

3rd Quarterly Update | 2016

RCDV:CPC

Resource Center on Domestic Violence: Child Protection and Custody

Welcome to the next issue of legislative news from the Resource Center on Domestic Violence: Child Protection and Custody!

This update covers state legislation passed during the third 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. Please direct any comments or inquiries to Amanda Kay, Program Attorney, at akay@ncjfcj.org.

Below is a list of the states included in this update and the general topic(s) addressed:

Alaska:

- Pretrial release
- Prevention of domestic violence

California:

- Gender-neutral language

Delaware:

- Batterer intervention
- Domestic violence definition

Hawaii:

- Aggravating factors
- Campus violence
- Early release
- Termination of parental rights

Illinois:

- Campus violence
- E-filing and remote appearances
- Medicaid confidentiality
- In camera testimony

Maryland:

- Police training
- Stalking
- Orders of protection

Missouri:

- Child custody
- Crime reporting
- Expungement
- Victims of crime
- Teen dating violence awareness

New Hampshire:

- Body-worn cameras
- Absentee ballots

Pennsylvania:

- Tax credits

Rhode Island:

- Campus violence
- Domestic Violence Prevention Fund
- Firearm surrender protocol
- Orders of protection
- Utility service

Vermont:

- Marriage license fees

Read on for more details about specific legislation:**ALASKA—PRETRIAL RELEASE, PREVENTION OF DOMESTIC VIOLENCE:**

Alaska enacted a new chapter establishing a Pretrial Services Program. Section 33.07.030 requires a pretrial services officer to recommend release on personal recognizance or unsecured performance bond for misdemeanors and Class C felonies with certain exceptions including crimes involving domestic violence. The bill, Senate Bill No. 91, also requires the Council on Domestic Violence and Sexual Assault to create or expand community-based violence prevention programming and services.

CALIFORNIA—GENDER-NEUTRAL LANGUAGE:

California passed a comprehensive bill, Senate Bill No. 1005, to amend provisions throughout the California statutes to replace the terms “husband,” “wife,” and “registered domestic partner” with the term “spouse” and to replace gender-specific pronouns and terms with gender-neutral terms. Amended statutes include the definitions of domestic violence in Penal Code § 13700 and Welfare

and Institutions Code § 18291. Please see the bill for a complete list of statutes that were amended.

DELAWARE—BATTERER INTERVENTION:

Delaware amended § 1024 of Title 10 to require domestic violence diversion programs included as part of a criminal sentencing order to be certified by the Delaware Domestic Violence Coordinating Council.

DELAWARE—DOMESTIC VIOLENCE DEFINITION:

Delaware amended § 901 of Title 10 to use gender-neutral terms, replacing “husband and wife” with “spouses” and “man and woman” with “couple.” Section 922 of Title 10 was amended to restate the jurisdiction of the family court over domestic violence misdemeanors to include offenses between former spouses, persons cohabitating together, or persons living separate with a child in common.

HAWAII—AGGRAVATING FACTOR:

Hawaii law provided that the commission of a crime committed in the presence of a minor, against a family or household member, constituted an aggravating factor. Hawaii amended § 706-606.4 to remove the requirement that the offense be committed against a family or household member.

HAWAII—CAMPUS VIOLENCE:

Hawaii enacted § 304A-120 to establish a requirement that the University of Hawaii must train all students and employees on Title IX, the Violence Against Women Act and university policies on sexual harassment, sexual assault, domestic violence, dating violence, and stalking. The university must also designate a confidential advocate for students. Every two years, the university must conduct a campus climate survey of all students and submit a report to the legislature.

HAWAII—EARLY RELEASE:

Hawaii enacted § 353-36 to establish an early release program for a misdemeanor offenders to prevent overcrowding. Persons arrested or convicted for abuse of family or household members, sexual harassment, harassment by stalking, or violation of an order of protection are not included in the program.

HAWAII—TERMINATION OF PARENTAL RIGHTS:

Hawaii amended § 571-61 to remove the requirement of a conviction to terminate parental rights based on the child's conception being the result of sexual assault. Instead, clear and convincing evidence is sufficient. Further, the amendment establishes a presumption that termination is in the child's best interest in such circumstances.

