clevelandclinic.org/health/diseases/22387-stockholm-syndrome.

[181] *Stockholm Syndrome*, CLEV. CLINIC (Feb. 14, 2022), https://my.clevelandclinic.org/health/diseases/22387-stockholm-syndrome.

[182] Gregory S. Parks & Jasmine Burgess, *supra* note 165 at 22.

[183] Aldo Cimino & Benjamin J. Thomas, *supra* note 134 at 414.

[184] Brock Bastian et al., *Pain as Social Glue: Shared Pain Increases Cooperation*, 25 PSYCH. SCI. 1, 1 (2014).

[185] *Compare* Elliot Aronson & Judson Mills, *The Effect of Severity on Initiation on Liking for a Group*, 59 J. OF ABNORMAL & SOC. PSYCH. 177, 181 (1959), *with* Aldo Cimino & Benjamin J. Thomas, *supra* note 134 at 411.

[186] Elliot Aronson & Judson Mills, *The Effect of Severity on Initiation on Liking for a Group*, 59 J. OF ABNORMAL AND SOC. PSYCH. 177, 181 (1959).

[187] Aldo Cimino & Benjamin J. Thomas, *supra* note 134 at 411.

[188] *Id.* at 409.

[189] *Id.* at 416.

[190] Elon Univ., *supra* note 136.

practices.[191] According to 2010 statistics, 94% of recorded deaths from hazing, pledging, or other rushing-related[192] events were men.[193] As such, internal perceptions of masculinity may also further influence the perpetuation of hazing.[194] Some descriptions of masculinity propose that men reject accepting help, as well as most emotions associated with femininity (e.g., vulnerability, emotionality, nurturance).[195] In the same vein, men may fail to speak up against hazing or opt out of hazing because doing so is "likely to be considered feminine, passive, and weak."[196] Because internal preconceived notions of masculinity also undermine attempts at intimacy, hazing may also be used to justify intimacy without "violating cultural norms."[197] For example, when hazing involves excessive consumption of alcohol, it may be more acceptable for individuals to say "I love you man," than it would be in a sober setting.[198] Other perceived stereotypical attributes of masculinity include believing male worth is dependent on power, status, and influence.[199] In hazing, hazers may seek power, status may be obtained through organization affiliation, and hazers may use the position of power to influence those around them.[200]

Concerns of overzealous power exertion may be heightened when those perpetuating hazing exhibit anti-social tendencies,

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[191] Nadine C. Hoover & Norman J. Pollard, *High School Hazing Report*, ALFRED UNIV. at 1 (Aug. 2000), https://www.alfred.edu/about/news/studies/_docs/hazing-study.pdf.

[192] "Rushing, also commonly known as recruitment, is the process that potential new members go through in order to become Greek members in order to join a fraternity or sorority." Gertrude Brogi, *What Does Rushing Mean in College?* (Sep. 7, 2022), https://www.cgaa.org/article/what-does-rushing-mean-in-college#goog_rewarded.

[193] *Facts and Myths*, STETSON UNIV., https://www.stetson.edu/other/hazing-education/facts-and-myths.php (last visited Apr. 7, 2025).

[194] Daniela Véliz-Calderón & Elizabeth J. Allen, *Defining Hazing: Gender Differences*, 12 WM. & MARY J. OF SORORITY & FRATERNITY LIFE RSCH. & PRAC. 12, 20 (2017).

[195] Kevin Foss, *What is Toxic Masculinity and How it Impacts Mental Health*, ANXIETY & DEPRESSION ASS'N OF AM. (Nov. 14, 2022) https://adaa.org/learn-from-us/from-the-experts/blog-posts/consumer/what-toxic-masculinity-and-how-it-impacts-mental.; Elon Univ., *supra* note 136.

[196] Daniela Véliz-Calderón & Elizabeth J. Allen, *supra* note 191.

[197] Elon Univ., *supra* note 136.; GEO. UNIV., *supra* note 135.

[198] *Id.* ("Hazing activities may thus be designed to meet intimacy needs without violating cultural norms. For example, being intoxicated makes it more acceptable to share one's feelings (e.g., 'I love you, man!').").

[199] Kevin Foss, *What is Toxic Masculinity and How it Impacts Mental Health*, ANXIETY & DEPRESSION ASS'N OF AM. (Nov. 14, 2022) https://adaa.org/learn-from-us/from-the-experts/blog-posts/consumer/what-toxic-masculinity-and-how-it-impacts-mental.; Elon Univ., *supra* note 136.

[200] *See* Elon Univ., *supra* note 136.; GEO. UNIV., *supra* note 135.

including consistent disregard for right and wrong, as well as ignorance of the rights and feelings of others.[201] In hazing, these tendencies are exhibited by "disregard[ing] the rights and safety of others, fail[ing] to conform to societal norms, and lack[ing] remorse."[202] Even though anti-social individuals may be the minority of a group, if an individual with anti-social tendencies is in a leadership position, they can hold substantial influence.[203] Thus, hazers believing their worth depends on power, status, and influence may engage in hazing to establish or reinforce their position as the dominant wielders of control.[204]

Even without anti-social tendencies, perpetrators of hazing may nevertheless engage in such behavior to establish or reiterate their dominant position in the organization.[205] Hazers may attempt to do so by exerting their power over others, and in the most horrific cases, they may enjoy seeing others subjected to painful experiences.[206] This theory is referred to as Dominance Macro-Theory, whereby the underlying features of hazing serve to perpetuate dominance of the hazer and submission of the hazing victim.[207] Some researchers go so far as to define hazing as "'an imposition of dominance…involv[ing] any activity that requires new members to show subservience to old members.'"[208] In other words, seeking dominance through hazing practices is rooted in the stark contrast between the hazer's dominant position in imposing "the humiliating nature of many hazing practices and the humble, passive behavior expected of hazees."[209] Such humiliation often occurs behind closed doors, where individuals covertly engage in degrading practices, insulated from external scrutiny or accountability.[210]

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[201] *Antisocial personality disorder*, MAYO CLINIC (Feb. 24, 2023), https://www.mayoclinic.org/diseases-conditions/antisocial-personality-disorder/symptoms-causes/syc-20353928.
[202] Elon Univ., *supra* note 136.; GEO. UNIV., *supra* note 135.
[203] *Id.*, ("While [anti-social] individuals tend to be a small subset of groups, they can exert significant influence as hazing ringleaders.").
[204] Elon Univ., *supra* note 136.; GEO. UNIV., *supra* note 135.
[205] Aldo Cimino, *supra* note 133 at 244.; Gregory S. Parks & Katherine E. Wenner, *supra* note 173 at 57 ("Too often, within organizations, when people come to power, they abuse that power.").
[206] Elon Univ., *supra* note 136.; GEO. UNIV., *supra* note 135.
[207] Aldo Cimino, *supra* note 133.; GEO. UNIV., *supra* note 135.; Elon Univ., *supra* note 136.
[208] *Id.* (quoting HANK NUWER, HIGH SCHOOL HAZING: WHEN RITES BECOME WRONGS, 20 (Franklin Watts 2000).
[209] Aldo Cimino, *supra* note 133.
[210] Susan Lipkins, *supra* note 179.

C. External Controls, or Lack Thereof

> "If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary."[211]

External controls, such as accountability and shared agreement to conform to behavioral norms, serve as the foundation of social order in civilizations.[212] When external controls or constraints on behavior decrease, conformity to behavioral or societal norms decreases.[213] If organizations fail to have strong internal leadership and promotion of prosocial norms, the risk of deviation from social norms is heightened.[214] Such risks are especially heightened when organizations operate in secrecy, isolated from external constraints.[215] In practice, many hazing activities are conducted in isolation, under a cloak and code of silence.[216] Common characteristics of hazing include secrecy and silence, with a majority of hazing activities taking place off campus in private spaces.[217] Evidence demonstrates that this seclusion and lack of supervision serve as a "breeding ground for hazing."[218] One possible explanation is that without supervision, young adults are left to guide one another, and "they tend to push some acts to the extreme."[219]

One of the most infamous examples of isolation impacting behavior is Zimbardo's Stanford Prison Experiment.[220] In the experiment, participants were randomly assigned the role of guard

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[211] The Federalist no. 51 (James Madison) (1788).
[212] Elon Univ., *supra* note 136.
[213] *Id.*
[214] *Id.*
[215] *Id.*
[216] Susan Lipkins, *supra* note 179.
[217] Elizabeth J. Allen & Mary Madden, *supra* note 61 at 24, (46% of off campus hazing takes place in a private space while 11% take place in a public space).
[218] Gregory S. Parks, *Pledge to End Hazing*, 11 WAKE FOREST L. REV. ONLINE 111, 126 (2021) (quoting Susan P. Stuart, *Warriors, Machismo, and Jockstraps: Sexually Exploitative Athletic Hazing and Title IX in the Public School Locker Room*, 35 W. NEW NEG. L. REV. 377, 419 (2013)).
[219] *Id.*, (quoting Gregory S. Parks et al., *White Boys Drink, Black Girls Yell: A Racialized and Gendered Analysis of Violent Hazing and the Law*, 18 GENDER RACE & JUST. 93,157 (2015)).
[220] Kendra Cherry, *The Most Famous Social Psychology Experiments Ever Performed*, (Nov. 14, 2023) https://www.verywellmind.com/famous-social-psychology-experiments-2795667.; Kendra Cherry, *The Stanford Prison Experiment*, (Apr. 30, 2024) https://www.verywellmind.com/the-stanford-prison-experiment-2794995.

or prisoner in a simulated prison environment.[221] In the beginning, "there were no differences between those assigned randomly to guard and prisoner roles."[222] The prisoners were placed into dresses without undergarments, and although real-life prisoners are not subjected to the same attire, Zimbardo used dresses to produce the humiliation and emasculation real-life prisoners experience.[223] While the guards were barred from physically abusing prisoners, the guards ultimately became "cruel and tyrannical."[224] On the second day of the experiment, several prisoners banded together in rebellion against the authoritarian constraints and coercive regulations.[225] However, the guards similarly bonded together to crush the rebellion, leading to increased guard camaraderie and personal distaste toward the prisoners.[226] Instead of all participants bonding, a clear divide emerged between the prisoners and guards, creating an "us versus them" mentality. That mentality, however, soon deteriorated. After the initial rebellion, the guards created a system of rewards and punishments,[227] rewarding the least rebellious prisoners with "the privilege of a good meal or a bed to sleep on."[228] The punishments ranged from stripping the prisoners naked, placing them in solitary confinement, depriving meals, blankets, or pillows, and forcing physical activity.[229] The worst abuses from the guards occurred during the midnight shift, when the guards thought they were not being monitored.[230]

Steadily increasing the humiliation, dehumanization, aggression, and coercion toward the prisoners, it soon became clear that the guards' hostile treatment was impacting the prisoners.[231] This hostility, combined with "arbitrary and capricious displays of their dominating power and authority," resulted in one prison's release after only 36 hours because of "extreme stress reactions."[232] Subsequently, some prisoners began blindly conforming to the prison procedures in a "zombie-like fashion" due to the "powerful

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[221] *Stanford Prison Experiment*, BRITANNICA (Feb. 7 2025), https://www.britannica.com/print/article/2080318.
[222] PHILIP G. ZIMBARDO ET AL., *supra* note 132 at 200.
[223] Philip G. Zimbardo, *Stanford Prison Experiment slideshow narration*, STAN. UNIV. LIBR. (Aug. 15-21, 1971) https://exhibits.stanford.edu/spe/catalog/gn204mr8406.
[224] BRITANNICA, *supra* note 221.
[225] PHILIP G. ZIMBARDO ET AL., *supra* note 132 at 198.
[226] *Id.* at 199.
[227] BRITANNICA, *supra* note 221.
[228] PHILIP G. ZIMBARDO ET AL., *supra* note 132 at 199.
[229] *Id.*
[230] *Id.* at 203.
[231] *Id.* at 199.
[232] *Id.*

conformity pressures."[233] The "normal young men" who entered the experiment had become "powerless prisoners" or "sadistic, all-powerful guards."[234] Although some guards were deemed "good" because they did not degrade or otherwise harass the prisoners, these so-called good guards never "contest[ed] an order by a sadistic guard, [or] intervene[d] to stop or prevent despicable behavior of another guard."[235] The group pressures imposed on the guards encouraged being a "team player [by] conforming to or at least not challenging what seemed to be the emergent norm of dehumanizing the prisoners."[236] Similar to how the guards had some "good" among them, one prisoner attempted to create solidarity between the prisoners with a second rebellion against the guards.[237] Unlike the initial rebellion where other prisoners banded together, the "us versus them" mentality had deteriorated, and this prisoner was despised by his fellow inmates, "instead of becoming the defiant hero," and was further tormented by the guards.[238]

The experiment was forced to shut down after six days.[239] In the end, there were no similarities between those assigned to guard and prisoner roles; "they had become totally different creatures."[240] The entire situation served as a breeding ground for "actions that would be constrained by laws, norms, morals, and ethics."[241] After ending the experiment, Zimbardo stressed the power of situations in determining unfounded obedience to authority.[242] He noted the emergence of three central themes.[243] First, obedience to authority stems from societal constructs of creating authoritative positions, and authority figures subsequently aim to legitimize their authority.[244] Second, humans are easily manipulated because of maintained illusions of "personal invulnerability and personal control" as well as failure to give weight to social forces being the

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[233] *Id.*
[234] PHILIP G. ZIMBARDO ET AL., *supra* note 132 at 200.
[235] *Id.*
[236] *Id.* at 202.
[237] Christina Maslach, *An Outsider's View of the Underside of the Stanford Prison Experiment*, *in* PHILIP G. ZIMBARDO ET AL., *Reflections on the Stanford Prison Experiment: Genesis, Transformations, Consequences,* in OBEDIENCE TO AUTHORITY 192, 211 (Thomas Blass ed., 1999).
[238] *Id.*
[239] PHILIP G. ZIMBARDO ET AL., *supra* note 132 at 200.
[240] *Id.*
[241] *See Id.* at 202.
[242] Gregory S. Parks & Tiffany F. Southerland, *supra* note 150 at 46.
[243] *Id.*
[244] *Id.*

actual underlying driver.[245] Third, evil deeds are a product of people doing their jobs rather than evil motives.[246]

Analyzing the similarities between hazing and the Stanford Prison Experiment, those placed in the position of hazer (like the guards) feel an innate pressure to act as a hazer.[247] Victims of hazing subjected to abusive, sadistic behavior feel a subsequent inclination to inflict the same abusive, sadistic behavior on others when later elevated to an authoritative position.[248] Zimbardo's three themes may be adapted to reflect some psychological drivers of hazing. First, hazing victims may be obedient to hazers because of cultural notions of hazing in organizations, and hazers act to reinforce their sense of power and control.[249] Second, hazing victims may have the illusion that they should refrain from being vulnerable and fail to recognize the social forces enabling hazing. Third, hazers may haze, not because of their own evil motives, but because they believe they are carrying out their duties as a hazer.

