

2nd Quarterly Update - Part 3 | 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 continues coverage of state legislation passed during the second quarter of 2016, and the primary focus was on revisions to criminal statutes, with protection orders a close second. Other measures included confidentiality protection efforts for victims, domestic violence awareness and education, 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
Alabama	Orders for Protection	Interpretation at protection order hearing
	Miscellaneous	Domestic violence license plate
Georgia	Criminal Penalties and Procedure	Enhanced penalties based on prior convictions
	Families and Children	Termination of parental rights of child conceived as result of nonconsensual sexual intercourse
Kansas	Families and Children	Host families act and assessment as domestic violence offender
Louisiana	Orders for Protection	Venue for protection orders
	Miscellaneous	Notification of prohibition on firearm possession
Maryland	Prevention and Treatment	Domestic violence prevention task force
	Miscellaneous	Address confidentiality program
Minnesota	Criminal Penalties and Procedures	Dissemination of private sexual images
	Orders for Protection	Hearing on extension of protection order
Oklahoma	Criminal Penalties and Procedures	DNA testing upon arrest or conviction of certain crimes

	Orders for Protection	Protective order by family member of murder victim
	Orders for Protection	Time limit for decision on final protective order
Pennsylvania	Families and Children	Consent to divorce, counseling
Tennessee	Criminal Penalties and Procedures	Enhanced penalties for subsequent offenses
	Criminal Penalties and Procedures	Stalking
	Orders for Protection	Protection orders: procedure, notice, service, and relief available
	Prevention and Treatment	Domestic violence and related education
	Miscellaneous	Housing protections for victims
Washington	Criminal Penalties and Procedures	Domestic violence by juvenile
	Criminal Penalties and Procedures	Supervision of probation or community custody
	Miscellaneous	Confidentiality of body camera recordings

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:

ALABAMA— INTERPRETATION AT PROTECTION ORDER HEARING:

Alabama amended § 15-1-3 to permit the court in a protection order proceeding to appoint an interpreter if a party or witness does not speak or adequately understand English.

ALABAMA— DOMESTIC VIOLENCE LICENSE PLATE:

Alabama enacted § 32-6-690 to authorize the issuance of “Stop Domestic Violence” license plates, for an additional fee that helps fund domestic violence programs operated by local district attorney offices.

GEORGIA—ENHANCED PENALTIES BASED ON PRIOR CONVICTIONS:

Georgia amended § 16-5-23.1 to provide that a first conviction of family violence battery is normally a misdemeanor but is a felony if the defendant has a prior conviction of a forcible felony committed between household members.

GEORGIA—TERMINATION OF PARENTAL RIGHTS OF CHILD CONCEIVED AS RESULT OF NONCONSENSUAL SEXUAL INTERCOURSE:

Georgia amended § 19-8-11 to provide that a person’s parental rights may be terminated when the court determines by clear and convincing evidence that the person caused the child to be conceived as a result of nonconsensual sexual intercourse with the child’s mother. Related changes were made to § 15-11-2 (defining “aggravating circumstances” to include when child conceived as result of nonconsensual sexual intercourse), § 19-7-22 (concerning petition for legitimation), § 19-8-10 (relating to when the surrender or termination of parental rights is not required for an adoption), and § 53-2-4 (concerning inheritance from children born out of wedlock).

KANSAS—HOST FAMILIES ACT AND ASSESSMENT AS DOMESTIC VIOLENCE OFFENDER:

Kansas enacted the host families act to allow child placement agencies to designate “host families,” to which a parent who is called to active military duty may delegate care and custody of a child, § 38-2403. In the same bill, but unrelated to the host families act, § 23-3203 was amended to permit a court considering legal custody, residency, and parenting time of a child to order a parent to undergo a domestic violence offender assessment.

LOUISIANA—VENUE FOR PROTECTION ORDERS:

Louisiana amended § 2133 to provide that, when a judicial district is comprised of more than one parish and a more expeditious hearing is in the interest of justice or is required due to time provisions in the protection order statutes, a protection order hearing may be held in any parish within the district.

