

2nd Quarterly Update - Part 1 | 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 criminal statutes for domestic violence and related offenses. Protection orders remained a focus, as did a variety of measures seeking to prevent domestic violence and assist victims. Other measures included revisions of 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	Fingerprinting of those arrested or cited for certain offenses, including domestic violence
	Prevention and Treatment	Funding of domestic violence services from collection of certain fees
Delaware	Miscellaneous	Convictions that bar employment by child-serving entities
Florida	Miscellaneous	Domestic violence conviction as bar to employment in child care, no exemption
Hawaii	Orders of Protection	Mutual protection orders
Idaho	Orders of Protection	Protection orders against harassment and stalking
Indiana	Criminal Penalties and Procedures	Additional fees imposed upon conviction of strangulation
	Criminal Penalties and Procedures	Domestic battery added to list of offenses requiring or prohibiting certain penalties and collateral consequences
	Families and Children	Termination of parental rights of perpetrator of rape resulting in conception of child
	Families and Children	Delegation of child care and custody by military service member during deployment
	Prevention and Treatment	Defines "victim advocate"

Maine	Criminal Penalties and Procedures	Penalties for stalking and repeated domestic violence offenses
	Criminal Penalties and Procedures	Bail for domestic violence offenses
Mississippi	Miscellaneous	Utility deposits for domestic violence victims
Utah	Criminal Penalties and Procedures	Pretrial release of those arrested for domestic violence
	Criminal Penalties and Procedures	Restitution elements authorized for victims of crime
	Orders of Protection	Guardian of adult ward permitted to obtain protection order for ward
Virginia	Criminal Penalties and Procedures	Prima facie evidence of stalking and degree of stalking offense
	Criminal Penalties and Procedures	Penalties when person violating protection order possesses a firearm
	Families and Children	Emancipation of minor for purpose of marriage, domestic violence inquiry required
	Prevention and Treatment	Education on domestic violence in high schools
	Prevention and Treatment	Confidentiality for persons receiving domestic violence and related services
Wisconsin	Prevention and Treatment	Defines “victim advocate”

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—FINGERPRINTING:

Arizona law requires the chief officers of criminal justice agencies to provide, among other things, fingerprints for persons charged with, arrested for, convicted of, or summoned to court as criminal defendants for certain offenses, including domestic violence offenses, and requires the arresting authority to obtain legible fingerprints. § 41-1750 was amended to require the person to appear before the appropriate county sheriff or city or town law enforcement agency for legible ten-print fingerprints to be taken when the person is summoned to court rather than arrested.

ARIZONA—DOMESTIC VIOLENCE SERVICES:

Arizona historically has maintained a “domestic violence shelter fund.” § 36-3001 was amended to replace the “domestic violence shelter fund” with the “domestic violence services fund,” defined to include shelters for domestic violence victims, domestic violence victim advocacy, and other support services for domestic violence victims. The amendment further provides that, to be eligible for funding, a domestic violence service provider must meet standards approved by the department of economic security in collaboration with the state coalition against domestic violence. Conforming amendments to other statutes reflect the new terminology.

DELAWARE—“INTERFERENCE WITH CUSTODY” AS BAR TO EMPLOYMENT IN CHILD-SERVING ENTITIES:

Delaware law provides that a person convicted of certain offenses is barred from employment by “child-serving entities,” which includes child care providers, schools, camps, etc. §309 of Title 31 was amended to add interference with custody to the list of offenses that qualify as “felony convictions involving physical or sexual assault crimes” that require a minimum ten-year prohibition on such employment. The statute was further amended to permit an employer to prohibit employment for a longer period.*

FLORIDA—DOMESTIC VIOLENCE 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. The exemption was not available for certain offenses, including felony domestic violence. § 435.07 was amended to disallow an exemption from disqualification based on a conviction, guilty plea, or plea of nolo contendere to any domestic violence offense, regardless of any previous exemptions.

HAWAII—MUTUAL PROTECTIVE ORDERS:

Hawaii enacted § 586-12 to prohibit mutual protection orders unless (1) the respondent properly files a separate petition, and (2) the plaintiff has reasonable notice of the separate petition.

IDAHO—PROTECTION AGAINST HARASSMENT AND STALKING:

Idaho enacted § 18-7907 to establish an action for protection against malicious harassment, stalking, or telephone harassment, as defined by Idaho law. The new statute sets forth the grounds and procedure for seeking such a protection order. § 18-7908 was enacted to provide for ex parte emergency relief, and § 18-7909 was enacted to provide that no filing, service, or other fee is to be charged for such petitions.

INDIANA—FEES IMPOSED FOR STRANGULATION CONVICTION:

Indiana requires the court to charge fees to criminal defendants found to have committed listed offenses. § 33-37-5-12 was amended to add strangulation to the list of offenses for which a \$100 child abuse prevention fee is imposed if the victim is less than 18 years old. Similarly, § 33-37-5-13 was amended to add strangulation to the list of offenses for which a \$50 domestic violence prevention and treatment fee is imposed.

