

1st Quarterly Update | 2016

RCDV:CPC

Resource Center on Domestic Violence: Child Protection and Custody

Welcome to the new electronic format for legislative news from the Resource Center on Domestic Violence: Child Protection and Custody!

In an effort to provide more frequent and timely updates on domestic violence legislation being enacted in the states, we will be providing quarterly electronic updates. We hope this new format and delivery method will result in a more useful product for you. As we are still in the early stages of this new format, any feedback is welcome! Please direct any comments or inquiries to akay@ncjfcj.org.

This first update includes state legislation passed in early 2016. Three additional updates for 2016 legislation will be coming approximately every three to four weeks through April. From then on, updates will be issued each quarter.

In early 2016, protection orders were clearly the primary topic of state legislation. Also, two states instituted or revised domestic violence fatality review processes. Other measures included revisions of criminal statutes, civil sanctions or consequences for domestic violence offenders, confidentiality protection efforts for victims, legislation regarding firearms and domestic violence, and amendment or enactment of statutes concerning families and children and domestic violence. The table below lists the states included in this update and the general topic(s) addressed.

STATE	CATEGORY ¹	TOPIC
Arizona	Criminal Penalties and Procedures	Stalking
District of Columbia	Criminal Penalties and Procedures	Confidentiality of body-worn camera recordings in domestic violence investigations
Florida	Miscellaneous	Domestic violence conviction as bar to employment in child care
Iowa	Families and Children	Termination of perpetrator's parental rights when child conceived as result of sexual abuse
	Miscellaneous	Address confidentiality program – when address may be compelled
Maine	Criminal Penalties and Procedures	Confidentiality of images in court record in prosecution for dissemination of private images
	Prevention and Treatment	Disclosure of law enforcement investigative information to sexual assault counselor or advocate to use in safety planning

Nebraska	Miscellaneous	Eviction when tenant has threatened health or safety of other tenants
New Mexico	Orders of Protection	Protection orders in sentencing for criminal sexual penetration
New York	Miscellaneous	Service animals at domestic violence shelters
South Carolina	Prevention and Treatment	Establishment of domestic violence fatality review committees
South Dakota	Families and Children	Relocation with minor child when protection order is in place
	Orders of Protection	Magistrate jurisdiction over protection orders
	Orders of Protection	Orders of protection against elder abuse
	Orders of Protection	Extension of <i>ex parte</i> protection orders when hearing is continued
	Orders of Protection	Protection orders for vulnerable adults
Tennessee	Criminal Penalties and Procedures	Non-eligibility for pretrial diversion for domestic assault
Utah	Families and Children	Online option for mandatory parenting class
	Miscellaneous	Domestic violence conviction bars licensure and employment that entails direct contact with children or vulnerable populations
Virginia	Orders of Protection	Possession of firearms prohibited for persons subject to protection order
	Prevention and Treatment	Expansion of cases referred to family violence fatality review team
West Virginia	Families and Children	Clarified standard for when false report of domestic violence or child abuse is grounds for restrictions on parental responsibilities
	Miscellaneous	Expansion of number of domestic violence courts
Wisconsin	Orders of Protection	Inclusion of pets in protection orders

¹*Category refers to the chapter of the Model Code on Domestic and Family Violence that contains similar legislation.*

Read on for more details about specific legislation!

ARIZONA—STALKING:

Arizona redefined stalking to broaden both the types of conduct that are prohibited and the targets of stalking based on relationship to the victim; the former definition was limited to fear of injury or death to the victim's immediate family. Specifically, § 13-2923 was amended to prohibit a course of conduct that causes the victim to suffer emotional distress or reasonably fear that the victim's property will be damaged or destroyed or that any of the following will suffer injury or death: the victim; the victim's family member, domestic animal, or livestock; a person with whom the victim has or has had a romantic or sexual relationship; or a person who resides or has resided in the victim's household within six months. The new definition also addresses cyberstalking by broadening the term "course of conduct" to encompass electronic communications. An exception was added for third-party service providers (such as a cell phone company or email service provider) for content provided by another person.

