

2nd Quarterly Update - Part 4 | 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 concludes coverage of state legislation passed during the second quarter of 2016, and the primary focus was on revisions to criminal statutes, followed closely by provisions regarding protection orders and prevention efforts. Other measures included protections for victims, domestic violence education, firearms, 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	Community reentry work program
	Families and Children	Mandatory mutual injunction
	Families and Children	Child support
	Miscellaneous	Child care assistance
Arkansas	Miscellaneous	Private investigator license
Colorado	Families and Children	Child support
	Miscellaneous	Necessary document program
Connecticut	Orders for Protection	Firearms and increased access
	Orders for Protection	Minor applicants, evidence, and information provided
	Families and Children	Termination of parental rights
	Prevention and Treatment	Affirmative consent
	Prevention and Treatment	Task force to improve access to legal counsel
	Prevention and Treatment	Domestic violence training

Delaware	Prevention and Treatment	Fatal and near death incident reviews
Hawaii	Criminal Penalties and Procedure	Firearms, harassment by stalking
Iowa	Prevention and Treatment	Domestic violence training
Kansas	Miscellaneous	Eligibility for professional license
	Miscellaneous	Limits on public benefits
Louisiana	Criminal Penalties and Procedure	Bail and pre-trial release
	Criminal Penalties and Procedure	Batterer intervention as part of sentencing
	Criminal Penalties and Procedure	Eligibility for parole
	Criminal Penalties and Procedure	Evidence of prior acts
	Criminal Penalties and Procedure	Veterans court program
	Orders for Protection	Jurisdiction over protection orders
	Orders for Protection	Temporary concealed handgun permit
	Orders for Protection	Electronic signatures
	Families and Children	Termination of parental rights
	Families and Children	Gestational carriers
Maryland	Prevention and Treatment	Task force
Minnesota	Orders for Protection	Filing fees
Missouri	Criminal Penalties and Procedure	Stalking and recordings
	Orders for Protection	Wireless telephone service
New Hampshire	Prevention and Treatment	Study committee
	Miscellaneous	Child care workers
New York	Orders for Protection	Referees
Ohio	Criminal Penalties and Procedure	Stalking and harassment
	Miscellaneous	Address confidentiality program and wireless service
Rhode Island	Criminal Penalties and Procedure	Electronic tracking of motor vehicle
	Prevention and Treatment	Voluntary home-visiting
Tennessee	Criminal Penalties and Procedure	Law enforcement response
Vermont	Criminal Penalties and Procedure	DNA sample
	Criminal Penalties and Procedure	Stalking and criminal threatening
	Orders for Protection	Petitions by minor and stalking

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—COMMUNITY REENTRY WORK PROGRAM:

Arizona enacted § 41-1604.18 to establish a community reentry work program for eligible inmates. Inmates currently serving a sentence for a domestic violence offense are not eligible for the program.

ARIZONA—MANDATORY MUTUAL INJUNCTION:

Arizona enacted § 25-808 to require a mandatory mutual injunction in any action to establish legal decision-making and parenting time for a child born out of wedlock, which includes prohibitions on harassing the other parent, removing the child from the jurisdiction of the court, and changing or discontinuing most types of insurance coverage for the child. The statute does not specifically address how this injunction affects any protection order that may be in place.

ARIZONA—CHILD SUPPORT:

Arizona amended § 25-503 to establish, as an affirmative defense to a petition for enforcement of child support arrears, voluntary relinquishment of custody by the obligee parent to the obligor parent. In determining whether the relinquishment was voluntary, the court must consider any evidence or history of domestic violence, parental kidnapping, or custodial interference.

ARIZONA—HEALTH CARE PROVIDER CONFIDENTIALITY:

Arizona amended § 36-509 to provide that, if a patient is not present or is incapacitated, or in an emergency circumstance, a provider may disclose confidential information to family, friends, or others designated by the patient only if the provider determines that disclosure is in the patient's best interest. In determining the patient's best interest, the provider must consider, among other things, whether the provider has reasonable grounds to believe that the release of the information may subject the patient to domestic violence, abuse, or endangerment.

ARIZONA—CHILD CARE ASSISTANCE:

Arizona amended § 46-803 to require that child care assistance for families in a crisis situation of domestic violence must cease after a period of time to be set in regulations after the family's income reaches 165 percent of poverty level and must cease upon notification once the family's income exceeds 85 percent of the state's median income.

ARKANSAS—PRIVATE INVESTIGATOR LICENSE:

Arkansas amended § 17-40-306 to provide that a person convicted of, among other things, a Class A misdemeanor involving violence is disqualified from being licensed as a private investigator for a period of 10 years.