Ultimately, hazing may be caused by a combination of elements from each of these various psychological theories. While the causes for hazing are supported by a range of psychological theories, a singular explanation for why individuals engage in hazing remains elusive. Although the phenomenon of hazing resists being reduced to a single explanation, the inability to articulate a single, definitive cause does not imply that hazing is destined to persist indefinitely.

V. PREDICTING THE SCHA'S IMPACT ON HAZING

> "[I]t is possible that hazing culture may be neither created nor destroyed, only contingently evoked or suppressed."[250]

The impracticability of identifying a single, definitive cause of hazing may seem to make the task of altering those deep-rooted psychological influences illusory, or at least improbable. However, even if these influences remain unaltered, as they have for centuries, the SCHA may nevertheless introduce new constraints which effectively inhibit their manifestation in the form of dangerous

[245] *Id.*
[246] *Id.*
[247] Baur Raposo Benjamin Yvo et al., *About Hazing in Higher Education*, 11 EUR. SCI. J. 1, 7 (2015).
[248] *Id.*
[249] Elizabeth J. Allen & Mary Madden, *supra* note 167.
[250] Aldo Cimino et al., *supra* note 142 at 7.

hazing.[251] After all, in many instances, the objective of laws is to change human behavior.[252] Laws may aim to do so directly—by imposing sanctions or rewards—or indirectly, by changing the societal attitude about a behavior.[253]

A. Direct Impact

The SCHA directly influences an institution's conduct by imposing reporting and educational requirements where the cost of noncompliance is the loss of federal assistance.[254] It is well known that "failure to comply with Title IV regulations requirements can result in serious adverse consequences."[255] For example, one institution that previously qualified for Title IV funding failed to meet the program's federal requirements.[256] As a result, the institution was required to repay $187.5 million in loans, and forced to "shut its doors and file for bankruptcy."[257] Further illustrating the critical impact and value of Title IV funds, the "mere threat that [a University] would become ineligible for Title IV funds was worth $277 million to [the University's] investors."[258]

Terminating an institution's access to federal financial aid "is seen as a 'nuclear option' because many institutions can't survive without federal funds."[259] Recent federal funding cuts, unrelated to

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[251] *See id.* at 6-7.

[252] KENWORTHEY BILZ & JANICE NADLER, *Law, Moral Attitudes, and Behavioral Change*, in THE OXFORD HANDBOOK OF BEHAVIORAL ECONOMICS AND THE LAW 241 (Eyal Zmir & Doron Teichman eds., 2014).; Merrell Dow Pharms., Inc. v. Thompson, 478 U.S. 804, 828 (1986) (Brennan, J., dissenting) ("By making federal law an essential element of a state-law claim, the State places the federal law into a context where it will operate to shape behavior: the threat of liability will force individuals to conform their conduct to interpretations of the federal law made by courts adjudicating the state-law claim.").

[253] KENWORTHEY BILZ & JANICE NADLER, *Law, Moral Attitudes, and Behavioral Change*, in THE OXFORD HANDBOOK OF BEHAVIORAL ECONOMICS AND THE LAW 241 (Eyal Zmir & Doron Teichman eds., 2014).

[254] *Supra* notes 89-95 and accompanying text.

[255] Lead Plaintiff, the Policemen's Annuity and Benefit Fund of Chicago's Consolidated Class Action Complaint for Violations of Federal Securities Laws at 8, In re Apollo Grp., Inc. Sec. Litig., 2008 WL 3072731 (Lead Case No. CV 04-2147-PHX-JAT), 2005 WL 6259503 [hereinafter In re Apollo Grp.].

[256] *Id.*

[257] *Id.*

[258] Matthew A. McGuire, *Subprime Education: For-Profit Colleges and the Problem with Title IV Federal Student Aid*, 62 DUKE L.J. 119, 139 (Oct. 2012) (citing to In re Apollo Grp. at 8).

[259] Katherine Knott, *Will the Feds Strip Colleges' Funds Over Anti-Jewish, Muslim Bias?*, INSIDE HIGHER ED (NOV. 20, 2023)

the SCHA, have left colleges and universities across the United States scrambling for solutions.[260] Some have already "frozen hiring, rescinded student offer letters, and cut programs due to federal funding cuts."[261] Loss of federal funding not only impacts the institution, but also "threaten[s] to put college out of reach for more students…[as] federal financial aid has played a critical role in partially offsetting higher costs for students and families."[262] Cutting federal funding can lead to "steep tuition increases," making the affordability of higher education even more strained.[263] Even still, increases in tuition are insufficient to fully compensate schools faced with the loss of government funding.[264] Struggling to recover from the financial strain of budget cuts and subsequent decline in enrollment, some public colleges and universities have additionally cut staff and/or eliminated programs.[265] Often, the attempts at remedying loss of funding through increasing tuition or eliminating jobs and programs "compromise the quality of education and jeopardize student outcomes."[266]

Aside from the financial implications of noncompliance, the SCHA obligates institutions to investigate hazing reports. Although the SCHA does not expressly prescribe any additional investigation processes under the Higher Education Act, it can be reasonably interpreted as requiring institutions to investigate hazing incidents. Because institutions are required to disclose when hazing investigations occurred, as well as their process for investigations, it logically follows that the institution has to at least conduct some form of hazing investigation. If this requirement had been in place when Timothy Piazza entered Greek life, it may not have saved his life but would have revealed more about the circumstances surrounding his death and thus allowed for more efficient resolution

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https://www.insidehighered.com/news/government/student-aid-policy/2023/11/20/pulling-colleges-federal-funds-would-be-nuclear.

[260] *See* Margret Attridge & Elin Johnson, *These Colleges and Universities Are Cutting Costs Over Federal Funding Freezes*, BEST COLLEGES (Apr. 9, 2025) https://www.bestcolleges.com/news/colleges-university-cut-costs-federal-funding-freeze/.

[261] *Id.*

[262] Michael Mitchell & Michael Leachman, *Years of Cuts Threaten to Put College Out of Reach for More Students*, CENTER ON BUDGET AND POLICY PRIORITIES (May 13, 2015) 1, 19 https://www.cbpp.org/sites/default/files/atoms/files/5-13-15sfp.pdf?ts=1613455153408.

[263] *Id.* at 1.

[264] *Id.* at 11.

[265] *Id.*

[266] *Id.* at 23.

of subsequent litigation. Two days after Piazza's death,[267] a fraternity member erased the security footage of the incident because he "'knew the footage would be damaging.'"[268] Although the FBI later recovered the footage in 2017,[269] if the SCHA had been in place the institution would have been obligated to investigate the incident, which would have included at least attempting to obtain the security footage before the member had the opportunity to delete it. If the institution had obtained the footage, they would have been under a legal obligation to disclose the recording to law enforcement.

Furthermore, institutions will be prohibited from sweeping hazing incidents under the rug, as they are required to disclose hazing violations in their Campus Hazing Transparency Report.[270] For example, at Wheaton College the school administration and athletic coaches allegedly knew of dangerous hazing rituals or should have known "but for deliberately turning a blind eye to it."[271] The school had a "pervasive and continuous nature of the hazing ritual of kidnapping freshman football players."[272] When Charles Nagy (a freshman football player) was being kidnapped, dorm security observed portions of the incident and yet "no agent or employee of Wheaton College intervened or attempted to intervene . . . nor reported the incident to law enforcement."[273] Furthermore, when the football coach learned of the incident, he "set about a plan to cover up the hazing" and attempted to prevent Charles from reporting the incident.[274] Once the coach learned law enforcement were investigating the incident, he communicated the incident to campus authorities, as it became clear his attempts to cover up the incident would be futile.[275]

Striking similarities can be drawn between the hazing of Charles and the Stanford Prison Experiment. Other victims at Wheaton may have easily submitted to the hazers because they

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[267] *Former Penn State Fraternity Brother Erased Security Camera Footage From Night Timothy Piazza Died, Prosecutors Say*, CBS NEWS PHILADELPHIA (May 29, 2019 10:58 AM) https://www.cbsnews.com/philadelphia/news/penn-state-timothy-piazza-hazing-braxton-becker/.
[268] Samantha Verrelli, *supra* note 44.
[269] *Id.*
[270] Stop Campus Hazing Act, 138 STAT. 2599 (2024).
[271] Complaint at 3, Nagy v. Wheaton Coll., 2018 WL 1363254 (Ill.Cir.Ct.), *filed* (Mar. 16, 2018).
[272] *Id.*
[273] *Id.* at 4-5.
[274] *Id.* at 7. The coach communicated the incident to campus authorities only after it became clear that local law enforcement began conducting an investigation. *Id.*
[275] *Id.*

anticipated the well-known practice of kidnapping.[276] This supports Zimbardo's first theme that obedience stems from societal constructs of creating authoritative positions and authority figures aim to legitimize their authority.[277] In contrast, Charles had no knowledge of this history and thus resisted for as long as he could, eventually having to submit to being kidnapped.[278] This is similar to how some of the prisoners in the Stanford Prison Experiment initially fought against the guards but ultimately became obedient zombies.[279] What happened to Charles illustrates both Zimbardo's first theme and the second theme that humans are easily manipulated due to illusions of personal invulnerability and personal control, and overlook the influence of social forces which actually drive behavior.[280] Much like how those in the Stanford Prison Experiment took on the role of "guard," thereby separating their personal identity from the experiment, the hazers at Wheaton College "hid their identities" as they kidnapped Charles.[281] In addition, the hazers were likely victims themselves of kidnapping, and if not, they were at least aware of the history.[282] Thus, they likely felt they had to fill the shoes of those who came before them. The same could be said for the coach attempting to cover up the incident or the security guards who turned a blind eye, as they may have felt the obligation to look the other way to preserve the so-called tradition. Those perpetuating the hazing of Charles may have thus done so in an attempt to do their job or legitimize their authority as a hazer, just like the guards in the Stanford Prison Experiment. This supports Zimbardo's third theme that evil deeds do not result from evil motives but rather result from people trying to do their jobs.

At Wheaton College, things could have gone differently if the SCHA had been in place. Because of the requirements imposed by the SCHA on institutions, any attempted coverup by Wheaton's coaches would jeopardize federal funding for the entire school. The net result is the imposition on the part of the coaches: risk losing the entire school and thus losing their team through forfeiture of federal funds or accept a blemish on the team's reputation. By attempting to cover up the incident, the coach's actions would have jeopardized

[276] Complaint at 2, Nagy v. Wheaton Coll., 2018 WL 1363254 (Ill.Cir.Ct.), *filed* (Mar. 16, 2018).
[277] Gregory S. Parks & Tiffany F. Southerland, *supra* note 150 at 46.
[278] Complaint at 4, Nagy v. Wheaton Coll., 2018 WL 1363254 (Ill.Cir.Ct.), *filed* (Mar. 16, 2018).
[279] Gregory S. Parks & Tiffany F. Southerland, *supra* note 150 at 46.
[280] *Id.*
[281] Complaint at 4, Nagy v. Wheaton Coll., 2018 WL 1363254 (Ill.Cir.Ct.), *filed* (Mar. 16, 2018).
[282] *Id.* at 2.

the institutions eligibility for Title IV federal fund. Had the SCHA been in place, the coach would have been under a legal and financial obligation to report the kidnapping, instead of seeking to conceal the hazing to "preserve the culture and norms of the football team and his autonomous control over it."[283]

Additionally, institutions are required to disclose hazing incidents reported to campus security or local police in their annual security report.[284] Five years before Charles was kidnapped as a part of a hazing ritual, a local resident called local police, "because of the hazing 'kidnapping' incidents, involving loud screaming and what appeared to be an individual being kidnapped from a dorm by a group of males."[285] When officers responded to the incident, "they were told by individuals, includ[ing] persons believed to be dorm security, that is was just a prank and nothing criminal."[286] Had the SCHA been in place at the time, the institution would have been required to disclose publicly the prior incidents reported to police. Charles thus would have been able to learn of this incident prior to his enrollment as the annual security report must be published and distributed to applicants for enrollment, among others.