DISTRICT OF COLUMBIA—BODY-WORN CAMERA RECORDINGS:

The District of Columbia passed a bill that added police officer body-worn camera recordings to the list of public records that may be requested. The bill amended § 2-534 to exempt recordings related to an incident involving domestic violence or sexual assault from public records requests.

FLORIDA—DV CONVICTION BAR TO EMPLOYMENT IN CHILD CARE:

Florida law bars those convicted of certain offenses, including domestic violence, from being employed as a child care worker, but it allows exemptions from disqualification under certain circumstances. § 435.07 was amended to disallow an exemption from disqualification based on a conviction for any of several offenses, including felony domestic violence. Thus, a person convicted of felony domestic violence is disqualified from child care employment and is not eligible for an exemption from such disqualification.

IOWA—ADDRESS CONFIDENTIALITY PROGRAM:

Iowa amended its address confidentiality program to clarify when disclosure of a program participant's address may be compelled and the limits on such disclosure. § 9E.8 was enacted to state that "a person" can be compelled to disclose a program participant's address only if the court finds that the address is needed to obtain information or evidence without which the investigation, prosecution, or litigation cannot proceed, and no other practicable means is available to obtain the information. In a criminal proceeding, disclosure must be ordered if not doing so would violate a defendant's constitutional right to confront a witness. The court must notify the program participant and provide an opportunity to be heard regarding any potential harm that might result from disclosure. Any disclosure must be limited to ensure that it is "no wider than necessary" for purposes of the investigation, prosecution, or litigation.

IOWA—TERMINATION OF PARENTAL RIGHTS:

Iowa amended § 232.116 and § 600A.8, regarding the termination of parental rights, to provide that when clear and convincing evidence demonstrates that the child was conceived as a result of sexual abuse grounds for termination of the abuser's parental rights exist. Under the former version of the statute, a conviction was required to establish grounds for termination.

MAINE-DISSEMINATION OF PRIVATE IMAGES:

§ 511-A of Title 17-A, which was enacted in 2015 to define the crime of unauthorized dissemination of private images, was amended to provide that access to and dissemination of such images and any written description of the images contained in the criminal court record will be governed by court rule or administrative order; the statement of legislative purpose indicates that this provision will permit such images to be sealed.

In addition, this updated criminal statute was incorporated into several statutes governing different types of protection by:

- Defining abuse to include dissemination of private images (§ 4002 of Title 19-A);
- Defining harassment to include dissemination of private images (§ 4651 of Title 5);

- Defining abuse to include dissemination of private images (§ 4002 of Title 19-A);
- Defining harassment to include dissemination of private images (§ 4651 of Title 5);
- Providing that a protection from abuse order may enjoin a defendant from engaging in the unauthorized dissemination of private images (§ 4006 of Title 19-A);
- Providing that a protection from abuse order may require a defendant to remove, destroy, or return private images (§ 4007 of Title 19-A);
- Providing that a protection from harassment order may enjoin a defendant from engaging in the unauthorized dissemination of private images (§ 4654 of Title 5);
- Providing that a protection from harassment order may require a defendant to remove, destroy, or return private images (§ 4655 of Title 5); and
- Providing that access to and dissemination of such images and any written description of the images contained in the record of any court considering a protection order will be governed by court rule or administrative order (§4008 of Title 19-A; § 4661 of Title 5).

MAINE—DISCLOSURE OF INVESTIGATIVE RECORD TO ADVOCATES:

§ 806 of Title 16 was amended to allow criminal justice agencies to disclose intelligence and investigative record information to sexual assault counselors and domestic violence advocates to be used only for safety planning for the victim. The legislation includes other conditions requiring secure storage and prompt destruction of any physical copies of such records.

NEBRASKA—FORCIBLE ENTRY AND DETAINER:

§ 25-21,220 was amended to permit a landlord to initiate a forcible entry and detainer proceeding when a tenant has threatened the health or safety of other tenants, the landlord, or the landlord's agents, without right of the tenant to cure. Similarly, § 76-1431 was amended to allow a landlord to file suit to recover possession of the premises if the tenant engages in any violent criminal activity or any other activity that threatens the health or safety of the other tenants or landlord or damage to the property; an exception applies if the prohibited conduct was engaged in by a person other than the tenant and the tenant seeks a protective order or reports the conduct to law enforcement.*

NEW MEXICO—PROTECTION ORDER IN CRIMINAL SEXUAL PENETRATION SENTENCING:

§ 40-13-5.1 was enacted to permit a court in a sentencing proceeding for criminal sexual penetration to enter an extended protection order for the duration of the criminal court's jurisdiction over the defendant; upon expiration of such jurisdiction, the victim may petition for a protection order, which may be granted for any length of time.