COLORADO—CHILD SUPPORT:

Colorado generally requires applicants for child care assistance to apply for child support. § 26-2-805 was amended to provide an exception to this requirement if the applicant submits a statement that the applicant is a victim of domestic violence and fears for the safety of the children or the applicant if an application for child support is pursued, together with documentation, which includes but is not limited to participation in the address confidentiality program or a statement from a victim's advocate.

COLORADO—NECESSARY DOCUMENT PROGRAM:

Colorado enacted § 25-4-2208 to establish the “necessary document program,” under which certain individuals, including victims of domestic violence, can obtain copies of listed documents (such as a social security card, driver’s license, or vital statistics certificate) without charge.

CONNECTICUT—FIREARMS AND INCREASED ACCESS:

Connecticut amended § 6-38b to require the state marshal commission to adopt rules that provide for (1) the provision of timely, consistent, and reliable access to a state marshal for persons applying for a protection order, (2) the provision of services to persons with limited English proficiency, (3) the provision of services to persons who are deaf or hearing impaired, and (4) service of process of a clear and accurate copy of the original document.

In the same bill, Connecticut amended several provisions regarding the treatment of firearms in protection orders. First, § 46b-15 was amended to permit a protection order applicant to indicate whether the respondent has an eligibility certificate for a handgun or a long gun or an ammunition certificate. If an ex parte order is granted on an application so indicating, the court must set a hearing on seven days’ notice, which can be extended by 14 days if service has not been completed. Also, when serving such an order, the assigned law enforcement officer must coordinate with the law enforcement agency for the town in which the respondent is to be served.

Second, § 46b-16a was amended to require the serving officer to input the details regarding service into the state tracking system within two hours after service is completed.

Third, § 29-36k was amended to allow a local police department to accept the surrender of firearms and ammunition, to shorten the time by which the respondent must surrender the items to 24 hours from notice of the protection order, and to set forth procedures for a respondent to request return of any such items after expiration of the protection order.

Finally, amendments to §§ 29-32, 29-36i, 29-37s, and 29-38p provide for reinstatement of permits and certificates of eligibility for firearms and ammunition upon expiration of a protection order.

CONNECTICUT—MINOR APPLICANTS, EVIDENCE, AND INFORMATION PROVIDED:

Connecticut amended § 46b-15 (governing orders for protection from physical abuse, stalking, or threatening by a family member) and § 46b-16a (governing orders for protection from sexual abuse, sexual assault, and stalking) to provide that a parent, guardian, or responsible adult who brings an application as next friend to a minor applicant may not speak for the minor at the hearing, but may be a witness.

In the same bill, § 46b-15b was amended to clarify that the court in a protection order matter must provide the applicant with information on how to contact a domestic violence counselor and domestic violence agency.

CONNECTICUT—TERMINATION OF PARENTAL RIGHTS:

Connecticut law previously required that a parent be convicted of sexual assault to terminate that parent’s parental rights to a child conceived as a result of the sexual assault. Section 17a-112 was amended to remove the requirement of a conviction and instead permit termination if the parent committed an act that constitutes sexual assault or

compelling a spouse or cohabitor to engage in sexual intercourse by the use of force or threat of force, as those acts are defined by Connecticut law. Also, § 45a-717 was amended to provide that if a termination of parental rights action is filed in the probate court and is based on this ground for termination, it must be transferred to the superior court.

CONNECTICUT—AFFIRMATIVE CONSENT:

Connecticut amended § 10a-55m to require institutions of higher education to set a standard of affirmative consent, defined as “an active, clear and voluntary agreement by a person to engage in sexual activity with another person,” in their policies regarding sexual assault and intimate partner violence.

CONNECTICUT—TASK FORCE TO IMPROVE ACCESS TO LEGAL COUNSEL:

Connecticut established a task force to study the unmet legal needs of state residents in civil matters and examine the impact that lack of access to legal counsel has on the ability to secure essential human needs. The task force must include a representative of the Connecticut Coalition Against Domestic Violence.

CONNECTICUT—DOMESTIC VIOLENCE TRAINING:

Connecticut amended § 46b-38c to require mandatory training for judges and other specified court-related professionals on family violence to include an examination of factors that contribute to a family being at risk for episodes of domestic violence.