Prior to enrolling at Wheaton College, Charles was unaware of the "long history of hazing new members of the team, including the practice of 'kidnapping.'"[287] This long history included, but was not limited to, the kidnapping incident reported to police five years prior to Charles's enrollment. Perhaps, if Charles knew of these dangerous practices beforehand, he would have been discouraged from joining the team or at least, reconsidered enrolling in a school with such a long-standing history of hazing. Had the SCHA been in place, Charles would have been able to learn of the history of hazing incidents on campus. By publicly disseminating hazing violations, the power may be put into the hands of the public, allowing for informed decisions instead of the power resting in the hands of hazers, who may coerce action behind closed doors.

B. Indirect Impact

As far as the indirect legislative impact, the SCHA may affect the internal influences within organizations as the reporting requirements may break the code of silence by putting hazing violations on public display. All of this, of course, presupposes that

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[283] *Id.* at 7.
[284] Stop Campus Hazing Act, 138 STAT. 2597 (2024).
[285] Complaint at 3, Nagy v. Wheaton Coll., 2018 WL 1363254 (Ill.Cir.Ct.), *filed* (Mar. 16, 2018).
[286] *Id.*
[287] *Id.* at 2.

hazing incidents become known. A profound tragedy like Max's or Timothy's, resulting in death, will likely become known regardless of the SCHA. But what of the countless other forms of dangerous hazing that never become lethal, how will those become known? Ultimately, whether the reporting requirement is a true reflection of the occurrences on campus is reliant on whether individuals actually report incidents. But, without the imposition of reporting requirements, there would be no improvement. The Georgia mandatory reporting requirement "promotes public awareness of the prevalence of hazing within particular schools and organizations but lacks incentives to encourage individuals to report hazing-related conduct within their affiliated organizations."[288] The SCHA likewise lacks express individual incentives for reporting, but it may nonetheless reduce the prevalence of hazing.

Research indicates that 84% of students would not join an organization if they knew the organization participated in hazing[289] and 91% find hazing unacceptable.[290] By publicly exposing hazing violations, students will have access to information regarding which organizations engage in hazing. Armed with this knowledge, students may be more reluctant to join organizations known to violate hazing policies. Organizations may subsequently reduce or eliminate hazing because of such external controls.[291] In addition, by having hazing information published on institutional websites (under the Campus Hazing Transparency Report) or otherwise

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[288] Lane McKell & Julia Martin, *SB 85: Mandatory Reporting of Hazing-Related Violations*, 38 GA. ST. U. L. REV. 1, 11 (2022) (citing to Elizabeth Crisp, *'Max Gruver Act' to Create Harsher Penalties for Hazing in Louisiana Swiftly Wins House Passage, Heads to Senate*, ADVOCATE (Apr. 2, 2018, 5:41 PM), https://www.theadvocate.com/baton_rouge/news/politics/legislature/max-gruver-act-to-create-harsher-penalties-for-hazing-in-louisiana-swiftly-wins-house-passage/article_0a86de08-36c7-11e8-b244-43b7f218103a.html).

[289] *Hazing Perceptions from College Students*, PREVENT ZONE, https://resources.prevent.zone/hazing-prevention-impact-report#:~:text=84%25%20of%20course%20participants%20indicated,would%20NOT%20join%20that%20organization.&text=In%20the%20pre%2Dcourse%20survey,%25%20before%20to%2089%25%20after.&text=available%20and%20is%20the%20%231%20choice%20of%20students (last visited Apr. 7, 2025).

[290] *Hazing Prevention Education Works!*, PREVENT ZONE, https://resources.prevent.zone/hazing-infographic/#:~:text=Data%20collected%20from%2090%2C000%20course,91%25 (last visited Apr. 7, 2025).

[291] Aldo Cimino et al., *supra* note 142 at 6, "[O]ut-groups that disapprove of hazing, as are found in modern environments (e.g., college administrators, anti-hazing advocates). To be sure, *these groups may sometimes reduce hazing by a credible threat of punishment,* but such tactics may have little impact on the motivational machinery underlying hazing, even if hazing behavior is suppressed." (emphasis added).

disseminated (under the annual security report), students can decide whether to join an organization on their own, with a clear head, unfettered by organizational coercion.

In Max's case, LSU received numerous credible reports of hazing and dangerous forced consumption of alcohol in the LSU Phi Delt chapter in the years leading up to Max's death.[292] The number of reports was so overwhelming that LSU's office of Greek life "begged for assistance" from the fraternity's national headquarters.[293] Similarly, in Timothy's case, prior to his death, Penn State "'had a task force that knew a lot of bad things were going on and did nothing about it.'"[294] Although it cannot be concluded that Max or Timothy would be alive if the SCHA had been enacted before they joined Greek life, LSU and Penn State would have been required to publish reports that include the prior hazing incidents. The public reports of hazing on campus would have allowed Max, Timothy, and their families to make more informed decisions about whether it was safe for them to join Phi Delta Theta or Beta Theta Pi, respectively. If only Max and Timothy knew of the numerous reports of hazing, they may have decided to forego Greek life altogether. If they had known how pervasive, continuous, and tolerated the hazing culture was at LSU and Penn State, Max and Timothy may have chosen other college destinations entirely.

Although other surveys may indicate students are not likely to report hazing incidents to campus officials,[295] their reasons for not reporting can be remedied by the SCHA. When asked to select reasons for not reporting hazing, respondents indicated they simply did not know where to report.[296] The SCHA may easily remedy this issue as it requires institutions to include information on how to report incidents in their annual security report. Other respondents feared members of their organization would discover who reported the incident, leading the reporter to face reprisal, ostracization, or even physical violence.[297] In practice, concerns of being identified as the reporter can be eliminated depending on how the institution chooses to structure its reporting process. For example, the University of South Carolina's webpage for reporting hazing allows

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[292] Dakin Andone, *Lawsuit claims LSU ignored alleged fraternity hazing before pledge's death last year*, CNN (Aug. 17, 2018, 5:36 PM) https://www.cnn.com/2018/08/17/us/max-gruver-lsu-frat-death-lawsuit/index.html.
[293] *Id.*
[294] Samantha Verrelli, *supra* note 44 (quoting Timothy's father, Jim Piazza).
[295] Elizabeth J. Allen & Mary Madden, *supra* note 61 at 28.
[296] *Id.* at 28-29.
[297] *Id.*

individuals to input their name or contact information as background information, but these fields are not required to make a report.[298] The required fields include the nature of the report, date of incident, and location of incident.[299] When prompted to list involved individuals, the form instructs: "please list the individuals involved (*excluding yourself*)."[300] Thus, individuals at this institution are free to decide whether or not they would like to submit hazing reports anonymously. Similarly, the SCHA prohibits institutions from including any personally identifiable information about any individual student in public reports.[301] Institutions are prohibited from publishing who made the report and have the option to collect anonymous reports, which can mitigate student concerns surrounding reporting.

Other reasons for not reporting hazing may also be mitigated by educational programs. These programs can inform students of the dangers of hazing, how to recognize hazing, and provide more consistent definitions of hazing. In surveys conducted prior to completing a hazing education course, 88% of students indicated they would report hazing if they witnessed it.[302] However, only 47% indicated they knew how to report hazing incidents.[303] After completing the hazing education course, 89% of students indicated they would report hazing if they witnessed it, and 89% indicated they knew how to report hazing incidents.[304] Accordingly, hazing education taught an additional 42% of students how to report hazing incidents. A separate survey supports this conclusion as results showed that after completing a hazing education program, 77% of students reported feeling more inclined to report hazing incidents after completing a hazing education program.[305] Thus, the implementation of hazing education programs can inform students on how to submit reports, as well as encourage reporting.

Together, the educational programming and reporting requirements will serve as an important step toward ending hazing by educating students and putting hazing violations on public display, thus breaking the elusive code of silence.

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[298] UNIV. OF S.C., *Code of Conduct Violation Report*, https://cm.maxient.com/reportingform.php?UnivofSouthCarolina (last visited Apr. 7, 2025).
[299] *Id.*
[300] *Id.* (emphasis added).
[301] Stop Campus Hazing Act, 138 STAT. 2600 (2024).
[302] PREVENT ZONE, *supra* note 289.
[303] *Id.*
[304] *Id.*
[305] PREVENT ZONE, *supra* note 290.

VI. CONCLUSION

The Stop Campus Hazing Act may not alter the psychological drivers that underlie hazing. After all, those drivers are various, insidious, and innate. But that does not mean the new federal law will fail to be impactful. State level legislation was an important step forward in mitigating the instances of hazing deaths, but federal legislation now offers a feature the state laws could not bring to the cause: uniformity across state lines. Institutions are now required, under this new federal law, to create and publicly disclose reports of hazing violations, as well as to implement hazing-informing educational programs. Such educational programming can expose students to the very real dangers of hazing and instruct them how to report hazing, making students better equipped to recognize and report hazing. Under the reporting requirements, the infamous code of silence that insulated hazing for so long may finally erode by putting hazing violations on public display. Armed with the ability to know upfront which organizations or campuses have a history of pervasive and dangerous hazing, students will be better suited to make informed decisions on which extracurricular activities to pursue. Students and families will be able view these reports in their own homes, or otherwise away from organizational pressures. Institutions of higher education are now duty-bound to abide by the SCHA, or risk loss of access to federal Title IV funding—likely a death knell to any institution. This Act shines a bright light on the hazing activities on campuses nationwide, which is likely to meaningfully incentivize more rigorous controls and fewer instances of hazing tragedies.

"Knowledge itself is power."[306] Like Max Gruver wrote in his journal, "Something bad may happen to you, but it may happen because it will make you better." [307] Despite the horrific losses of Mortimer, Max, Timothy, and countless others whose names and stories remain often unknown to all but their traumatized families, this history has finally become a catalyst in ending hazing. By imposing federal external controls for the first time in U.S. history, the Stop Campus Hazing Act is an important step in the right direction in the long journey of eradicating hazing.

[306] Leonard Azamfirei, *Knowledge is Power*, 2 J. OF CRITICAL CARE MED. 65 (2016) HTTPS://PUBMED.NCBI.NLM.NIH.GOV/29967839/.
[307] MAX GRUVER FOUND., *supra* note 18.

MAKING CHILDREN'S SAFETY AN EXPLICIT PRIORITY IN DOMESTIC VIOLENCE CASES: A SIMPLE SOLUTION WITH IMMENSE IMPACT

Katelyn Holmstrom Riley*

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V. CONCLUSION..... 70

I. INTRODUCTION

Supposed to be in bed, a little boy in pajamas holds his favorite stuffed animal tight to his chest as he peers around the corner, watching it happen—again. The curse words and threats ring in his ears and fill the air like smoke, choking out any sense of safety he may have. He hears his mommy's trembling voice begging his daddy to "be quiet, Little Benjamin is sleeping." However, Little Benjamin is not sleeping; he is right there, feet cold on the hardwood floor, eyes wide and wet. Speechless. Scared. Should he say something? Should he rush to help his mommy? Should he be brave and fight his daddy? No, he cannot do any of that. He decides in an instant, for he is only a little boy—a little boy who knows that if he appears from around the corner—he will get hurt because he is a little boy who knows what comes next. First, the slaps in her face. Second, the kicks and punches to her stomach. Third, the choking and pinning her against the wall until his mommy falls to the ground, limp. Lastly, dragging her into the bedroom and slamming the door. Little Benjamin does not want to see his mommy get hurt, but he also does not want to get hurt. He wants to cry, but he chooses to fight his tears instead because crying will alert the monster of his presence. With his teddy bear in hand, he holds his breath and tiptoes back to bed, not to sleep, but to hide. Little Benjamin is too frightened to sleep tonight. His heart races beneath the blankets, not from dreams of imaginary monsters under his bed, but from the real monster who lives down the hall. And so, he lies awake tonight, like most other nights, not fearing the dark, but fearing what the dark might bring. He waits, not for dreams, but for morning, fearing what the monster will do this time and hoping he will get to see his mommy alive again.[1]

Unfortunately, Little Benjamin's story is an all-too-common experience for children across the United States,[2] particularly in

[1] This vignette is fictional but informed by real-world accounts of children witnessing domestic violence, including documented 911 calls placed by children during ongoing domestic violence situations and caselaw, to illustrate the effects of exposure to domestic violence on children. *See 911 Audio Recordings.* NAT'L CTR. ON DOMESTIC & SEXUAL VIOLENCE, *https://www.ncdsv.org/911-audio-recordings.html?utm_source=* (Nov. 21, 1990); *S.C. Dep't of Soc. Services v. Benjamin*, No. 2019-UP-382, 2019 S.C. Ct. App. LEXIS 379, at *2 (Ct. App. Dec. 6, 2019).

[2] *2024 South Carolina Special Emphasis Report: Adverse Childhood Experiences (ACEs)* (2024), S.C. DEP'T OF PUBLIC HEALTH, https://dph.sc.gov/sites/scdph/

South Carolina.[3] In Little Benjamin's case, his father repeatedly battered his mother in his presence.[4] In what was at least the third time Little Benjamin witnessed domestic violence in his home, he watched as his father struck his mother, leaving bruises all over her body, throw frozen food at her, dump food on her head, and eventually rendered her unconscious.[5] In the process, Little Benjamin ended up being shoved.[6] His daddy hurt him.

Imagine poor Little Benjamin crying out to his mommy for help, but she cannot help him because his daddy hurt her, too. He does not deserve this. He is just a small boy—a boy with hopes and dreams. A boy who wants to love his mommy and daddy, but inevitably, a boy who gets hurt, physically, mentally, and emotionally, for being born to parents in an abusive relationship. The court recognized this, finding that Little Benjamin was harmed and the home was unsafe.[7]

As evidenced above, domestic violence does not just affect the perpetrator and the targeted victim. Children who witness domestic violence are at serious risk for short and long-term physical and mental health problems.[8] Witnessing domestic violence as a child can profoundly shape a child's outlook on life because every relationship they enter will be viewed through the dirty lens of their earliest role models of husband and wife—their abusive father and their battered mother.[9] Therefore, in South Carolina, in households where children are exposed to domestic violence, children's *safety* should be placed at the forefront of family law disputes.