NEW YORK—SERVICE ANIMALS AT DOMESTIC VIOLENCE SHELTERS:

New York law requires domestic violence shelters to permit service animals and therapy dogs to accompany victims at a domestic violence residential program. § 459-b of the Social Services Law was amended to permit an exception if the animal's accompaniment would cause an undue burden on the program, in which case the program must make

reasonable efforts to place the animal at an off-site animal care facility, and if such efforts fail, to provide referrals for off-site animal care facilities. The amendment further clarifies that it must not be construed to limit any rights under federal or state law, including any right to reasonable accommodations for individuals with disabilities.

SOUTH CAROLINA—DOMESTIC VIOLENCE FATALITY REVIEW COMMITTEES:

South Carolina passed legislation to establish Domestic Violence Fatality Review Committees. § 16-25-720 was enacted to require each Circuit Solicitor to establish a circuit-wide committee to assist local agencies in identifying and reviewing domestic violence deaths, including homicides and suicides, and to require the development of protocols. §§ 16-25-730 to 16-25-750 set forth provisions governing access to information, confidentiality, and recommendations of the new Domestic Violence Fatality Review Committees.

SOUTH DAKOTA—RELOCATION OF MINOR CHILD WHEN PROTECTION ORDER IN PLACE:

South Dakota law provides that a custodial parent must provide 45 days' notice to the other parent before relocating with the child, with certain exceptions; these exceptions include when an existing protection order in favor of the child or the custodial parent is in place or when the noncustodial parent has been convicted of violation of a protection order, criminal assault, child abuse, or other domestic violence against the child or the custodial parent. § 25-4A-17 was amended to require that notice be sent, even in these situations, if parenting time is established by (1) the protection order, (2) a custody order entered after the protection order, or (3) a custody order entered after the criminal conviction. § 25-4A-18 was amended to provide that, if notice is required in these situations, it need include only the city and state of the new residence, not the complete address and phone number.

SOUTH DAKOTA—MAGISTRATE JURISDICTION OVER PROTECTION ORDERS:

South Dakota amended § 16-12B-13, which establishes the jurisdiction of magistrate courts, to provide that an action for a protection or restraining order may be heard by a magistrate court. The statute, however, excludes a petition for an order for protection from domestic abuse that includes a request for temporary custody, temporary visitation, or temporary support from the magistrate court's jurisdiction.

SOUTH DAKOTA—ORDERS FOR PROTECTION AGAINST ELDER ABUSE:

South Dakota adopted a new chapter to provide for protection orders against vulnerable adult abuse. §§ 21-65-1 to 21-65-18 were enacted to set forth the grounds, procedure, and relief available in such matters. Under newly enacted § 21-65-1, grounds for a protection order can include physical abuse, emotional and psychological abuse, neglect, and financial exploitation. Relief available under newly enacted § 21-65-11 includes requiring the respondent to leave the home, requiring the respondent to provide suitable alternative housing for the vulnerable adult, restraining the respondent from further abuse, prohibiting contact, and prohibiting the respondent from acting as the vulnerable adult's guardian. § 21-65-12 provides for additional remedies when financial exploitation is present. § 21-65-14 requires that the protection order specify a term, which may be up to five years.

SOUTH DAKOTA—EXTENSION OF EX PARTE TEMPORARY PROTECTION ORDER:

§ 25-10-7 was amended to permit a court to continue the hearing for an ex parte temporary protection from domestic abuse order for more than thirty days upon a finding of good cause and either the parties' stipulation to the continuance or a finding that law enforcement is unable to locate the respondent for service; the protection order is to remain in effect until the continued hearing date. § 22-19A-12 was similarly amended for stalking protection orders.

