

2nd Quarterly Update - Part 2 | 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!

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 Amanda Kay, Program Attorney, at akay@ncjfcj.org.

This update covers state legislation passed during the second quarter of 2016, and the primary focus was protection orders and victim protections. Other measures included revisions to criminal statutes, restructuring or creation of entities tasked with studying or preventing domestic violence, civil sanctions or consequences for domestic violence offenders, confidentiality protection efforts for victims, 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	Families and Children	Restriction of parental rights of parent convicted of sexual assault
Colorado	Criminal Penalties and Procedure	Habitual domestic violence offender
Florida	Criminal Penalties and Procedure	Enhanced penalties for third or subsequent violations of protection order
	Miscellaneous	Protection order as bar to serving as patient representative or guardian advocate
	Miscellaneous	“Rapid ReHousing” homeless assistance
Hawaii	Miscellaneous	Victim protections regarding wireless telephone plans
Iowa	Families and Children	Uniform Deployed Parents Custody and Visitation Act
Maine	Families and Children	Termination of parental rights for child conceived as result of sexual assault
Nebraska	Criminal Penalties and Procedures	Elder abuse
Oklahoma	Criminal Penalties and Procedures	Felony domestic violence
Utah	Families and Children	Uniform Deployed Parents Custody and Parent-Time Act
	Orders of Protection	Term of protection order entered as part of divorce
	Prevention and Treatment	Safety Net Initiative

	Prevention and Treatment	Utah Substance Abuse and Mental Health Advisory Council
	Prevention and Treatment	Suicide prevention and gun data study
	Miscellaneous	Needs assessment regarding housing and homelessness
	Miscellaneous	Housing and homeless services
Vermont	Miscellaneous	Sick leave for domestic violence victims
Virginia	Criminal Penalties and Procedures	Violation of protection order, degree of offense
	Orders of Protection	Conduct prohibited by protection order
	Miscellaneous	Exclusive possession of residence by non-tenant
Washington	Families and Children, Orders of Protection	Judicial information system
Wisconsin	Orders of Protection	Uniform Interstate Enforcement of Domestic Violence Protection Orders Act
	Orders of Protection	Service of protection orders
	Miscellaneous	Address confidentiality program

¹Category 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— RESTRICTION OF PARENTAL RIGHTS OF PARENT CONVICTED OF SEXUAL ASSAULT:

Arizona enacted § 25-416, providing that if a person is convicted of sexual assault that resulted in the birth of a child, the person has no parental rights related to legal decision-making or parenting time.

COLORADO—HABITUAL DOMESTIC VIOLENCE OFFENDER:

Colorado amended § 18-6-801 to revise the language, procedure, evidence, and sentencing for habitual domestic violence offenders, defined as persons with at least three prior convictions, in separate proceedings and arising out of separate criminal episodes, of offenses that included acts of domestic violence.

FLORIDA—ENHANCED PENALTIES FOR THIRD OR SUBSEQUENT VIOLATIONS OF PROTECTION ORDER:

Florida revised its law concerning violation of protection orders to provide for enhanced penalties for a third or subsequent violation, making the offense a felony rather than a misdemeanor. § 741.31, concerning domestic violence protection orders (in-state and foreign); § 784.047, concerning orders for protection against repeat violence, sexual violence, or dating violence; and § 784.0487, concerning orders for protection against stalking and cyberstalking, were amended to include the enhanced penalty provisions.

FLORIDA—PROTECTION ORDER AS BAR TO SERVING AS GUARDIAN ADVOCATE OR PATIENT REPRESENTATIVE:

Florida amended § 394.4597 to prohibit a person subject to a protection order for which a mentally ill person was the petitioner from serving as that person's patient representative. Identical amendments were made to § 394.4598, concerning guardian advocates for mentally ill persons, and § 397.6978, concerning guardian advocates for substance abuse patients.

FLORIDA—"RAPID REHOUSING" HOMELESS ASSISTANCE:

Florida enacted § 420.6265 to create the Rapid ReHousing program, a strategy of using temporary financial assistance and case management to move an individual or family quickly from homelessness to permanent housing rather than focusing solely on shelters and transitional housing. The statute specifically recognizes that one of the two main causes of homelessness is domestic conflict. In addition, amendments to § 420.9072 permit funds to be used for rent subsidies for certain groups, including domestic violence victims.