This article discusses making children's *safety* an explicit priority in custody decisions when children have witnessed domestic violence. Part II of this article explains the necessary background to understand domestic violence, the effects on children who live in

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files/202504/2024_SER_ACEs_SouthCarolina.pdf?.

[3] *How Witnessing Domestic Violence Can Cause PTSD in Children*, CHILDHOOD DOMESTIC VIOLENCE ASSOCIATION, https://cdv.org/2023/06/childhood-domestic-violences-connection-to-post-traumatic-stress-disorder-ptsd/ (last visited Feb. 22, 2026).

[4] *Benjamin*, 2019 S.C. Ct. App. LEXIS 379, at *2.

[5] *Id.* at *2-3.

[6] *Id.* at *2.

[7] *Id.* at *3.

[8] Debra Pogrund Stark, Jessica M. Choplin & Sarah Elizabeth Wellard, *Properly Accounting for Domestic Violence in Child Custody Cases: An Evidence-Based Analysis and Reform Proposal*, 26 MICH. J. GENDER & L. 1, 15 (2019) (noting some effects are: abuse, injury, anxiety, depression, fear, aggression, and criminal behaviors).

[9] Patricia K. Susi, *The Forgotten Victims of Domestic Violence,* 54 J. MO. B. 231, 232 (1998).

households with domestic violence, and important aspects of child custody disputes when domestic violence is present. Part III examines the current South Carolina family law statutes governing children and families who experience domestic violence. Part IV then provides a detailed analysis of how children's *safety* should be prioritized in custody cases when the child has witnessed domestic violence. Part V concludes by stating the solution is simple: add two words—"safety and"—to Section 63-15-240 of the South Carolina Code Annotated to mitigate the harmful effects on children who witness domestic violence. It is essential to note that, although South Carolina is used as the example, this statutory change is likely applicable nationwide, as it pertains to most statutory language within family courts concerning children and domestic violence.[10]

II. BACKGROUND

The U.S. Department of Justice defines domestic violence, also known as intimate partner violence,[11] as "a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner."[12] Domestic violence can affect anyone, no matter their race, age, sexual orientation, religion, sex, gender identity, education level,[13] ethnicity, or socioeconomic status.[14] Domestic violence can occur in both opposite-sex and same-sex relationships,[15] though women are

[10] Not quite half of the states appear to expressly include the term "safety" in their best interest of the child and/or child custody statutes. *See* ALASKA STAT. ANN. § 25.24.150 (West 2025); CAL. FAM. CODE § 3011 (Deering 2024); COLO. REV. STAT. ANN. § 14-10-124(4)(A) (West 2024); CONN. GEN. STAT. § 46b-56 (2024); GA. CODE ANN. § 19-9-3 (West 2024); HAW. REV. STAT. ANN. § 571-46 (West 2025); IOWA CODE § 598.41 (2025); KY. REV. STAT. ANN. § 403.270 (West 2024); LA. CIVIL. CODE. ANN art. 134 (2025); ME. REV. STAT. ANN. tit. 19-A, § 1653(3) (West 2024); MASS. GEN. LAWS ANN., ch. 208, § 31A (West 2025); MINN. STAT. ANN. § 518.17 (West 2025); NEB. REV. STAT. ANN. § 43-2923(1) (West 2025); N.J. REV. STAT. § 9:2-4 (2024); N.C. GEN. STAT. ANN. § 50-13.2 (West 2025); N.D. CENT. CODE ANN. § 14-09-06.2 (West 2025); OHIO REV. CODE ANN. § 3109.051 (West 2025); OKLA. STAT. tit. 43, § 109 (West 2025); 23 PA. STAT. AND CONS. STAT. § 5328 (West 2025); 15 R.I. GEN. LAWS ANN. § 15-5-16 (2025); TEX. FAM. CODE ANN. § 153.001 (West 2025).

[11] *About Intimate Partner Violence*, CTRS. FOR DISEASE CONTROL & PREVENTION (May 16, 2024), https://www.cdc.gov/intimate-partner-violence/about/index.html#:~:text=Quick%20facts%20and%20stats%20*%20About%2041%,by%20an%20intimate%20partner%20in%20their%20lifetime.

[12] *Domestic Violence*, U.S. DEPT. OF JUST.: OFF. ON VIOLENCE AGAINST WOMEN (Jan. 22, 2025), https://www.justice.gov/ovw/domestic-violence.

[13] *Id.*

[14] Serena Dineshkumar et al., *Domestic Violence*, 25 GEO. J. GENDER & L. 473, 473 (2024).

[15] *Domestic Violence*, *supra* note 12.

still at a much higher risk than men.[16] Domestic violence can also happen when intimate partners are dating, cohabiting, married, or biological parents to a child or children.[17] However, the focus of this article is on women in heterosexual relationships who have children with their perpetrators.[18]

In the United States, an estimated 24.3% of adult women and 13.8% of adult men have experienced severe physical violence from an intimate partner.[19] Each year, more than 12 million people are affected by intimate partner violence.[20] South Carolina's statistics are even higher than this national average. In South Carolina, 42.3% of women and 29.2% of men experience intimate partner violence in their lifetime.[21] Typically, women in age groups 18 to 24 and 25 to 34 have the highest reports of intimate partner violence.[22] This is particularly problematic because many women have children during these years.[23]

Domestic violence is one of the most misunderstood crimes.[24] This is partly due to the complicated nature of domestic violence and the lack of sufficient education and understanding within society and the legal system concerning the dynamics of domestic violence, particularly when dealing with children who witness the abuse.[25] Without a strong understanding of domestic violence cases involving child witnesses, many judges treat all

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[16] MARY PEZZULLA, DOMESTIC VIOLENCE CASES: HANDLING THEM EFFECTIVELY IN MD. DIST. AND CIR. CT. § I-I (2017).
[17] *Domestic Violence*, *supra* note 12.
[18] While the author recognizes domestic violence can occur in all relationships, the violence differs throughout each type of relationship. Given that currently, violence by men against women is the most common type of domestic violence, particularly in South Carolina, the focus of this article is on heterosexual relationships. Space is left open for domestic violence conversations in other relationship types.
[19] *Domestic Violence Statistics*, NAT'L. DOMESTIC VIOLENCE HOTLINE, https://www.thehotline.org/stakeholders/domestic-violence-statistics/ (last visited Feb. 22, 2026).
[20] *Id.*
[21] SHARON G. SMITH ET AL., NAT'L. CTR. FOR INJURY PREVENTION & CONTROL, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (NISVS): 2010-2012 STATE REPORT 129 & 145 (2017), https://stacks.cdc.gov/view/cdc/46305/cdc_46305_DS1.pdf.
[22] *Domestic Violence Statistics*, *supra* note 19.
[23] *Historical Time Series Tables*, U.S. CENSUS, (last revised Jan. 3, 2024), https://www.census.gov/data/tables/time-series/demo/fertility/his-cps.html#par_list_6 (reporting steady childless percentages decreasing from 94.9% in 15 to 19-year-olds to 30.5% in 30 to 34-year-olds, and births per 1,000 women being highest in 25 to 29-year-olds at 96.4).
[24] Dineshkumar, *supra* note 14, at 511.
[25] *Id.*

domestic violence cases the same.[26] This is problematic because judges do not implement alternative resolutions that may better protect survivors and their children.[27] This can ultimately perpetuate the cycle of violence.[28]

A. Defining Domestic Violence and Understanding the Cycle of Violence

Domestic violence is a "pervasive, insidious, and life-threatening crime."[29] Domestic violence is not limited to physically violent acts[30] but may also include sexual, emotional, economic, psychological, or technological acts, as well as any other repeated threats, coercion, or behaviors aimed at intimidating, manipulating, humiliating, isolating, frightening, terrorizing, blaming, hurting, injuring, or wounding the abused partner.[31] Given the statistics, domestic violence is not only a private family matter but a public health crisis.[32]

Public health crises, however, do not exist in isolation and are often shaped by cultural and societal norms that influence whether harm is acknowledged or minimized. For instance, in South Carolina, given that religion is a significant part of conservative society, this idea that domestic violence is a private family matter is consistent with the traditional teachings of the church.[33] It may even cause women to choose to stay with their abusers to avoid the sin of

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[26] *Id.*
[27] *Id.*
[28] Kendra Saathoff, *How Family Law Court Exacerbates the Effects of Domestic Violence*, MN J. OF L. & INEQ., INEQ. INQUIRY BLOG (Feb. 2, 2021), https://lawandinequality.org/2021/02/02/how-family-law-court-exacerbates-the-effects-of-domestic-violence/.
[29] Jesse Noltimier, *Minimum Deadly Contacts*, 107 MINN. L. REV. 869, 869 (2022) (quoting
Domestic Violence: A Public Problem and a Public Health Concern, NAT'L NETWORK TO END DOMESTIC VIOLENCE (Apr. 7, 2016),https://nnedv.org/latest_update/domestic-violence-public-health-concern [https://perma.cc/G3Z8-6M6T]).
[30] Dineshkumar, *supra* note 14, at 474.
[31] *Domestic Violence*, *supra* note 12.
[32] *Domestic Violence: A Public Problem and a Public Health Concern*, *supra* note 29 (phrase "private, family matter" comes from this source); Noltimier, *supra* note 29 at 869 (citing WORLD HEALTH ORG., GLOBAL AND REGIONAL ESTIMATES OF VIOLENCE AGAINST WOMEN: PREVALENCE AND HEALTH EFFECTS OF INTIMATE PARTNER VIOLENCE AND NON-PARTNER SEXUAL VIOLENCE 2 (2013), https://iris.who.int/bitstream/handle/10665/85239/ 9789241564625_eng.pdf).
[33] Matthew Robins, *Domestic Violence Law: State of Fear: Domestic Violence in South Carolina*, 68 S.C. L. Rev. 629, 646 (2017).

divorce.[34] As women continue to be battered, they begin to blame themselves for the violence, which reinforces the abuser's power and control while simultaneously deepening the victim's sense of powerlessness.[35] This is part of the cycle of violence.

Women who are abused, particularly those who are victims of domestic violence, typically experience the cycle of violence.[36] The cycle of violence refers to a recurring pattern of exhibited behaviors that traps victims of domestic violence in abusive relationships.[37] The cycle consists of three phases or stages.[38] Phase I involves a gradual buildup of tension between the individuals, but the perpetrator's behaviors do not escalate to overtly violent or explosive outbursts.[39] Naturally, a woman in this position will try to appease her abuser in hopes of temporarily preventing further violence.[40] In response, the woman may become more fearful of violence and likely attempt to distance herself from her abuser.[41] This frequently causes the abuser to enter Phase II, the "acute battering incident," where the perpetrator bombards the victim with verbal and/or physical assaults.[42] This stage is where injury is most likely to occur.[43] Phase III can manifest in various ways, often characterized by a temporary absence of violence or tension, accompanied by expressions of remorse or kindness, such as offering gifts or making promises, or any combination thereof.[44] The battered woman often believes these promises, which leads the man to reinforce her behavior and perpetuates her "learned helplessness."[45] However, the cycle does not end there. Eventually,

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[34] *Id.* at 646-47.
[35] *Id.*
[36] Bailey Pierce, *Requiem for A Survivor: The Use of Battered Woman Syndrome in Acquitting Survivors of Abuse*, 110 KY. L.J.O. 1, 3 (2024) (citing LENORE E. A. WALKER, THE BATTERED WOMAN SYNDROME 91 (4th ed. 2017)).
[37] *The Cycle of Violence and Power and Control*, PEACE OVER VIOLENCE, https://www.peaceoverviolence.org/iii-the-cycle-of-violence-and-power-and-control (last visited Feb. 22, 2026).
[38] Pierce, *supra* note 36, at 3.
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.* at 4.
[43] Pierce, *supra* note 36, at 4.
[44] *Id.*
[45] *Id.*; Walker, *supra* note 36, at 12, 17 (defining "Learned helplessness" as a theory that suggests women stop believing they can escape from their batterer because they are less likely to predict which actions will produce better results to protect them from the negative experiences of abuse. While battered women are experiencing this, they develop sophisticated responses and coping strategies that, from their point of view, often reduce the possible harm. In turn, these battered

this honeymoon phase ends due to rising tensions, and the couple returns to Phase I, restarting the cycle of violence.[46]

Throughout a relationship, this cycle can continue over and over again before a woman is able to leave the relationship[47] or suffers a serious injury that ends her life. Understanding the cycle of violence is helpful because of its predictability.[48] However, because each stage can vary in length and severity,[49] in the moment, it is difficult for a woman to anticipate her abuser's exact reaction, leading to a disconnect between how she responds to the abuse and how the abuser reacts.[50] This is what makes the cycle so complex and continuous.

B. The Costs of Children Living in Households with Domestic Violence

The costs of children living in households with domestic violence are high, even if the children are not the direct target of the abuse.[51] Although parents or caregivers engaged in violent relationships may believe their conflicts do not impact their children, research shows that it does.[52] Each year, an estimated three to ten million children and adolescents witness violence between their parents or caregivers.[53] In addition to harming the targeted victim of the perpetrator's abuse, this violence also harms children present in the household through direct exposure, indirect exposure, or both.[54] Directly, children of primary abusers are at an increased risk of being abused, of witnessing the abuse of a sibling, and of being continuously exposed to domestic violence in their abusive parents' future relationships.[55] Even if children are not intentionally

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women are incredibly successful in staying alive and minimizing their physical and psychological injuries).