SOUTH DAKOTA—PROTECTION ORDERS FOR CERTAIN PROTECTED PERSONS:

§§ 29A-5-421 to 29A-5-426 were enacted to provide generally that a guardian or conservator must permit communication, visitation, or interaction between protected persons and their parents, children, and siblings, unless restriction is authorized by court order. The statutes further establish the procedure and standards for obtaining a protection order restricting or prohibiting such communication upon a showing of good cause and provide for penalties if a guardian or conservator violates a protection order or, conversely, knowingly isolates a protected person.

TENNESSEE—ELIGIBILITY FOR PRETRIAL DIVERSION:

Tennessee amended § 40-15-105 to provide that a person charged with domestic assault is not eligible for pretrial diversion.

UTAH—ONLINE OPTION FOR MANDATORY CLASS FOR DIVORCING PARENTS:

Utah amended § 30-3-11.3 to permit online and video options for its mandatory educational course for divorcing parents, which requires instruction that domestic violence has a harmful effect on children and family relationships. Any online or video option, however, must be formatted as an interactive presentation that ensures active participation by the parent.

UTAH—CIVIL SANCTIONS, RESTRICTIONS ON ACCESS TO CHILDREN:

Utah amended § 62A-2-120 to include contractors of the state Department of Human Services among the categories of people who must pass a background check, including that they not have been convicted of a domestic violence offense within the prior 10 years, before being granted a license permitting the person to have direct access to children or vulnerable populations. The amendment further provides that once a license has been denied that applicant may not have supervised or unsupervised direct access to a child or vulnerable adult unless a subsequent application is approved.

VIRGINIA—FIREARMS RESTRICTIONS:

Virginia amended § 18.2-308.1:4 to prohibit a person subject to a protection order from possessing a firearm while the order is in effect. Conforming amendments were made to §18.2-308.09, disqualifying such a person from obtaining a concealed handgun permit, and § 18.2-308.2:3, prohibiting such a person from being employed by a firearms dealer as a seller.

VIRGINIA—FAMILY VIOLENCE FATALITY REVIEW TEAM:

Virginia amended § 32.1-283.3 to expand the types of cases referred to the family violence fatality review team to include incidents that are suspected of having occurred in the context of abuse between family members or intimate partners.

WEST VIRGINIA—FRAUDULENT REPORT OF DOMESTIC VIOLENCE OR CHILD ABUSE:

§ 48-9-209 provides for restrictions on parental responsibilities if a parent has engaged in specified conduct, which includes making one or more fraudulent reports of domestic violence or child abuse. West Virginia amended this statute to provide that a person's withdrawal of or failure to pursue a report of domestic violence or child abuse is not alone sufficient to consider that report fraudulent.

WEST VIRGINIA—EXPANSION OF DOMESTIC VIOLENCE COURTS:

West Virginia amended § 48-27-301 to permit the state supreme court to expand from one pilot domestic violence court to as many as five domestic violence courts in any jurisdiction chosen by the state supreme court to preside over specific domestic violence misdemeanor offenses and civil and criminal protection orders.

WISCONSIN—INCLUSION OF PETS IN PROTECTION ORDERS:

Wisconsin amended § 813.12 to permit the court, in a domestic abuse restraining order, to prohibit the respondent from removing, hiding, damaging, harming, mistreating, or disposing of a household pet and to permit the petitioner to retrieve the pet. Similar amendments were made to § 813.122 (child abuse restraining order), § 813.123 (restraining orders for individuals at risk, i.e., vulnerable adults), and § 813.125 (harassment restraining orders).

*Some domestic violence experts recommend working within the parameters of existing law rather than enacting new legislation that, when implemented, may have dangerous unintended consequences and ramifications for domestic violence victims and their children.

ABOUT THE RESOURCE CENTER

The National Council of Juvenile and Family Court Judges houses The National Resource Center on Domestic Violence: Child Protection and Custody. The Resource Center is devoted to helping domestic violence survivors and professionals such as judges, attorneys, social workers, and domestic violence advocates who work with survivors in the child protection and custody systems. In addition to providing training and technical assistance, the Resource Center also conducts research and evaluation projects focused on the intersection of domestic violence and child protection or child custody. Contact us by telephone at (800) 527-3223 or by email at fvdinfo@ncjfcj.org.