LOUISIANA—NOTIFICATION OF PROHIBITION ON FIREARM POSSESSION:

Louisiana amended § 13:753 to require clerks of court to notify the National Instant Crime Background Check System of any adult who is prohibited from possessing a firearm based on a conviction for a violation of domestic abuse battery.

MARYLAND—DOMESTIC VIOLENCE PREVENTION TASK FORCE:

Maryland passed Senate Bill 1143, creating the Neshante and Chloe Davis Domestic Violence Task Force for the purpose of studying interventions, policies, procedures, practices, and education and prevention efforts and developing policy recommendations.

MARYLAND—ADDRESS CONFIDENTIALITY PROGRAM:

Maryland amended Election Law § 1-101 to define the address confidentiality program, for purposes of the state’s election laws, as the domestic violence address confidentiality program or the human trafficking address confidentiality program. Election Law § 3-506 was amended to provide that the residence of an address confidentiality program participant may not be disclosed, and a participant is not required to reapply to keep the participant’s residence address confidential.

MINNESOTA—DISSEMINATION OF PRIVATE SEXUAL IMAGES:

Minnesota passed legislation prohibiting the nonconsensual dissemination of private sexual images. The bill includes a civil cause of action (§ 604.31) and a criminal offense, (§ 617.261). Several statutes were amended to incorporate the new offense: § 609.02 (included in the list of qualified domestic violence-related offenses for sentencing purposes), § 609.27 (coercion), and § 609.748 (harassment). Finally, § 609.749, which defines stalking, was amended to include the use of another’s personal information, without consent, to invite, encourage, or solicit a third party to engage in a sexual act with the person.

MINNESOTA—HEARING ON EXTENSION OF PROTECTION ORDER:

Minnesota amended § 518B.01 to provide that if a petitioner seeks only emergency ex parte relief, a hearing is not required unless the court declines to order the requested relief or the respondent requests a hearing.

OKLAHOMA—DNA TESTING UPON ARREST OR CONVICTION OF CERTAIN CRIMES:

Existing Oklahoma law provides for collection of DNA samples of persons convicted of certain offenses, including all felonies and specified misdemeanors, including domestic abuse and stalking. § 1313.2 of Title 20 was amended to impose a DNA fee of \$150, to be used to operate the DNA laboratory and maintain the state DNA database. Also, § 210 of Title 22 was enacted to require any person arrested for any felony offense to provide a DNA sample.

OKLAHOMA—PROTECTIVE ORDER BY FAMILY MEMBER OF MURDER VICTIM:

Oklahoma amended § 40.2 of Title 22 to permit an immediate family member of a murder victim to obtain a protective order, substantially similar to a domestic abuse protective order, against the perpetrator or accessory. Similarly, § 40.3 of Title 22 was amended to permit an emergency temporary order of protection by requesting it from a peace officer.

In the same bill, § 60.3 of Title 22 was amended to provide that if an emergency ex parte protective order is issued in a different county from a pending divorce or custody proceeding, the hearing on the final protective order must be held in the same county as the divorce or custody proceeding.*

OKLAHOMA—TIME LIMIT FOR DECISION ON FINAL PROTECTIVE ORDER:

Oklahoma amended § 60.4 of Title 22 to require that a final protective order must be granted or denied within six months of service unless all parties agree that the temporary order remain in effect, provided that the victim may request a final protective order hearing at any time after the six months.

PENNSYLVANIA—CONSENT TO DIVORCE, COUNSELING:

Pennsylvania amended § 3301 of Title 23 to provide that a party to a divorce is deemed to have consented to the divorce if convicted of a “personal injury crime” against the other party. § 3103 of Title 23 was amended to define “personal injury crime” as crimes relating to homicide, assault, kidnapping, human trafficking, sexual offenses, arson, robbery, victim and witness intimidation, homicide by vehicle, and accidents involving death or personal injury. Finally, § 3302 of Title 23 was amended to provide that the court may not require counseling over the objection of a party who has a protection from abuse order or who was the victim of a personal injury crime by the other party.