[46] *Understanding the Cycle of Domestic Violence*, MARJAREE MASON CTR., https://mmcenter.org/stay-informed/understanding-the-cycle (last visited Feb. 22, 2026).

[47] *Id.*

[48] Pierce, *supra* note 36, at 4.

[49] *Understanding the Cycle of Domestic Violence*, *supra* note 46.

[50] Pierce, *supra* note 36, at 4.

[51] Allen M. Bailey, *Prioritizing Child Safety as the Prime Best-Interest Factor*, 47 FAM. L.Q. 35, 48-53 (2013).

[52] *Domestic Violence and Children*, AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY (Sept. 2023), https://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/Helping-Children-Exposed-to-Domestic-Violence-109.aspx.

[53] *Id.*

[54] Bailey, *supra* note 51, at 48.

[55] *Id.*

abused, they may be hurt accidentally in the crossfire of a dispute,[56] like Little Benjamin.[57] In fact, in households where domestic violence occurs, there is a "41 percent correlation with households also experiencing critical injuries or deaths due to child abuse and neglect."[58] Indirectly, children can suffer severe emotional effects such as internalizing symptoms of anxiety, depression, fear, shame, social withdrawal, somatic complaints, bedwetting, and poor concentration, as well as externalizing symptoms of aggression, impulsivity, bullying, and criminal behaviors.[59]

Exposure to high-conflict and violent family environments, such as living in a household with domestic violence, is extremely harmful to children at every stage of life—infancy, childhood, and adolescence.[60] To varying degrees, children from homes with a prevalence of domestic violence may experience very similar effects as children whose caretakers directly abuse them.[61] Such effects can cause severe injuries or even death.[62] These effects can be both short- and long-term for children and society, "regardless of a survivor's gender, race, age, religion, income, or education."[63]

i. Short-Term Effects

Child witnesses of domestic violence may experience short-term effects due to their trauma. These traumatic experiences of witnessing domestic violence can cause instant, harmful biological responses to the stress,[64] which can further disrupt brain functioning, healthy development, and relationships.[65] Additionally, children may "experience increased [physical] health problems ranging from insomnia, headaches, stomachaches, diarrhea, asthma, and peptic ulcers."[66]

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[56] *Domestic Violence and Children*, *supra* note 52.
[57] *Benjamin*, 2019 S.C. Ct. App. LEXIS 379, at *2 (Noting the child was shoved during the dispute).
[58] Stark, *supra* note 8, at 36.
[59] *Id.* at 22. *See generally* Andrienne C. Walters, *The Forgotten Children: Victims of Domestic Violence, Victims of the System*, 12 ALB. GOV'T L. REV. 286, 287 & 289-92 (2018) (noting some criminal behaviors known to correlate with children witnessing domestic violence are: engaging in intimate partner violence, battering their already abused mother, abusing drugs and alcohol, and juvenile delinquency, including runaways, gang membership, and gang violence).
[60] Bailey, *supra* note 51, at 56.
[61] *Id.*
[62] Pezzulla, *supra* note 16.
[63] *Id.*
[64] Stark, *supra* note 8, at 23.
[65] Bailey, *supra* note 51, at 50.
[66] Annette M. Gonzalez & Linda M. Rio Reichmann, *Representing Children in Civil Cases Involving Domestic Violence*, 39 FAM. L.Q. 197, 207 (2005).

In addition to biological and physical problems, children may also endure emotional and behavioral symptoms of distress.[67] This may include difficulties eating and sleeping, problems paying attention and concentrating, experiencing anxiety, intrusive thoughts, depressed mood, withdrawal, relationship problems, aggression, irritability, and impulsivity, including dangerous risk-taking, alcohol and drug abuse, and promiscuous sexual behavior.[68] Children who experience emotional systems of distress may also exhibit low self-esteem, shyness, guilt, shame, confusion,[69] and fearfulness.[70]

Domestic violence can permanently disrupt a child's fundamental need for attachment to their mother, causing biological, physical, and emotional symptoms to emerge as early as infancy.[71] As children age, they may exhibit a loss of interest in school, friends, or activities they previously enjoyed doing, changes in friend groups, new rebellious behavior, spending time alone, bullying or being bullied,[72] poor school performance, school phobia, erratic attendance, and distractibility.[73] Taken together, all of these short-term effects can lead to the inability to resolve interpersonal conflicts effectively because of the affected children's issues with self-regulating behaviors.[74]

Children who witness domestic violence are at an increased risk of experiencing life-changing disruptions within the family, including separation, contentious divorce, loss, and instability in their caregiving arrangements.[75] In households where a male partner believes he is entitled to use force to control his female partner, children face an approximately sixfold increased risk of sexual abuse in their household, often perpetrated by that male partner.[76] Being raised in a household like this creates further issues because children "learn to become part of a dishonest conspiracy of silence … learn to lie to prevent inappropriate behavior, and … learn to suspend fulfillment of their needs rather than risk another confrontation."[77] Unlike children who live in nurturing homes, these

[67] Bailey, *supra* note 51, at 50.
[68] *Id.*
[69] Susi, *supra* note 9, at 231.
[70] Gonzalez & Reichmann, *supra* note 66, at 207.
[71] *Id.*
[72] *Domestic Violence and Children*, *supra* note 52.
[73] Susi, *supra* note 9, at 231.
[74] *Id.*
[75] Bailey, *supra* note 51, at 56.
[76] *Id.* at 48.
[77] Susi, *supra* note 9, at 231.

children direct much of their energy toward evading problems, retreating into a world of fantasy.[78]

ii. Long-Term Effects

In addition to the short-term effects described above, approximately 50% of children exposed to violence in their homes endure long-lasting adverse effects.[79] This is because "exposure to violence may 'substantially alter a child's biological makeup through long-lasting changes in brain anatomy and physiology.'"[80] Such biological responses to witnessing domestic violence may cause chronic health conditions, such as heart disease, obesity, and substance use disorders.[81]

Witnessing domestic violence can also have several other long-term effects, such as Post-Traumatic Stress Disorder (PTSD), lower self-esteem and social adjustment, depression,[82] anxiety, and the tendency to make poor choices when selecting romantic partners.[83] Often, children who witness domestic violence are traumatized and find it difficult to heal, grow, and build a stable future.[84] Thus, it is not surprising that children who witness domestic violence report higher rates of attempted suicide than those who have not experienced such trauma.[85] This is partially because:

> [s]tudies have found a relationship between adverse childhood experiences [ACEs] and emotional and physical health problems in adulthood. Adverse childhood experiences include events such as children witnessing their mother being treated violently. This can result in physical and emotional consequences for the child when the body's stress response is repeatedly triggered by such events, and there is an absence of availability of adult protection.[86]

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[78] *Id.* ("fantasy" meaning an imaginary place of security, calm, peace, and joy that is improbable and does not currently exist to the individual).
[79] Bailey, *supra* note 51, at 49.
[80] *Id.* at 50 (such as repeated activation of neural threat-response systems activated by stress in children's exposure to violent events, particularly in the family setting).
[81] Stark, *supra* note 8, at 24.
[82] Gonzalez & Reichmann, *supra* note 66, at 207.
[83] Bailey, *supra* note 51, at 56.
[84] *Id.* at 50.
[85] Susi, *supra* note 9, at 231.
[86] Stark, *supra* note 8, at 23.

The release of cortisol, the body's stress hormone, is linked to detrimental health outcomes among children who witness domestic violence.[87] As the child continues to encounter stress throughout their life, the "fight or flight" response may be triggered, leading to a nervous system that overreacts to future stressors.[88] This biological response interferes with the child's capacity to interpret their surroundings accurately and respond appropriately to life's daily, minor stressors.[89] Therefore, guarded is the best way to describe the long-term effects on children who grow up in violent families.[90]

Perhaps most concerning, children who witness domestic violence at home learn that violence is a permissible way to deal with conflicts in close relationships[91] and other conflicts, generally.[92] Research supports this pattern, noting that "adult batterers are likely to have grown up in families in which battering occurred."[93] Such exposure to domestic violence during childhood often leads children to imitate the behaviors observed in the home when forming their own relationships.[94] For instance, children who witnessed their father batter their mother may view such behavior as an acceptable way for a father to assert control.[95] As a result, men exposed to domestic violence growing up are more likely to become perpetrators of domestic violence and repeat the cycle of violence in the next generation, while women exposed to domestic violence growing up are more likely to become victims of domestic violence because they watched their mother be abused.[96]

C. Child Custody and Domestic Violence

Child custody is determined by a court based on which person or parent should have rights and responsibility for major

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[87] *Id.*
[88] *Id.*
[89] *Id.*
[90] Bailey, *supra* note 51, at 56.
[91] Robins, *supra* note 33, at 661.
[92] Gonzalez & Reichmann, *supra* note 66, at 207.
[93] Susi, *supra* note 9, at 232; Catherine Delsol & Gayla Margolin, *The Role of Family-of-Origin Violence in Men's Marital Violence Perpetration*, 24 CLINICAL PSYCH. REV. 99, 103 (2004) (noting that a 2004 study found up to 54% of men who engaged in interpersonal violence as adults were exposed to domestic violence as children, which is twice as high as those without a history of violence in their childhood home).
[94] Robins, *supra* note 33, at 661.
[95] *Id.*
[96] Bailey, *supra* note 51, at 56-57.

decisions concerning a child.[97] Custody can be physical and legal.[98] Physical custody designates where the child will live, while legal custody grants the custodial parent(s) the authority to make decisions regarding the child's welfare.[99] In making a custody decision, the court considers the best interest of the child standard.[100] The best interest of the child standard is a guiding principle used in family law to make decisions that affect children, especially in custody, visitation, and welfare cases.[101] In the simplest sense, the standard means that the interests of the children are prioritized above all else.[102]

If it is in the child's best interest and the parents agree to cooperate, the court can award joint physical and legal custody.[103] However, in these 50/50 situations, one parent must be the primary or custodial parent.[104] Thus, the non-custodial parent is granted visitation rights, including either liberal or more stringent schedules, depending on the parties' needs and circumstances.[105] Visitation and custody are distinct terms, but both may allow parents to have access to their children.

Nearly every state, including South Carolina, requires courts to take evidence of domestic violence into account when making custody decisions.[106] States may limit the perpetrator's and victim's child custody and visitation rights depending on the circumstances.[107] Typically, allegations of domestic violence surge in custody battles when the parents are getting divorced, with most of these claims emerging just after the commencement of divorce proceedings.[108] Therefore, a comprehensive understanding of domestic violence and its significance in child custody

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[97] *Custody*, BLACK'S LAW DICTIONARY (12 ed. 2025); S.C. CODE ANN. § 63-15-210 (2024).
[98] Lindsey A. Waits, *For Better or For Worse: Joint Custody Should be the Presumption in South Carolina*, 9 CHARLESTON L. REV. 473, 485 (2015).
[99] *Physical Custody*, BLACK'S LAW DICTIONARY (12 ed. 2025); *Custody*, *supra* note 97.
[100] Waits, *supra* note 98, at 485.
[101] S.C. CODE ANN. § 63-15-240 (2024).
[102] CHILD WELFARE INFORMATION GATEWAY, *Determining the Best Interests of the Child,* https://www.childwelfare. gov/resources/determining-best-interests child/ (Sept. 30, 2023).
[103] *Custody*, *supra* note 97.
[104] *Id.*
[105] *Id.*; Waits, *supra* note 98, at 498.
[106] Gonzalez & Reichmann, *supra* note 66, at 198; ROY T. STUCKEY, MARITAL LITIGATION IN SOUTH CAROLINA: SUBSTANTIVE LAW 509 (5th ed. 2020); S.C. CODE ANN. § 63-15-40 (2024); S.C. CODE ANN. § 63-15-240 (2024).
[107] Dineshkumar, *supra* note 14, at 510.
[108] Jordan Miller, *Custody and Visitation: Allegations of Domestic Violence in Child Custody Proceedings* (pt. 3), 16 J. CONTEMP. LEGAL ISSUES 229, 230 (2007).

determinations is essential for making more informed and safer decisions for children's welfare.[109]

i. Why Victims May Not Look Like Good Parents

Victims of domestic violence may not look like good parents for a few reasons. First, a considerable number of battered women witnessed violence in their own childhood homes or were physically and sexually abused themselves, leading them to internalize the belief early on that victimization is unavoidable and unchangeable.[110] In combination with the recent abuse, women exhibit trauma responses, such as PTSD.[111] PTSD can take many forms, but common symptoms include:

> intrusive symptoms (reliving the traumatic experience as if it were continually recurring in the present, through nightmares and flashbacks), avoidant symptoms (emotional numbing, withdrawal, or the repression of memories of violent incidents), and hyperarousal (being in a constant state of alertness for and expectation of danger, which often leads to irritability and angry outbursts.)[112]

Not only do nearly 64% of battered women exhibit these symptoms, but about 50% of battered women with PTSD may continue to experience symptoms for six to nine years after leaving the violent relationship.[113]

Second, women may not realize how damaging it is for children to witness domestic violence and may believe that separating the family will be more harmful.[114] Even if a woman realizes the effects of children living with domestic violence, she may not have a safe place for her and her children to escape, which reduces the likelihood that she will leave her abuser.[115] Survivors may stay with their abusers for several reasons, such as scarce resources available for survivors seeking support, repercussions of accepting assistance, financial support, or fear of separation from