DELAWARE—FATAL AND NEAR DEATH INCIDENT REVIEWS:

Delaware amended § 2105 of Title 13 to define “near death” for purposes of incidents to be reviewed by the Delaware Domestic Violence Coordinating Council as suffering life-threatening injuries. The amendment also requires the Attorney General, the Department of Services for Children, Youth, and Their Families, and other state or local agencies with knowledge of an incident to report it within 14 days. Finally, membership on the Council was amended to include two victim advocates and a domestic violence victim.

HAWAII—FIREARMS, HARASSMENT BY STALKING:

Hawaii amended § 134-1, which defines “crimes of violence,” the conviction for which disqualifies a person from owning, possessing, or controlling any firearm or ammunition, to include harassment by stalking.

IOWA—DOMESTIC VIOLENCE TRAINING:

Iowa amended § 915.94 and § 915.95 and passed accompanying appropriations to provide for the hiring of an instructor by the law enforcement academy to train on domestic abuse and human trafficking, to be funded by victim compensation funds.

KANSAS—ELIGIBILITY FOR PROFESSIONAL LICENSE:

Kansas amended several statutes setting forth requirements for licensure in various behavioral health care professions to provide that a person is not eligible for licensure if the person has been convicted of a misdemeanor against persons, which includes domestic battery, and has not demonstrated sufficient rehabilitation to merit the public trust. The statutes so amended are: § 65-5809 (professional counseling), § 65-6311 (social work), § 65-6408 (marriage and family therapy), § 65-6615 (addiction counseling), and §§ 74-5324 and 74-5369 (psychology).

KANSAS—LIMITS ON PUBLIC BENEFITS:

Kansas law amended § 39-709 to reduce to 36 months the maximum time period for which a person may receive TANF benefits after having received a hardship extension, which includes when an extension is necessary to overcome the effects of domestic violence. Also, the statute was amended to provide that a person who does not meet work requirements for food assistance is penalized by being ineligible for food assistance for a period of time from three months to one year.

LOUISIANA—BAIL AND PRE-TRIAL RELEASE:

Louisiana substantially revised its provisions regarding bail and pre-trial release. Included were the following amendments relevant to domestic abuse offenses:

Article 312 of the Code of Criminal Procedure was amended to provide that a person released on bail for a crime of violence (which includes stalking, domestic abuse aggravated assault, and aggravated assault on a dating partner) who failed to appear must not be readmitted to bail if an arrest warrant was issued and not recalled or the bail undertaking was revoked or forfeited;

Article 320 of the Code of Criminal Procedure was modified to revise the language setting forth what the court is required to consider when deciding conditions of release for a person charged with a domestic offense, stalking, or a sex offense to remove the requirement that the court consider evidence of any danger to persons other than the victim (such as the victim's family or members of the public, especially children);*

Article 320 of the Code of Criminal Procedure was also amended to specify that a court must use a Uniform Abuse Prevention Order if, as part of a bail restriction, a court issues an order to prevent violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person for the purpose of preventing domestic abuse, stalking, dating violence, or sexual assault;

Article 320 of the Code of Criminal Procedure was also amended to permit the court to order global position monitoring for a defendant charged with an offense against the defendant's family, household member, or dating partner or the offenses of domestic abuse battery, stalking, or sexual assault; the court is required to consider house arrest as an alternative to electronic monitoring;

Article 320 of the Code of Criminal Procedure was also amended to require the court, if a defendant is charged with a crime of violence (see above for included offenses), to include as a condition of bail a prohibition on any contact, including electronic, written, or oral, with the victim or the victim's immediate family; and

Article 321 of the Code of Criminal Procedure was amended to preclude release on a personal undertaking or unsecured personal surety of a defendant charged with listed offenses, including crimes of violence, domestic abuse battery, and cyberstalking.

LOUISIANA—BATTERER INTERVENTION AS PART OF SENTENCING:

Louisiana previously required defendants placed on probation for domestic abuse battery to "participate" in a domestic abuse intervention program. Section 14:35.3 was amended to require these defendants to "complete" the program.

LOUISIANA—ELIGIBILITY FOR PAROLE:

Louisiana amended § 15:574.4 to provide that a person committed to the Department of Public Safety and Corrections is eligible for parole after 15 years, except if sentenced for a third or subsequent felony for certain offenses, including crimes of violence (which include stalking, domestic abuse aggravated assault, and aggravated assault on a dating partner).

LOUISIANA—EVIDENCE OF PRIOR ACTS:

Louisiana enacted Article 412.4 of the Code of Evidence to allow admissibility of prior abusive acts in domestic abuse cases, with prior notice by the prosecution and application of a balancing test by the court.