HAWAII—VICTIM PROTECTIONS REGARDING WIRELESS TELEPHONE PLANS:

Hawaii amended § 269-16.93 to permit a victim of domestic abuse to submit an opt-out request, together with documentation of the abuse (which can include a police report, protection order, or affidavit from a medical or mental health care provider, social worker, or court employee). Upon receipt of the request, a wireless telecommunications service provider has 48 hours to release the victim from a shared or family plan without penalty and either (1) transfer the billing authority and all rights to the number(s) to the victim, or (2) remove or release the victim from the plan and assign a substitute number or numbers. The amendment further provides immunity to the provider for actions taken under the statute.

IOWA—UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT:

Iowa enacted §§ 598C.101, et seq., to adopt the Uniform Deployed Parents Custody and Visitation Act.

MAINE—TERMINATION OF PARENTAL RIGHTS FOR CHILD CONCEIVED AS RESULT OF SEXUAL ASSAULT:

Maine enacted § 1658 of Title 19-A to provide that when a child is conceived as a result of a sexual assault, the victim parent may petition for termination of the perpetrator parent's parental rights. Proof of the sexual assault may be shown by introducing a criminal conviction or by demonstrating clear and convincing evidence in the termination proceeding.

NEBRASKA—ELDER ABUSE:

Nebraska substantially revised its existing legislation regarding protections for vulnerable adults to apply many of those protections to senior adults (defined as persons who are 65 or older, § 28-366.01) as well. Specifically, the following protections for senior adults were added:

- Applies offense of exploitation to senior adults and expands prohibited conduct to include taking, withholding, converting, or other unauthorized use of funds or assets by means of intimidation, force or threat of force, or isolation, § 28-358 ("isolation" is defined by § 28-358.01);

- Applies offense of intentional abuse, neglect, or exploitation to senior adults, § 28-386; and
- Applies sex offender registration requirement to persons convicted of sexual abuse of a senior adult, § 29-4003.

OKLAHOMA—FELONY DOMESTIC VIOLENCE:

Oklahoma amended § 644.1 of Title 21 to revise the definition of “prior pattern of abuse,” which if shown raises the offense from a misdemeanor to a felony, to require two (rather than three) separate incidents, including the current incident, and removing the requirement that the incidents have occurred within the last 12 months.

UTAH—UNIFORM DEPLOYED PARENTS CUSTODY AND PARENT-TIME ACT:

Utah adopted the Uniform Deployed Parents Custody and Parent-Time Act as §§ 78B-20-101, et seq.

UTAH—TERM OF PROTECTIVE ORDER ENTERED AS PART OF DIVORCE:

Utah amended § 78B-7-115 to provide that a protective order entered as part of a divorce automatically expires after 10 years unless the petitioner demonstrates a reasonable fear of future abuse or the respondent was convicted of a protective order violation or any crime of violence after issuance of the protective order.*

UTAH—SAFETY NET INITIATIVE:

Utah had previously established a task force within the Attorney General’s office called the Safety Net Initiative, with the duty of, among other things, addressing and preventing the crimes of domestic violence, sexual assault, and stalking. Utah amended § 35A-3-802 to transfer responsibility to the Department of Workforce Services and to delete the explicit duty to address and prevent the crimes of domestic violence, sexual assault, and stalking.*

UTAH—UTAH SUBSTANCE ABUSE AND MENTAL HEALTH ADVISORY COUNCIL:

Utah amended § 63M-7-301 to rename the Utah Substance Abuse Advisory Council to the Utah Substance Abuse and Mental Health Advisory Council and to remove the executive director of the Utah Domestic Violence Council (or designee) from membership on the Council.*

UTAH—SUICIDE PREVENTION AND GUN DATA STUDY:

Utah amended § 62A-15-1101 to require the state suicide prevention coordinator to gather statistics and report to the legislature on, among other things, the number of suicides committed with a gun and, if the suicide involved the injury or death of another individual, whether the shooter had a history of domestic violence. In addition, § 62A-15-1102 was enacted to require additional study and reporting on the number of all gun-related deaths (including suicide, homicide, gang-related violence, legal intervention, self-defense, and accidents) in the state and information on whether the shooter had a history of domestic violence.