[109] Stark, *supra* note 8, at 12.
[110] *Id.*
[111] Bailey, *supra* note 51, at 44.
[112] *Id.* at 45.
[113] *Id.*
[114] Stark, *supra* note 8, at 36.
[115] Robins, *supra* note 33, at 647.

their children.[116] Unfortunately, leaving is not always black and white, especially when the most dangerous time in the victim's life is the first two weeks after leaving their intimate partner.[117] In fact, "women are seventy times more likely to be killed in the two weeks after leaving their partner than at any other time during the relationship."[118]

Third, women face uphill battles in court when they mention domestic violence. Domestic violence survivors are often not believed and viewed as alienating parents.[119] Gender bias frequently influences custody dispute outcomes, stemming from the assumption that women are more prone to fabricating claims of child abuse and domestic violence to keep children from their fathers.[120]

In court, battered women often find it challenging to communicate, especially when their abuser is seated so close to them.[121] This arrangement is particularly problematic because domestic violence usually places the victim in perpetual fear for her life, not just when the perpetrator threatens her.[122] Because of their trauma and the associated manipulative, power imbalance, women may struggle to focus on questions being asked, formulate coherent answers, and describe past traumatic events.[123] Women are also likely to be fearful and stressed with their abuser in the room and having to testify about the abuse, reliving the torment, fright, and agony felt during episodes of domestic violence.[124] These emotions can further hinder the woman because the battering partner, through their effective communication in comparison with the victim's faltering communication, may be able to influence a judge to believe that they are the better parent.[125] If the judge does not understand the dynamics of domestic violence and its symptoms, they could see the victim as a less capable parent than the perpetrator and award custody to the perpetrator, allowing him to retain power over all family members, and potentially harm the children.[126]

It may also backfire on battered women who try to protect their children because some states may blame the victim for not leaving the abusive relationship that continues to cause children

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[116] Dineshkumar, *supra* note 14, at 509-10.
[117] *See* Noltimier, *supra* note 29, at 870.
[118] *Id.*
[119] Stark, *supra* note 8, at 36.
[120] *Id.* at 31.
[121] Bailey, *supra* note 51, at 44.
[122] Gonzalez & Reichmann, *supra* note 66, at 208.
[123] Bailey, *supra* note 51, at 44.
[124] *Id.*
[125] *Id.*
[126] Gonzalez & Reichmann, *supra* note 66, at 208.

physical and/or psychological harm.[127] Therefore, while having a protective parent should be particularly important in domestic violence situations, battered parents who attempt to protect their children may nevertheless lose custody due to courts misinterpreting their protective actions.[128] Specifically, courts may view the battered parent as uncooperative or emotionally unstable.[129] This may cause the court to believe the survivor will not foster a healthy relationship with the other parent, their abuser, potentially resulting in the abusive parent being granted custody or unsupervised visitation, despite the evidence highlighting their history of violence.[130] Ultimately, by punishing and blaming victims in this way, the legal system fails to understand or address the profound fear and consequences created by the perpetrator and why victims of domestic violence may not report it.[131]

For example, in custody cases in states like South Carolina, judges must consider whether domestic violence has occurred in the child's household.[132] If evidence of domestic violence is presented, judges weigh the evidence to determine whether the claims are credible.[133] In making this determination, judges may hear parental and eyewitness testimony, as well as review photo and video evidence of the allegations of violence.[134] Aside from this information, very little guidance exists regarding how judges should handle domestic violence cases in South Carolina. The silence on this topic speaks volumes.

ii. Using Guardians ad Litem or Representatives for Children

A Guardian ad Litem (GAL) is an individual appointed by the court to represent the best interest of a person, often a child, who cannot advocate for themselves.[135] A GAL serves as both an

[127] Susi, *supra* note 9, at 232.
[128] Stark, *supra* note 8, at 13-14.
[129] *Id.* at 29.
[130] *Id.*
[131] Susi, *supra* note 9, at 232.
[132] S.C. CODE ANN. § 63-15-240.
[133] *How Domestic Violence Impacts Custody Decisions in South Carolina*, ELLIOTT FRAZIER LAW FIRM, https://elliottfrazierlaw.com/how-domestic-violence-impacts-child-custody-decisions-in-south-carolina/#:~:text=Judges%20take%20allegations%20of%20domestic,the%20child%20in%20imminent%20danger (last visited Feb. 22, 2026).
[134] *Id.*
[135] Melissa F. Brown, *Delineating the Roles of Guardians ad Litem and Custody Evaluators: Where Do Their Labors Intersect and Where Not?*, 23 S.C. LAW., May 2012, at 17; S.C. CODE ANN. § 63-3-820 (2024); S.C. CODE ANN. § 63-3-830 (2024).

investigator and a spokesperson, presenting pertinent information to the court to aid in the court's determination of what is in the best interest of the child.[136] In South Carolina, "in determining the best interest of the child, the court must consider the child's reasonable preference for custody," weighing "the preference based on the child's age, experience, maturity, judgment, and ability to express a preference."[137]

A GAL does not need to be a lawyer in South Carolina if the individual meets all training and qualification requirements.[138] The specific GAL qualifications depend on the nature of the case and whether the case is brought as a Department of Social Services (DSS) action or as a private matter.[139] A GAL has several responsibilities and duties, which include conducting an independent, balanced, and impartial investigation through the review of relevant documents and records to uncover the facts pertinent to the child and family situation; meeting and observing the child, preferably in the home setting when appropriate; interviewing parents, caregivers, school personnel, law enforcement officers, and others closely involved in the child's life; and submitting a neutral, written report outlining facts directly affecting the child's best interest.[140] These rights, responsibilities, and authorized activities all point back to the most significant priority of a GAL in South Carolina—to represent the best interest of the child.[141]

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[136] Brown, *supra* note 135, at 17 (citing S.C. CODE ANN. § 63-3-830).
[137] S.C. CODE ANN. § 63-15-30 (2024).
[138] Brown, *supra* note 135, at 17.
[139] S.C. CODE ANN. § 63-7-1620 (2024) (requiring children to be appointed a GAL in all child abuse and neglect proceedings); *Cass Elias McCarter Guardian ad Litem*, S.C.GOV, https://gal.sc.gov/volunteer/faq#:~:text=Being%20a%20GAL%20requires%20no,A%20genuine%20desire%20to%20help (last visited Feb. 22, 2026) (explaining a GAL does not need specialized degrees or legal experience, but must be a resident of the state, over the age of 21, pass background and reference checks, and complete a 30-hour training course); S.C. CODE ANN. § 63-3-820 (2024) (requiring GALs to be over the age of 25, possess a high school diploma or its equivalent, complete 6 hours of family law continuing legal education if the person is an attorney or 12 if the person a lay guardian, with 9 of those hours being in the area of custody and visitation and the other 3 hours being related to substantive law and procedure in family court, lay guardians must also observe 3 contested custody merits hearings).
[140] Brown, *supra* note 135, at 17-18 (citing S.C. CODE ANN. § 63-3-830); S.C. CODE ANN. § 63-11-510 (2024).
[141] Elizabeth G. Ward, *Survey of South Carolina Law: A Child's Right to Real Representation in Dependency Cases: A Proposal to Modify South Carolina's Child Representation System*, 75 S.C. L. REV. 793, 802 (2024).

When a parent's mental health is a concern, the GAL should ask for a formal psychological evaluation to be conducted.[142] However, GALs and attorneys should understand that a diagnosis alone does not inform the court about parental ability.[143] Instead, the evaluation must include information about observations of the individual's parenting through a child-centric lens.[144] Mental health professionals, psychiatrists, and social workers may also conduct child custody assessments to provide the court with a comprehensive and impartial analysis of the best interest of the child to aid in making a custody arrangement decision that is as informed and beneficial for the child as possible.[145]

iii. Protective Orders and Their Uses in Domestic Violence Cases

Protective orders are an option in domestic violence cases, in particular, because they often place stringent restrictions on an abuser's ability to contact and communicate with the victim, grant the victim a specific right to police intervention, and provide the victim with legal recourse through sanctions imposed on the abuser.[146] Protective orders may also be referred to as restraining orders.[147] These types of orders "protect" by creating (1) clear boundaries, (2) a designated *safety* zone surrounding the victim's person and property, and (3) a rapid-response team for emergency intervention.[148] Because *safety* is of the utmost importance in protecting victims of violence and their children, these orders can be obtained on a temporary or *ex parte* basis without using legal counsel.[149] However, the minimal threshold needed to get a protective order can be problematic because protective orders may be used as a divorce strategy rather than to provide *safety*.[150]

Civil and criminal protective orders allow courts to decide issues concerning the best interest of children.[151] However, in domestic violence situations, even though children are listed in

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[142] Brown, *supra* note 135, at 19 (citing S.C. CODE ANN. § 63-11-510(1) (2008)).
[143] *Id.*
[144] *Id.*
[145] *Id.*
[146] Randy Frances Kandel, *Squabbling in the Shadows: What the Law Can Learn from the Way Divorcing Couples Use Protective Orders as Bargaining Chips in Domestic Spats and Child Custody Mediation*, 48 S.C. L. REV. 441, 445-46 (1997).
[147] *Id.* at 446
[148] *Id.* at 446-47.
[149] *Id.* at 447.
[150] *Id.* at 448.
[151] Gonzalez & Reichmann, *supra* note 66, at 199.

protective orders, they are not parties to the proceedings.[152] Therefore, they are often neither interviewed nor asked about the violence they have witnessed or endured.[153] Through this process, children are rendered invisible and continue to suffer numerous short- and long-term effects, many of which can be perpetuated through future generations and broader society.[154]

III. CURRENT SOUTH CAROLINA FAMILY LAW AND ITS EFFECTS ON CHILDREN

Current South Carolina law encompasses several statutes relevant to domestic violence and custody.[155] These statutes define various terms, goals, and considerations. Yet, the *safety* of the child is only considered in child welfare interventions and visitation orders,[156] not custody orders.[157] Some may argue this is because family courts use the best interest standard to issue or modify a custody order, so the *safety* of the child is inherently addressed.[158] However, because the best interest standard is vague,[159] subjective, and ill-defined,[160] children may remain in potentially unsafe situations.

A. Harm, Injury, and Safety in Statutes

In South Carolina's Children's Code, Chapter 7: Child Protection and Permanency provides the greatest protection for children. This is understandable, as children removed from their homes must be treated with great care. Thus, this chapter is intended to guide the State's intervention into family life on behalf of children.[161] As codified in Section 63-7-10(C) of the S.C. Code Annotated, "[a]ll child welfare intervention by the State has as its primary goal the welfare and *safety* of the child."[162]

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[152] Bernardine Dohrn, Symposium: *Domestic Violence, Child Abuse, and the Law: Bad Mothers, Good Mothers, and the State: Children on the Margins*, 2 U. CHI. SCH. ROUNDTABLE 1 (1995).
[153] *Id.*
[154] *Id.*
[155] S.C. CODE ANN. § 63-7-20 (2024); S.C. CODE ANN. § 63-7-10 (2024); S.C. CODE ANN. § 63-15-50 (2024); S.C. CODE ANN. §§ 63-15-40 & 63-15-240.
[156] S.C. CODE ANN. §§ 63-7-10 & 63-15-50.
[157] S.C. CODE ANN. § 63-15-240.
[158] *Id.*
[159] Jennifer Wriggins, *Parental Rights Termination Jurisprudence: Questioning the Framework*, 52 S.C. L. Rev. 241, 261 (2000).
[160] Ward, *supra* note 141, at 806.
[161] S.C. CODE ANN. § 63-7-10.
[162] *Id.* (emphasis added).

This stand-alone language is imperative because, before 2023, the goal of welfare and *safety* of the child was simply one of the factors to be considered in providing child welfare services.[163] While this goal was codified as a factor before 2023, it was not an explicit, stand-alone consideration.[164] Accordingly, in 2023, the legislature clarified the primary goal of welfare and *safety* by moving the goal out of the factors. As written now, the statute illustrates that the factors are to be used to contribute to the primary goal of the welfare and *safety* of the child. This slight, yet significant, amendment illustrates that the welfare and *safety* of all children needing state intervention is the primary goal that must be considered, independent of other factors, when the State intervenes in family life on behalf of children. Taken together, this framework completes and reinforces the goal of prioritizing child *safety*.[165]

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[163] 2023 S.C. Acts 33.

[164] *Id.*

[165] S.C. CODE ANN. § 63-7-10 (Child welfare services must be based on these principles: (1) parents have the primary responsibility for and are the primary resource for their children; (2) children should have the opportunity to grow up in a family unit if at all possible; (3) State and community agencies have a responsibility to implement prevention programs aimed at identifying high risk families and to provide supportive intervention to reduce occurrence of maltreatment; (4) state and community agencies have a responsibility to implement prevention programs aimed at identifying high risk families and to provide supportive intervention to reduce occurrence of maltreatment; (5) child welfare intervention into a family's life should be structured so as to avoid a child's entry into the protective service and foster care systems if at all possible; (6) the state's child welfare system must be designed to be child-centered, family-focused, community-based, and culturally competent in its prevention and protection efforts; (7) neighborhoods and communities are the primary source of opportunities and supports for families and have a primary responsibility in assuring the safety and vitality of their members; (8) The Department of Social Services shall collaborate with the community to identify, support, and treat families in a nonthreatening manner, in both investigative and family assessment situations; (9) a family assessment approach, stressing the safety of the child, building on the strengths of the family, and identifying and treating the family's needs is the appropriate approach for cases not requiring law enforcement involvement or the removal of the child; (10) only a comparatively small percentage of current child abuse and neglect reports are criminal in nature or will result in the removal of the child or alleged perpetrator; (11) should removal of a child become necessary, the state's foster care system must be prepared to provide timely and appropriate placements for children with relatives or in licensed foster care settings and to establish a plan which reflects a commitment by the State to achieving permanency for the child within reasonable timelines; (12) the Department of Social Services staff who investigates serious child abuse and neglect reports with law enforcement must be competent in law enforcement procedures, fact finding, evidence gathering, and effective social intervention and assessment; (13) services should be identified quickly and should build on the strengths and resources of families and communities).