TENNESSEE—ENHANCED PENALTIES FOR SUBSEQUENT OFFENSES:

Tennessee law provides that a third or subsequent domestic assault is a misdemeanor. § 39-13-111 was amended to raise the offense to a felony if the victim was a current or former spouse, person with whom the defendant has a current or former dating or sexual relationship, or a child of any such person.

TENNESSEE—STALKING:

Tennessee amended § 39-17-315, governing the offenses of stalking, aggravated stalking, and especially aggravated stalking, to define “course of conduct” to mean a pattern consisting of two or more separate, noncontinuous acts evidencing a continuity of purpose, including but not limited to acts in which the defendant directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to a person or interferes with a person’s property.

TENNESSEE—PROTECTION ORDERS, PROCEDURE, NOTICE, SERVICE, AND RELIEF AVAILABLE:

In a series of bills, Tennessee made several changes to its provisions regarding civil and criminal protection orders.

First, Tennessee amended provisions regarding protection orders entered as part of a criminal case. § 36-3-602 was amended to require a temporary order of protection to be issued at a domestic violence respondent's initial appearance if the court finds probable cause to believe respondent caused serious bodily injury or used or displayed a deadly weapon. Also, § 36-3-619 was amended to permit a court to issue an emergency ex parte protection order at the request of a law enforcement officer responding to an incident of domestic abuse.

Second, in a separate bill, Tennessee amended § 38-6-109 to require notice to the agency that entered a protection order into the national crime information center database if a person subject to the protection order attempts to buy a firearm.

In a third bill, § 40-11-150 was amended to require the offender to be served with a protection order while incarcerated under Tennessee's mandatory 12-hour hold period or as soon thereafter as possible and specifies that service is valid if made after the offender was released.

Finally, Tennessee law previously stated that an order for protection against stalking or sexual assault could not include provisions granting petitioner possession of a residence or requiring respondent to provide suitable alternate housing. § 36-3-606 was amended to remove these restrictions and permit full relief.

TENNESSEE—DOMESTIC VIOLENCE AND RELATED EDUCATION:

Tennessee amended § 49-7-137 to provide that each public institution of higher education must require incoming freshman during orientation or introductory studies to receive instruction aimed at increasing the awareness and prevention of sexual assault, sexual battery, sexual harassment, and date rape.

TENNESSEE—HOUSING PROTECTIONS FOR VICTIMS:

Tennessee amended its statutes regarding notice of termination of a lease (§ 66-7-109) and eviction (§ 66-28-517) to include the following provisions:

- If domestic abuse is the landlord's reason for termination, only the perpetrator may be evicted, not the victim, children, or any "innocent occupants";
- The landlord may remove the perpetrator from the lease and require the remaining adults to qualify for and enter into a new lease;
- The victim and all adult tenants must agree, in writing, not to permit the perpetrator to return to the premises and to report the perpetrator's presence to the proper authority, with any violation of this agreement to be cause to terminate the lease as to the victim and any other adult tenants;*

- The above provisions do not apply until the victim has been granted an order of protection against the perpetrator for the specific incident for which the tenancy is being terminated, the order requires the perpetrator to vacate the premises or prohibits the perpetrator from sharing the victim's residence, and the victim has provided a copy of the order to the landlord;*

WASHINGTON—DOMESTIC VIOLENCE BY JUVENILE:

Washington amended § 10.31.100 to require a police officer to arrest, at the parent's or guardian's request, a 16-year-old or 17-year-old if the officer has probable cause to believe the child has assaulted a family or household member within the preceding four hours, with the child to be booked into a juvenile detention facility.*

WASHINGTON—SUPERVISION OF PROBATION OR COMMUNITY CUSTODY:

Washington law provides for the department of corrections to supervise domestic violence offenders placed on probation or sentenced to community custody. § 9.94A.501 was amended to limit the time of supervision to the community custody term appropriate under Washington law, unless the court imposed an exceptional period of community custody.

WASHINGTON—CONFIDENTIALITY OF BODY CAMERA RECORDINGS:

Washington amended § 42.56.240 to exempt law enforcement body camera recordings from disclosure under certain circumstances, including when the recording includes the identify of or communications with a victim of or witness to domestic violence, unless the victim or witness requests disclosure.

*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.