LOUISIANA—VETERANS COURT PROGRAM:

Louisiana amended § 13:5366 to set forth requirements for participation in the Veterans Court program for domestic abuse battery offenses, including completion of a court-monitored domestic abuse intervention program and a prohibition on the possession of a firearm while under supervision by the Veterans Court or court-ordered probation.

LOUISIANA—JURISDICTION OVER PROTECTION ORDERS:

Louisiana amended § 13:2496.3 to provide that the Municipal and Traffic Court of New Orleans has jurisdiction to issue protective orders.

LOUISIANA—TEMPORARY CONCEALED HANDGUN PERMIT:

Louisiana enacted § 40:1379.3.2 to allow a successful petitioner for a protective order to apply for and obtain a temporary concealed handgun permit, effective in the state for 45 days or until a concealed handgun permit is issued, whichever is less.

LOUISIANA—ELECTRONIC SIGNATURES:

Louisiana amended § 9:2603 to permit electronic signatures on court documents in protective order matters, including petitions and orders. Similarly, § 14:79 was amended to provide that service of a protective order with an electronic signature is effective.

LOUISIANA—TERMINATION OF PARENTAL RIGHTS:

Louisiana law previously included among grounds for termination of parental rights the commission of felony rape that resulted in the child's conception. Louisiana amended Article 1015 of the Children's Code to add conviction of a listed sex offense that resulted in conception of a child and the commission of a listed sex offense that resulted in conception of a child, without requiring a conviction. In the same bill, Article 1004 was enacted to provide that termination on these bases results in the loss of custody, visitation, contact, and other parental rights of the perpetrator but does not affect the child's inheritance rights, and further, the perpetrator is responsible for court costs for the termination action. Finally, Article 1015.1 was enacted to provide that a petitioner seeking termination on either basis is not required to prepay court costs or the cost of service, and the perpetrator is responsible for all listed costs and fees.

LOUISIANA—GESTATIONAL CARRIERS:

Louisiana enacted legislation to establish standards and procedures for gestational carrier contracts in the state. As part of this effort, § 9:2720.4 was enacted to require, among other things, a records check in the protective order registry for orders involving the intended

parents, the gestational carrier, and the carrier's spouse, if any. Also as part of this act, § 9:2720.5 was enacted to provide that the court shall issue an order approving a contract and declaring the intended parents to be the parents of a child born pursuant to the contract if certain findings are made, including a finding that the records check revealed no risk of harm to the child or the gestational carrier.

MARYLAND—TASK FORCE:

Maryland created a task force to study recording deeds for victims of domestic violence, in particular how to protect address confidentiality. The task force includes, among other designees, a representative of an organization that advocates for domestic violence victims.

MINNESOTA—FILING FEES:

Minnesota amended § 518B.01 to waive the filing fee in protection order matters for respondents as well as petitioners.

MISSOURI—STALKING AND RECORDINGS:

Section 565.225 defines the offenses of stalking and aggravated stalking, with aggravated stalking consisting of stalking and at least one additional specified action. Missouri amended the statute to include knowingly accessing or attempting to access the address of a person participating in the address confidentiality program as conduct that increases the offense to aggravated stalking. In the same bill, § 595.226 was amended to add visual or aural recordings to the types of information that must be closed or redacted to protect the identity and location of a victim of any sex offense, domestic assault, or stalking, including an unobstructed visual image of the victim's face or body.

MISSOURI—WIRELESS TELEPHONE SERVICE:

Missouri amended § 455.050 and § 455.523 to permit a court issuing a protection order to include provisions directing a wireless service provider to transfer billing responsibility and rights to a wireless telephone number to the petitioner, after notice and a hearing. The provider may apply any routine and customary requirements for account establishment to the petitioner and is not liable for actions taken pursuant to such an order.

NEW HAMPSHIRE—STUDY COMMITTEE:

New Hampshire enacted § 281:1, et seq., to establish a study committee to review the effects of prior legislation regarding parental rights and responsibilities, which was intended to reduce the adversarial nature of divorce and parenting cases. The committee may solicit information and testimony from relevant individuals and organizations, including the New Hampshire Coalition Against Domestic and Sexual Violence.

NEW HAMPSHIRE—CHILD CARE WORKERS:

New Hampshire amended § 170-E:7 to define more clearly the offenses which disqualify a person from being licensed as a child care worker. Included in the list is felony spousal abuse.

NEW YORK—REFEREES:

New York amended § 212 of the Judiciary Law to extend for two years the authority of referees to hear protection order matters.