UTAH—NEEDS ASSESSMENT REGARDING HOUSING AND HOMELESSNESS:

Utah amended § 35A-8-602 to require the state Homeless Coordinating Committee to conduct a needs assessment that, among other things, reviews technology used

for data gathering, including an evaluation of the technology’s ability to ensure proper privacy restrictions and sharing between reporting entities, including those addressing domestic violence.

UTAH—HOUSING AND HOMELESS SERVICES:

Utah enacted § 35A-8-605 to create a Homeless to Housing Reform Restricted Account to fund grants administered by the Homeless Coordinating Committee. § 35A-8-604 was enacted to require such grants, among other things, to ensure that they target the distinct housing needs of at-risk or homeless populations, which include domestic violence victims.

VERMONT—SICK LEAVE FOR DOMESTIC VIOLENCE VICTIMS:

Vermont passed legislation requiring employers to provide paid sick leave for employees, subject to certain limits and conditions. In particular, § 483 of Title 21 was enacted to permit the use of such leave to arrange for social, legal, medical, or counseling services for the employee or the employee’s family member who is a victim of domestic violence.

VIRGINIA—VIOLATION OF PROTECTION ORDER:

Virginia amended § 16.1-253.2, governing violations of family abuse protection orders, to expand the conduct that results in a higher degree offense, removing the requirement that bodily injury be serious to qualify for the higher level offense and adding a provision applying the higher level if the respondent stalked the protected party. Identical amendments were made to § 18.2-60.4, regarding violations of an order for protection against stalking.

VIRGINIA—CONDUCT PROHIBITED BY PROTECTION ORDER:

Virginia amended §§ 16.1-253.4 and 19.2-152.8 to expand the conduct that may be prohibited by a protection order to include barring the respondent from being in the physical presence of the allegedly abused person or the person’s family or household member(s). The amendments further define “physical presence” as intentionally maintaining direct eye contact or unreasonably being within 100 feet of the petitioner’s residence or workplace.

VIRGINIA—EXCLUSIVE POSSESSION OF RESIDENCE BY NON-TENANT:

Virginia amended §§ 55-225.5 and 55-248.18:1 to provide that when a person who is not a tenant or authorized occupant of a dwelling unit obtains a protection order awarding that person exclusive use of the residence, the person may provide the landlord with a copy of any such order and submit a rental application. If approved, the person may become a tenant; if not approved, the person has 30 days to vacate the dwelling unit. If the person fails to provide a copy of the order and submit a rental application within 10 days from issuance of the protection order, the person has 30 days to vacate the dwelling unit. Any tenant obligated on the original rental agreement remains responsible for rent and any other obligations imposed by the agreement.

WASHINGTON—JUDICIAL INFORMATION SYSTEM:

Washington law expressly permits a court considering, among other things, custody and parenting time or protection orders to consult the judicial information system or related databases to determine the criminal history or the pendency of other cases involving the parties, and the statute further provides that the court must disclose to the parties if the

database is consulted. § 2.28.210 was amended to provide that the court must provide a copy of the document relied upon only if requested by a party.

WISCONSIN—UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT:

Wisconsin adopted the Uniform Interstate Enforcement of Domestic Violence Protections Orders Act by renumbering § 806.247 as § 813.128, amending the former provisions, and adding new subsections to the statute. References in other statutes to former § 806.247 were corrected to refer to § 813.1283.

WISCONSIN—SERVICE OF PROTECTION ORDERS:

Wisconsin enacted § 813.115 to allow a sheriff who serves a protection order to use a service notification system that enables the petitioner to receive an automatic notification of the service. §§ 813.12, 813.122, 813.123, and 813.125 were amended to require the court clerk to forward protection orders to the sheriff to assist the petitioner with service (while permitting the petitioner to elect to use a private process server, at petitioner's expense) and to permit the clerk and sheriff to transmit documents electronically.

WISCONSIN—ADDRESS CONFIDENTIALITY PROGRAM:

Wisconsin enacted § 165.68 to create an address confidentiality program. The program allows any person to participate in the program (1) who is a victim of abuse, who is a parent or guardian of a victim, or who resides with a victim or (2) who fears for the physical safety of the person or child. The statute does not condition participation in the program on the existence of criminal charges, a protection order, or a police report. The statute provides that the participant agrees not to inform the person who threatens the participant or child of the participant's address.

*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.