Understanding the primary goal of child welfare and *safety*, Section 63-7-20 of the S.C. Code Annotated defines various terms used in the family law context when state intervention is necessary.[166] The statute describes "harm" or otherwise referenced as "[c]hild abuse or neglect" as occurring when:

> (a) the parent, guardian, or other person responsible for the child's welfare:
>
> (i) inflicts or allows to be inflicted upon the child physical or mental injury or engages in acts or omissions which present a substantial risk of physical or mental injury to the child.[167]

As referenced in the harm definition, the statute defines "[m]ental injury" as:

> an injury to the intellectual, emotional, or psychological capacity or functioning of a child as evidenced by a discernable and substantial impairment of the child's ability to function when the existence of that impairment is supported by the opinion of a mental health professional.[168]

Parents are also held to the "[r]easonable and prudent parent standard[,]" which means:

> the standard of care characterized by careful and sensible parenting decisions that maintain the health, *safety*, and best interest of a child while at the same time encouraging the growth and development of the child, that a caregiver shall use when determining whether to allow a child in foster care to participate in age or developmentally appropriate activities.[169]

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[166] S.C. CODE ANN. § 63-7-20.
[167] *Id.*
[168] *Id.*
[169] *Id.* (emphasis added). The Reasonable and Prudent Parent Standard is derived from the constitutional right to parent as one sees fit, which is protected under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. However, there are basic standards that must be met. Anything outside of this standard would be considered unsafe and not constitutionally protected.

Together, these three definitions help guide judges in determining if a child has been harmed, if the child has suffered a mental injury, or if the child's parents are acting as reasonable and prudent parents.

Undoubtedly, witnessing domestic violence in the home harms children. When a child witnesses domestic violence, the parent, guardian, or other person responsible for the child's welfare "inflicts or allows to be inflicted upon the child physical or mental injury."[170] The research is clear: children who witness domestic violence suffer from direct and/or indirect and short- and/or long-term consequences, many of which must be addressed with a mental health professional.[171]

Furthermore, when a parent is involved in domestic violence, the parent is not acting as a reasonable and prudent parent because the child is being harmed. Exposure to domestic violence falls within South Carolina's statutory definition of harm, as it can cause a child to suffer physical or mental injury, or place the child at a substantial risk of such injuries, by creating an environment of fear, instability, and emotional trauma. By allowing this harm to occur, the parent fails to maintain the child's health, *safety*, and best interest, which directly violates the Reasonable and Prudent Parent Standard and places the child at substantial risk of lasting physical and psychological harm, rather than fostering an environment that encourages a child's growth and development. Reasonable and prudent parents, in contrast, do not harm their children and take active steps to ensure their health, *safety*, and best interest are met.

While the Reasonable and Prudent Parent Standard is primarily used in abuse and neglect cases, when the State must intervene, it reflects a principle that all parents seeking custody of their children should meet. This standard requires parents to make careful and sensible decisions that prioritize the health, *safety*, and best interest of their child while also encouraging their child's growth and development. However, not all parents, especially those involved in situations of domestic violence, meet this Reasonable and Prudent Parent Standard because their actions can place the child at substantial risk of harm. If a parent cannot demonstrate the ability to maintain the health, *safety*, and best interest of their child, it raises a critical question: should such a parent be awarded custody or visitation?

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[170] *Id.*

[171] *Domestic Violence and Children*, *supra* note 52 (describing between three and ten million children and adolescents witness violence between their parents or caregivers each year); Bailey, *supra* note 51, at 48 (describing the effects may be direct and/or indirect); Pezzulla, *supra* note 16 (describing the consequences may be short- and/or long-term); Stark, *supra* note 8, at 36, 22 (describing some effects are: abuse, injury, anxiety, depression, fear, aggression, and criminal behaviors).

Under Section 63-15-50 of the S.C. Code Annotated, courts are allowed to award visitation to a person who has committed domestic violence, but only if adequate provisions for the *safety* of the child and the victim of domestic violence can be made.[172] In a visitation order, a court may use a variety of protective orders[173] to ensure the *safety* of the child and the victim of domestic violence, including any conditions considered necessary to provide for the *safety* of the child.[174] One condition a court may order is that the child's and the victim's addresses not be disclosed.[175] This order usually occurs when visitation is restricted or not allowed to provide for the *safety* of the child.[176] Additionally, the perpetrator who has been found to have committed domestic violence must pay the cost of any medical or psychological treatment for the child if there are physical or psychological injuries from the perpetrator's acts of domestic violence.[177]

B. Giving Weight to Domestic Violence in Statutes in Custody Decisions

The treatise of Marital Litigation in South Carolina instructs that "[t]he family courts are specifically directed to consider evidence of domestic violence in making child custody decisions and not to use the fact that a victim of domestic violence left the marital home as the sole reason for denying custody."[178] This consideration of domestic violence is codified in Section 63-15-40 of the S.C. Code Annotated and reads:

> (A) In making a decision regarding custody of a minor child, in addition to other existing factors specified by law, the court must give weight to evidence of domestic violence…

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[172] S.C. CODE ANN. § 63-15-50.
[173] *An introduction to Civil Protection Orders/Restraining* Orders, UNIV. OF S.C.: GUIDE TO S.C. ORDS. OF PROT. & RESTRAINING ORDS. https://sc.edu/study/colleges_schools/law/academics/experiential_learning/clinics/domestic_violence/_resources/guide_to_orders.php#:~:text=In%20South%20Carolina%20there%20are,protection%20offered%2C%20and%20filing%20processes (last visited Feb. 22, 2026) (civil protective orders available in South Carolina are: orders of protection, restraining orders, permanent restraining orders, and emergency restraining orders).
[174] S.C. CODE ANN. § 63-15-50.
[175] *Id.*
[176] *Id.*
[177] *Id.*
[178] Stuckey, *supra* note 106, at 509.

> (B) The absence or relocation from the home by a person, against whom an act of domestic violence has been perpetrated, if that person is not the primary aggressor, must not be considered by the court to be sufficient cause, absent other factors, to deny custody of the minor child to that person.[179]

This statute is essential to child custody in cases with domestic violence because it explicitly instructs the court "to give weight to evidence of domestic violence."[180] This statute further recognizes that even if a victim of domestic violence relocates, they must not be denied custody for that sole reason.[181] Taken together, these considerations lay the foundation for considering domestic violence and relocation in child custody cases. By doing so, children living in homes with domestic violence experience enhanced protection in these sensitive cases.

In addition to these required considerations, Section 63-15-240 of the S.C. Code Annotated addresses the possible contents of an order for custody affecting the rights and responsibilities of the parents and lays out the factors for the best interest of the child.[182] It states:

> In issuing or modifying a custody order, the court must consider the best interest of the child, which may include, but is not limited to:
>
> (1) the temperament and developmental needs of the child;
>
> (2) the capacity and the disposition of the parents to understand and meet the needs of the child;
>
> (3) the preferences of each child;
>
> (4) the wishes of the parents as to custody;
>
> (5) the past and current interaction and relationship of the child with each parent, the child's siblings, and any other person, including a grandparent, who may significantly affect the best interest of the child;

[179] S.C. CODE ANN. § 63-15-40.
[180] *Id.*
[181] *Id.*
[182] S.C. CODE ANN. § 63-15-240.

> (6) the actions of each parent to encourage the continuing parent-child relationship between the child and the other parent, as is appropriate, including compliance with court orders;
> (7) the manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute;
> (8) any effort by one parent to disparage the other parent in front of the child;
> (9) the ability of each parent to be actively involved in the life of the child;
> (10) the child's adjustment to his or her home, school, and community environments;
> (11) the stability of the child's existing and proposed residences;
> (12) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, must not be determinative of custody unless the proposed custodial arrangement is not in the best interest of the child;
> (13) the child's cultural and spiritual background;
> (14) whether the child or a sibling of the child has been abused or neglected;
> (15) *whether one parent has perpetrated domestic violence or child abuse or the effect on the child of the actions of an abuser if any domestic violence has occurred between the parents or between a parent and another individual or between the parent and the child*;
> (16) whether one parent has relocated more than one hundred miles from the child's primary residence in the past year, unless the parent relocated for safety reasons; and
> (17) other factors as the court considers necessary.[183]

While this statute gives 16 important considerations regarding the best interest of the child, one even more important

[183] S.C. CODE ANN. § 63-15-240 (emphasis added).

consideration is that it does not once mention the *safety of the child*. One may argue that *the safety of the child* is closely tied to the best interest standard. Some judges even use the concepts interchangeably in family court,[184] which is problematic for several reasons.

First, the best interest standard is a vague,[185] subjective, and ill-defined standard.[186] In fact, the standard is not universally defined.[187] Yet, most, if not all, states use this standard to resolve custody disputes in divorce cases[188] because it is believed to reflect the court's careful consideration of which services, actions, and orders will best support the needs of a child and help determine the child's most suitable caregiver.[189]

To determine the best interest of the child in South Carolina and 30 other states,[190] statutory factors guide the court. The best interest of the child standard is assessed on a case-by-case basis, taking into account each parent's character, fitness, attitude, and tendencies as they affect the child, along with the psychological, physical, environmental, spiritual, educational, medical, familial, emotional, and recreational needs of the child.[191] Again, out of all these important considerations, nowhere does the *safety* of the child appear. While the National Council of Juvenile and Family Court Judges provides that a "child's physical, emotional, and psychological *safety* are always in his or her best interest[,]" the same Judicial Guide to Child Safety in Custody Cases also instructs judges to connect their "findings and conclusions to the *safety* and best interest of the child."[192] Separating *safety* and best interest indicates that the two terms should not be used interchangeably. Further, it emphasizes that while *safety* may be in the best interest of the child, it should be explicitly listed in the statute.

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[184] I have personally been in courtrooms where these terms were used interchangeably.
[185] Wriggins, *supra* note 159, at 261.
[186] Ward, *supra* note 141, at 806.
[187] *Id.* at 799.
[188] Theodora D. Economou, *The Plight of the Disabled Parent in Contested Child Custody Cases: Is There Federal Redress Under the Americans with Disabilities Act (Nearly) Twenty-Five Years Hence?*, 10 CHARLESTON L. REV. 71, 76 (2016).
[189] Child Welfare Information Gateway, *supra* note 102.
[190] *Id.* (noting the other states are Conn., Del., Fla., Ga., Haw., Idaho, Ill., Kan., Ky., Me., Md., Mass., Mich., Minn., Miss., Nev., N.M., N.D., Ohio, Okla., Or., Pa., S.D., Tenn., Tex., Utah, Vt., Va., Wash., and Wis).
[191] Daily v. Daily, 432 S.C. 608, 618 (S.C. Ct. App. 2021).
[192] Hon. Jerry J. Bowels, Hon. Kaye K. Christian, Margaret B. Drew, Katheryn L. Yetter, *A Judicial Guide to Child Safety in Custody Cases*, https://www.ncjfcj.org/bench-cards/a-judicial-guide-to-child-safety-in-custody-cases/ (2008).

Second, this distinction is crucial for textualists who take the statute's words literally and do not infer outside words. If *safety* is not explicitly listed as a factor to be considered or as a separate standard that must be met, textualist judges will likely not consider the child's *safety* because it is not plainly written in the statute.[193] This omission could ultimately cause judges, who are supposed to be protecting children's *safety* through custody orders, to place a child in an unsafe environment because they do not consider words outside of the language written in the statute.

Third, drawing on the South Carolina Reasonable and Prudent Parent Standard, decisions regarding the children are to maintain the child's "health, *safety*, and best interest."[194] Again, *safety* and best interest are separated, indicating these are two independent, essential contentions in cases involving children. While health and *safety* are in the best interest of the child, listing the terms separately gives them the weight they deserve to ensure children are not placed in harm's way, which is especially important in domestic violence cases.

Furthermore, while children living in households with domestic violence may have their health needs met by maintaining vaccines and/or participating in therapy, for example, their *safety* and best interest are certainly lacking because they could easily become victims of the violence. Little Benjamin, for instance, was injured because he was caught in the crossfire of his father's battering. Even if these children do not become victims of the violence, they may still likely suffer adverse effects long after such incidents, including becoming perpetrators and victims of violence in the future, only furthering the cycle of violence.

If some judges currently read the best interest standard to include the *safety* of the child, this is further evidence that such an ill-defined statute creates confusion, leading to inconsistent results. Having the health, *safety*, and welfare of the child at the forefront of any determination regarding the best interest of the child, not just a custody decision, will further protect the population's most vulnerable—children—all while making the best interest standard

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[193] James Burling, *What is the Difference Between Originalism vs. Textualism vs. Living Constitutionalism?, https://pacificlegal.org/originalism-vs-textualism-vs-living-constitutionalism/#:~:text=Textualism%20is%20the%20theory%20that,no%20one%20ought%20to%20be.%E2%80%9D* (Apr. 27, 2022) (describing a textualist judge as someone who interprets legal texts, particularly statutes and the Constitution, by focusing on the plain, ordinary meaning of the text itself, rather than the legislative intent, purpose, or evolving societal norms).

[194] S.C. CODE ANN. § 63-7-20 (emphasis added).

more concrete and universally applied to protect all children in South Carolina, not just those who witness domestic violence.