INDIANA—DOMESTIC BATTERY:

Indiana amended § 35-42-2-1.3 to expand the definition of “domestic battery” by removing the requirement of physical injury for a misdemeanor level offense and to describe in detail the conduct required for various felony-level offenses. Also, under Indiana law, certain offenses have particular penalties, are ineligible for alternative sentencing, or have other collateral consequences. Indiana added “domestic battery” to the list of offenses for the following provisions:

- Ineligible for the forensic diversion program, under which the defendant receives community treatment instead of or in addition to incarceration, § 11-12-3.7-6;

- A “battery” offense for purposes of the chapter governing adult protective services, § 12-7-2-20.8;
- A “potentially disease transmitting offense” if the domestic battery involved placing a bodily fluid or waste on another person, § 16-41-8-1, which then permits the court to require the defendant to submit to a screening test for HIV or other diseases, § 16-41-8-5;
- A “battery” offense for purposes of compiling statistics on school suspensions and expulsions, § 20-19-3-4;
- An offense for which a school may decline to employ or contract with the person convicted, § 20-26-5-11;
- An offense a school is required to report if it occurred on or within 1,000 feet of school property, § 20-33-9-1.3;
- Consent to adoption is not required from a parent if convicted and incarcerated for a felony-level domestic battery offense at the time the adoption petition is filed, § 31-19-9-10;
- While a felony conviction normally disqualifies a person for placement of a child, the court may permit placement with a person convicted of a felony battery offense (including domestic battery) if the conviction is more than five years old and the court finds that the person’s commission of the offense is not relevant to the person’s present ability to care for a child and the placement is in the child’s best interest, § 31-34-4-2 (out-of-home placement upon removal from home), §§ 31-34-20-1.5 and 31-34-19-6.5 (dispositional decree), and § 31-34-21-7.5 (approval of permanency plan);*
- Requires law enforcement to notify a child’s school if arrested or taken into custody for listed offenses, § 31-37-4-3;
- Imposition of child abuse prevention fee of \$100 if the victim is less than 18 years old, § 33-37-5-12;
- Upon request for a continuance of a trial or other court proceeding in the criminal case for listed offenses, the court must consider whether a postponement will have an adverse impact upon an endangered adult or child who was a victim or will be a witness, § 35-36-7-3;
- Permits a statement or videotape by a protected person, defined as a child or an adult with any of several listed mental disabilities or illnesses, to be admissible at trial for listed offenses if certain conditions are met, § 35-37-4-6, or permits the protected person to testify via closed circuit television from a separate room, § 35-37-4-8;
- Permits evidence of a previous battery to be admitted for limited purposes and after following a specified procedure, § 35-37-4-14;
- Ineligible for community corrections program, § 35-38-2.6-1;

- If a fetus is killed in the commission or attempt of listed offenses, the person commits involuntary manslaughter, § 35-42-1-4;*
- Defines a criminal organization as a formal or informal group of at least three people that promotes or requires as a condition of membership any listed offense, § 35-45-9-1;
- Provides immunity for, in good faith, reporting of, providing evidence of, or participating in court proceedings regarding listed offenses, § 35-46-1-14;
- Provides that possession of a firearm by a person convicted of felony-level domestic battery is a level 4 felony, § 35-47-4-5; and
- Provides that conviction of a listed offense is an aggravating circumstance in a murder case, § 35-50-2-9.

INDIANA—DEFINITION OF VICTIM ADVOCATE:

Indiana amended § 35-37-6-3.5 to include a “student advocate office” in the definition of “victim advocate” and amended § 34-60-1-2 to delete a separately stated definition of “victim advocate” and instead to incorporate § 35-37-6-3.5 by reference.

INDIANA—TERMINATION OF PARENTAL RIGHTS OF PARENT WHO COMMITTED ACT OF RAPE:

Indiana enacted a new chapter to provide for termination of the parent-child relationship if the parent committed an act of rape resulting in the child’s conception. In particular, § 31-35-3.5-3 permits the parent who was the victim to file a petition to terminate the parent-child relationship between the child and the alleged perpetrator of the act of rape. Under new § 31-35-3.5-4, the petition must be filed within 180 days of the child’s birth, and under new § 31-35-3.5-7, the court must terminate the parent-child relationship if the allegations are shown by clear and convincing evidence and termination is in the child’s best interests. Other provisions in the new chapter set forth the procedure to be followed in such cases.

INDIANA—POWER OF ATTORNEY FOR CARE AND CUSTODY OF CHILD:

Indiana amended § 29-3-9-1 to provide that a military service member called to active duty may execute a power of attorney to delegate care and custody of a child while the parent is on active duty, for a period of up to 12 months.