OHIO—STALKING AND HARASSMENT:

Ohio amended § 2903.211 to expand the definition of stalking to include conduct against family and household members, written communication, written or verbal graphic gestures, and posts to the internet or social media. Similarly, § 2917.21, which governs prohibited telecommunications, was amended to include several types of communications intended to abuse, threaten, or harass the recipient, including interruption of the recipient's telephone service or communication device, knowingly making communications at inconvenient times and in an offensive and repetitive manner, and making false statements about the recipient or a family or household member. The amendment provides an exemption for internet or telecommunication service providers whose sole involvement is to provide access or connection to the abuser.

OHIO—ADDRESS CONFIDENTIALITY PROGRAM AND WIRELESS SERVICE:

Ohio enacted § 111.41, et seq., to establish an address confidentiality program for victims of domestic violence, menacing by stalking, human trafficking, trafficking in persons, rape, or sexual battery. Several other provisions were amended to incorporate the new program, including the following:

- § 109.57 was amended to provide that the law enforcement gateway is to include the name, confidential address, and telephone number of participants;
- § 149.43 was amended to exclude a participant's information from the definition of public record;
- § 319.28 was amended to permit a participant to request that they not be listed on publicly available real property tax lists;
- §§ 1901.25 and 2313.06 were amended to exclude participants from lists of possible jurors;*
- §§ 3503.13, 3503.16, 3503.21, 3503.23, 3503.24, 3504.02, 3509.03, 3509.04, 3509.05, 3509.06, 3509.07, 3509.09, 3511.02, 3511.05, 3511.11, and 3511.12 were amended to conform various provisions regarding voting to the program, and in particular, § 3504.04 was amended to preclude a participant who moves shortly before the election from voting for state and local offices as a former resident of the participant's previous home county.

In the same bill, Ohio amended § 3113.31, governing protection orders, to permit the court to include a provision requiring a transfer of wireless service. Ohio enacted § 3113.45, et seq., to set forth specific requirements for the order, responsibilities of the wireless service provider, and a hold harmless provision for wireless service providers complying with an order under these provisions.

RHODE ISLAND—ELECTRONIC TRACKING OF MOTOR VEHICLES:

Rhode Island enacted § 11-69-1 to establish the offense of electronic tracking of motor vehicles and to add this offense to the list of conduct that constitutes domestic violence. The statute includes an exception for a device placed by a parent or legal guardian of a minor child solely for the purpose of monitoring the minor child when in the vehicle, unless the person utilizing the device is subject to an active restraining order or no contact order for the protection of any vehicle occupant.

RHODE ISLAND—VOLUNTARY HOME VISITING:

Rhode Island enacted § 23-13.7-2 to establish a voluntary home-visiting system to provide support and services to vulnerable families, including those with a history of domestic abuse.

TENNESSEE—LAW ENFORCEMENT RESPONSE:

Tennessee enacted § 40-38-118 to require law enforcement officers responding to listed crimes to provide the alleged victim with information regarding the statewide victim information and notification service. Listed crimes include domestic assault, violation of a protection order, and stalking.

VERMONT—DNA SAMPLE:

Vermont law requires that a DNA sample be taken from a person convicted of designated offenses. Vermont amended § 1932 of Title 20 to add stalking, violation of a protection order, and abuse, neglect, or exploitation of a vulnerable adult to the list of designated offenses.

VERMONT—STALKING AND CRIMINAL THREATENING:

Vermont amended § 1061 of Title 13 to revise the definition of stalking to clarify terms used in the statute. Also, § 1064 of Title 13 was enacted to provide that it is not a defense to a stalking charge that the defendant was not provided actual notice that the course of conduct was unwanted. Next, § 1028 of Title 13, which defines the offense of assault on a protected professional, was amended to add employees, contractors, and grantees of the Department of Children and Families to the list of “protected professionals.” Finally, § 1702 of Title 13 was enacted to establish the offense of criminal threatening, defined as threatening another person and placing that person in reasonable apprehension of death or serious bodily injury.

VERMONT—PETITIONS BY MINORS AND STALKING:

Vermont amended several statutes governing protection orders. In the same bill as the previous entry, § 5131 of Title 12, governing orders for protection against stalking, was amended to conform the definition of stalking to the criminal definition amendments and to describe evidence that would support a showing of substantial emotional distress. Also, several provisions were amended, in two separate bills, to permit persons 16 years or older, or of any age who is in a dating relationship, to apply for several types of protection orders: § 5133 of Title 12 (stalking and sexual assault), § 1103 of Title 15 (domestic abuse), and § 1104 of Title 15 (emergency relief to protect against domestic abuse).

*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.