Together, both codes lay a foundation for judges to consider domestic violence in custody cases. Section 63-15-40 of the S.C. Code Annotated is essential because it explicitly instructs the court "to give weight to evidence of domestic violence[,]"[195] which should greatly help protect children living in homes with domestic violence from being placed in unsafe environments. However, Section 63-15-240 of the S.C. Code Annotated falls short in helping protect the *safety* of children in domestic violence cases because the *safety* of the child is not explicitly mentioned in the language of the statute.[196] Instead, the vague,[197] subjective, and ill-defined[198] best interest standard is used, which may not prompt all judges to consider the *safety* of the child in making a custody determination. This is problematic and requires a solution.

IV. ANALYSIS

By adding *safety* as an explicitly important consideration in cases where children have been harmed, such as in cases where children have witnessed domestic violence, child *safety* is given great, necessary weight in addition to the child's best interest. This policy change also helps provide structure to an ill-defined and subjectively applied best interest standard to ensure no child is placed in harm's way. While other ways to prioritize *safety* exist, codifying *safety* as an explicit consideration in these cases is the most straightforward and impactful.[199]

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[195] S.C. CODE ANN. § 63-15-40.
[196] S.C. CODE ANN. § 63-15-240.
[197] Wriggins, *supra* note 159, at 261.
[198] Ward, *supra* note 141, at 806.
[199] *See* 23 PA. STAT. AND CONS. STAT. § 5328 (explicitly requiring courts to give substantial weighted consideration to factors affecting the safety of the child); *see also Kayden's Law Unanimously Voted Out of Senate Judiciary Committee*, CHESTER COUNTY PRESS, Oct. 25, 2023, https://www.chestercounty.com/2023/10/25/470037/kayden-s-law-unanimously-voted-out-of-senate-judiciary-committee (explaining that the legislation was enacted in response to child's death during an unsupervised visit with her dad to make safety an explicitly statutory consideration and quoting Sen. Santarsiero saying "Kayden's Law will ensure the safety of the child is paramount in custody cases and will absolutely save children's lives.").

A. Prioritizing Child Safety in Households Where Children Witness Domestic Violence as a Matter of Public Policy

Historically, the South Carolina legislature has been uninterested in domestic violence reform.[200] The State's ongoing institutional tolerance of domestic violence has perpetuated the perception that domestic violence is still a private, family matter to be resolved within the home, even though its effects extend beyond the household and affect society.[201] The changes proposed in this article would have an immense impact on children's *safety* in homes with domestic violence. Even if the South Carolina legislature has historically shown little interest in domestic violence reform, the fact that this change affects all children, not just those impacted by domestic violence, combined with the introduction and continued consideration of House Bill 3085 amending Section 63-15-240 of the S.C. Code Annotated, offers hope that this necessary reform may eventually be implemented.[202] All the legislature would have to do to enact this change, making *safety* a superior consideration, is add two words—"safety and"—to Section 63-15-240 of the S.C. Code Annotated. The statute would then read: "In issuing or modifying a custody order, the court must consider the *safety and* best interest of the child…"[203]

Doing so is important because diminishing a child's exposure to domestic violence, so they are *safe*, needs to be the most important goal in determining custody.[204] If a child is not *safe*, their best interest, no matter how ill-defined, is unmet, and the system has undeniably failed them. Child *safety*, particularly in domestic violence cases, should be at the top of the list of factors for the apparent reason of protecting children.[205]

Additionally, as mentioned, the best interest of the child standard is ambiguous. Even in Termination of Parental Rights (TPR) actions, the South Carolina courts do not uniformly apply the factors to be considered in stripping a parent of their legal rights to their child.[206] In contrast, other states, like Wisconsin, require all judges to consider certain factors when addressing the best interest

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[200] Robins, *supra* note 33, at 631.
[201] *Id.*
[202] H.R. 3085, 126th Cong. (2025).
[203] S.C. CODE ANN. § 63-15-240 (emphasis added).
[204] Stark, *supra* note 8, at 16.
[205] Bailey, *supra* note 51, at 56.
[206] Stuart M. Jones, Jr., *Not Perfect, but Better than Most: South Carolina's TPR Process and Its Surprisingly Fair Treatment of Incarcerated Parents*, 62 S.C. L. REV. 697, 710 (2011).

of the child.[207] If such ambiguity and irregularity exist in TPR actions, ambiguity and irregularity in applying the best interest standard are likely happening in custody cases, particularly those involving domestic violence. By incorporating *safety* as a consideration in custody determination cases, South Carolina would achieve goals of uniformity, clarity, and, most importantly, child *safety*.

South Carolina already has templates to follow as outlined in Section 63-15-50 of the S.C. Code Annotated and Section 3011 of the California Family Code. Section 63-15-50 of the S.C. Code Annotated allows the court to award visitation to a person who has committed domestic violence, but only if adequate provisions for the *safety* of the child and the victim of domestic violence can be made.[208] Section 3011 of the Cal. Fam. Code requires the court to consider the child's health, *safety*, and welfare in determining the best interest of a child.[209]

Addressing the South Carolina statute first, if the legislature deems visitation necessary to explicitly include the *safety* of the child, then indeed, a child's permanency, determined by a custody order, should also expressly include the *safety* of the child as the most critical factor. As mentioned above, the right to visitation is a component of child custody,[210] so, a custody order must include a visitation agreement. In theory, under a custody order compliant with this statute, a victim of domestic violence could retain primary legal and physical custody of the child, and the perpetrator of domestic violence could be awarded visitation, subject to the considerations in Section 63-15-50 of the S.C. Code Annotated, which would ensure the child's *safety*. However, keeping the child *safe* should not be so nuanced.

Following the template from Section 3011 of the Cal. Fam. Code is even easier. The statute lists: "[t]he health, *safety*, and welfare of the child" as the first factor to be considered in

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[207] *Id.*; WIS. STAT. ANN.§ 48.426 (West 2025) (In considering the best interest of the child, the court is required to consider: (a) the likelihood of the child's adoption after termination; (b) the age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home; (c) whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships; (d) the wishes of the child; (e) the duration of the separation of the parent from the child; (f) whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements).

[208] S.C. CODE ANN. § 63-15-50.

[209] CAL. FAM. CODE § 3011.

[210] Middleton v. Johnson, 369 S.C. 585, 594 (S.C. Ct. App. 2006).

determining the best interest of the child.[211] This factor is listed above the history of abuse, nature and amount of contact with both parents, and habitual or continual illegal use of controlled substances, abuse of alcohol, or prescribed controlled substances.[212] In this way, California offers the strongest definition of the best interest standard by explicitly requiring "the health, *safety*, and welfare of the child" to be considered first and foremost in any case where a child's best interest must be determined.[213]

Because South Carolina, in Section 63-15-240 of the S.C. Code Annotated, already has its own 16 factors to consider in child custody, the legislature would only need to add *safety* of the child, alongside the best interest of the child, as the primary consideration before all other factors.[214] This addition could have an immense impact on the *safety* of children, particularly those in households where they witness domestic violence, because it places the *safety* of children, like Little Benjamin, at the forefront of child custody disputes. By simply adding "*safety* and" to Section 63-15-240 of the S.C. Code Annotated, the legislature would acknowledge the problematic nature of not addressing the *safety* of children in custody determinations without completely revamping the statute. Ultimately, doing so helps serve one of the state's most vulnerable populations, children, while simultaneously attempting to reduce generational violence.

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[211] CAL. FAM. CODE § 3011 (emphasis added).
[212] *Id.*
[213] *Id.* (emphasis added).
[214] S.C. CODE ANN. § 63-15-240 (the 16 other factors to be considered are: (1) the temperament and developmental needs of the child; (2) the capacity and the disposition of the parents to understand and meet the needs of the child; (3) the preferences of each child; (4) the wishes of the parents as to custody; (5) the past and current interaction and relationship of the child with each parent, the child's siblings, and any other person, including a grandparent, who may significantly affect the best interest of the child; (6) the actions of each parent to encourage the continuing parent-child relationship between the child and the other parent, as is appropriate, including compliance with court orders; (7) the manipulation by or coercive behavior of the parent in an effort to involve the child in the parents' dispute; (8) any effort by one parent to disparage the other parent in front of the child; (9) the ability of each parent to be actively involved in the life of the child; (10) the child's adjustment to his or her home, school, and community environments; (11) the stability of the child's existing and proposed residences; (12) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, must not be determinative of custody unless the proposed custodial arrangement is not in the best interest of the child; (13) the child's cultural and spiritual background; (14) whether the child or a sibling of the child has been abused or neglected; (16) whether one parent has relocated more than one hundred miles from the child's primary residence in the past year, unless the parent relocated for safety reasons; and (17) other factors as the court considers necessary).

B. Other Ways to Prioritize Safety in Households Where Children Have Witnessed Domestic Violence

Recently, joint custody has been recognized as inappropriate in households where domestic violence has occurred.[215] However, victims of domestic violence who try to shield their children from any further harm at the hands of their former partner, the batterer, find that the courts do not award sole custody.[216] The court typically awards joint legal or physical custody instead, forcing these victims into the nightmare of co-parenting with an abusive ex and continuing to harm the children through continued exposure to the violence.[217] When this happens, courts must take into account protective factors to mitigate the harm to children who have already been exposed to domestic violence and will continue to be exposed to such violence, especially without the presence of the battered spouse.[218] Some protective factors that should be considered are: protection by a supportive, non-abusive parent, good parenting skills, family support, a secure attachment to caregivers, living in a supportive, safe, and a close-knit community, and not experiencing other forms of trauma.[219] All of these factors help reduce the harm children experience and witness.[220]

Additionally, requiring the family court to consider domestic violence or child abuse and the effects of such on the child, which is listed as factor 15 in Section 63-15-240 of the S.C. Code Annotated, as compelling support for appointing a GAL or child representative, is a way to prioritize child *safety*.[221] Doing so is essential for several reasons. First, in contested matters, the child's wishes will likely differ from at least one of the parents.[222] Even though the child may have different wishes from one of the parents, neither of the parents' attorneys owes a duty to advocate for the child; instead, the attorneys are focused on their client's position, so the child's interests may be overlooked.[223] Second, the child's interest may also be lost because perpetrators of domestic violence, who thrive off power and control, are likely to use a custody dispute to regain control over the victim.[224] Third, mothers may hide household domestic violence to

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[215] Bailey, *supra* note 51, at 46.
[216] *Id.* at 47.
[217] *Id.*
[218] Stark, *supra* note 8, at 17.
[219] *Id.*
[220] *Id.*
[221] Gonzalez & Reichmann, *supra* note 66, at 207.
[222] *Id.* at 207-08.
[223] *Id.* at 208.
[224] *Id.*

protect the batterer, to avoid interaction with the Department of Social Services at large and child protective services more specifically,[225] or to protect her reputation.[226]

In South Carolina, since family court judges are required, without waiver, to undergo domestic violence training, they should have a better understanding of the effects and dynamics of domestic violence than judges in other states.[227] In practice, though, because judges are the ones who make the final decision in awarding custody, they need this education and training to be backed by methodical, validated research so that they can make well-informed decisions and not ones based on potentially poor intuition.[228] Given this significant power to alter children's and families' lives, the Chief Justice of the South Carolina Supreme Court should prioritize continued training on these issues, including the ill effects of witnessing domestic violence, so that judges can be reminded of the incredible complexities of domestic violence and not fall into blind practice in their day-to-day life on the bench.[229]

V. CONCLUSION

Wide-eyed children, like Little Benjamin, do not deserve to watch their loved ones be called nasty names and be physically injured by another loved one. Blameless children, like Little Benjamin, do not deserve to be caught in the crossfire of an incident of domestic violence either. Wholesome children, like Little Benjamin, do not deserve to grow up thinking violence is acceptable and inadvertently becoming part of a generational cycle of violence. No child, like Little Benjamin, deserves to be unsafe in their home.

Knowing the harmful effects that witnessing domestic violence can have on children, South Carolina should implement child *safety* as an explicitly important factor in custody disputes. By doing so, a much-needed, greater focus is given to child *safety* so South Carolina can protect and empower children affected by domestic violence.[230] This change in legislation removes the opportunity for children to witness domestic violence, giving the

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[225] *Id.*
[226] Mary E. Becker, Symposium: *Domestic Violence, Child Abuse and the Law: Double Binds Facing Mothers in Abusive Families: Social Support Systems, Custody Outcomes, and Liability for Acts of Others*, 2 U. CHI. L. SCH. ROUNDTABLE 13 (1995).
[227] Stark, *supra* note 8, at 65-66.
[228] *Id.* at 17-18.
[229] S.C. CODE. ANN. § 16-25-100 (2024).
[230] Gonzalez & Reichmann, *supra* note 66, at 218.

legislature the power to change children's futures directly and future generations indirectly.

This proposed statutory change also provides greater guidance to judges in considering the best interest of the child. This is particularly important for textualist judges, who ignore factors outside of the text, because *safety* does not appear in the text of the statutes. Therefore, textualist judges would likely not consider *safety* when determining the best interest of the child standard, which could cause a child to be placed in an unsafe environment, directly contradictory to the law that is supposed to protect them.

Furthermore, even if some judges already conflate *safety* and best interest, enacting this policy change would clarify the standard and help mitigate the harmful effects on children who witness domestic violence, like Little Benjamin, and end up at the forefront of custody battles. Because justice cannot be served if someone, especially a child, is being harmed, the South Carolina legislature has a responsibility to explicitly prioritize child *safety* in custody determinations, particularly in cases involving domestic violence. By doing so, South Carolina will ensure that the child's *safety* is the number one priority in all custody decisions.