MAINE—CRIMINAL PENALITIES FOR POSSESSION OF FIREARM, STALKING, AND REPEATED DOMESTIC VIOLENCE OFFENSES:

Maine amended § 393 of Title 15 to specify the class of crime for possession of a firearm by a person convicted of stated offenses, including domestic violence. Also, § 210-A of Title 17-A was amended to strengthen the penalties for stalking. Finally, § 1252 of Title 15 was amended to add attempt offenses to sentence enhancements for repeat offenses, including domestic violence offenses.

MAINE—PRETRIAL RELEASE FOR DOMESTIC VIOLENCE OFFENSE:

Maine amended § 1023 of Title 15 to prohibit a bail commissioner from setting preconviction bail for lower level domestic violence offenses without setting a court date within five weeks of the bail order.

MISSISSIPPI—UTILITY DEPOSITS FOR DOMESTIC VIOLENCE VICTIMS:

Mississippi amended its statutes governing private corporations that provide electric energy and other utility services, including an amendment to § 77-5-235 that generally exempted such corporations from regulation by the Mississippi Public Service Commission. Despite the general exemption from regulation, the amendment requires such corporations to abide by certain regulations, including those regarding establishment of an initial deposit for certified domestic violence victims.

UTAH—PRETRIAL RELEASE FOR DOMESTIC VIOLENCE OFFENSE AND NOTICE TO VICTIM:

Utah amended § 77-36-2.5 to require that, after arrest for domestic violence, the offender may not be released unless the magistrate orders or the offender signs a jail release agreement that the offender will not have contact with, threaten, or harass the alleged victim or knowingly enter onto the alleged victim's residence or premises temporarily occupied by the alleged victim. The no-contact order remains in effect until the initial appearance. The amendment further provides that, upon an arrest for domestic violence, law enforcement must notify the alleged victim that the alleged perpetrator will not be released without such release conditions.

UTAH—RESTITUTION FOR VICTIMS OF CRIME:

§ 77-38A-102 was amended to expand the definition of "pecuniary damages" that may be ordered to be paid as restitution to include wage loss, travel expenses, and other expenses reasonably incurred as a result of participation in criminal proceedings.

UTAH—AUTHORITY OF GUARDIAN, PROTECTION ORDERS:

§ 75-5-312 was amended to prohibit the guardian of an incapacitated person from unreasonably restricting visitation with the ward's family, relatives, or friends. § 75-5-312.5 was enacted to permit the guardian, at the time of appointment or thereafter, to obtain a protection order limiting or restricting contact. When ruling on such a request, the court must consider any history of abuse or existence of prior protection orders against the relative or friend.

VIRGINIA—STALKING:

Virginia amended § 18.2-60.3, defining the offense of stalking, to provide that if a person contacts, follows, or attempts to contact or follow the targeted person after being given actual notice that the targeted person does not want to be contacted or followed, such actions are prima facie evidence that the conduct was intended, or reasonably should have been known, to place the targeted person in reasonable fear of death, criminal sexual assault, or bodily injury to the targeted person or a family or household member.

In a separate bill, the statute was amended to expand application of second offense stalking to include when the defendant was convicted of a substantially similar offense in another jurisdiction.

VIRGINIA—VIOLATION OF PROTECTION ORDER:

Virginia amended §§ 16.1-253.2 and 18.2-60.4 to enhance the penalty for violation of a protection order from a misdemeanor to a felony if the defendant was in possession of a firearm while violating the protection order.

VIRGINIA—EMANCIPATION OF MINOR:

Virginia law formerly set a minimum age of 16 to marry, with the consent of the parent or guardian. § 20-48 was amended to require a minimum age of 18 unless emancipated. Virginia amended § 16.1-331, regarding emancipation of minors, to add requirements when the petition is based on the minor's desire to enter into a valid marriage to require the inclusion of information regarding the prospective spouse, including criminal records and any protective order. § 16.1-333.1 was also enacted to require the court, when considering such a petition, to make specified written findings, including a finding that the marriage will not endanger the minor's safety, taking into account any criminal record for an act of violence and any history of violence between the parties to be married.

VIRGINIA—HIGH SCHOOL EDUCATION ON DOMESTIC VIOLENCE:

Virginia amended § 22.1-207.1:1 to require that any high school family life education curriculum include age-appropriate elements of effective and evidence-based programs on the prevention of dating violence, domestic violence, sexual harassment, and sexual violence.

VIRGINIA—CONFIDENTIALITY OF DOMESTIC AND SEXUAL VIOLENCE SERVICES:

Virginia amended § 63.2-104.1 to expand the confidentiality protections for persons receiving services for domestic or sexual violence to include victims of dating violence, sexual assault, stalking, and sex trafficking.

WISCONSIN—DEFINITION OF VICTIM ADVOCATE:

Wisconsin law previously recognized the role of an advocate for victims of domestic abuse, interspousal battery, and sexual assault. § 905.045 was amended to replace the term "advocate" with "victim advocate" and to expand the definition of "abusive conduct" for which such advocacy is available to include human trafficking, child sexual abuse, and sexual exploitation by a therapist.

*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.