ILLINOIS—CAMPUS VIOLENCE:

Illinois amended § 155/10 to list specific sanctions for violations of a campus comprehensive policy concerning sexual violence, domestic violence, dating violence, and stalking.

ILLINOIS—E-FILING AND REMOTE APPEARANCES:

Illinois enacted § 5/7.5 to establish a pilot e-filing program for orders of protection, for issuance of orders by audio-visual means, and for electronic appearances.

ILLINOIS—MEDICAID CONFIDENTIALITY:

Illinois amended § 5/5-30 to extend confidentiality requirements for Medicaid entities, including requirements regarding confidentiality of “sensitive health services,” which include services for domestic abuse, to business associates of Medicaid entities.

ILLINOIS—IN CAMERA TESTIMONY:

Illinois amended § 5/106B-5 to add aggravated battery and aggravated domestic battery to the list of offenses where the testimony of a minor or disabled adult victim can be taken outside court.

MARYLAND—POLICE TRAINING:

Maryland passed House Bill No. 1371 to require the police training commission to develop a lethality screening protocol and training for domestic violence and assault by strangulation.

MARYLAND—STALKING:

Maryland amended Criminal Law § 3-802 to expand the definition of stalking to include when the defendant intended to cause or reasonably knew the conduct would cause serious emotional distress.

MARYLAND—ORDERS OF PROTECTION:

Maryland amended Courts and Judicial Procedure §§ 3-8A-19.1, governing peace orders in criminal cases, and 3-1503, governing civil orders of protection, to include as grounds for such orders misuse of technology, including telephone, electronic communication, and computers; revenge porn; and visual surveillance.

MISSOURI—CHILD CUSTODY:

Missouri amended several provisions of § 452.375. First, the best interest factors are considered only if the parties do not reach an agreement on custody. Second, while the statute already provided that no preference should be given to either parent because of that parents age, sex, or financial status, a second sentence was added to reiterate that the court may not presume either parent is more qualified due to sex. Third, the statute was further amended to require a language in every custody order stating that any violation was punishable by contempt and providing for a simplified family access motion to expedite enforcement of visitation. Finally, any such violation must be considered in any motion to modify the custody order.*

MISSOURI—CRIME REPORTING:

Missouri previously required the state highway patrol to include domestic violence incidents in a voluntary system of crime reporting. Missouri amended § 43.545 to require inclusion of these incidents in its statutorily required annual crime report. Section 455.545 was amended to require the report to be completed by March 1 of each year.

MISSOURI—EXPUNGEMENT:

Missouri amended § 488.650 to raise the filing fee for petition for expungement but permit the court to waive the fee. Section 610.140 was amended to restate the list of crimes subject to expungement; misdemeanor and felony offenses for domestic assault are excluded.

MISSOURI—VICTIMS OF CRIME, CAMPUS VIOLENCE, AND TEEN DATING VIOLENCE AWARENESS:

Missouri enacted a bill addressing several issues. First, § 9.172 was enacted to establish the month

of February as Teen Dating Violence Awareness Month in the state of Missouri. Second, § 173.2050 was enacted to require each college and university to enter into a memorandum of understanding with law enforcement regarding sexual assault, domestic violence, dating violence, and stalking involving students on and off campus, setting forth detailed policies and protocols regarding jurisdiction over and investigation of these crimes. Third, § 455.543 was amended to remove the requirement that information on whether a homicide or suicide was related to domestic violence be recorded within 15 days; as amended there is no time requirement. Fourth, § 595.030 was amended to allow victims of crime funds to pay for psychiatric treatment or Counseling Services provided by a board-certified psychiatric mental health clinical nurse specialist or nurse practitioner. Fifth, § 595.209, governing rights of crime victims, was amended to add domestic assault to the list of covered offenses.

NEW HAMPSHIRE—BODY-WORN CAMERAS:

New Hampshire enacted Chapter 105-D to adopt a body-worn camera protocol. § 105-D:2 provides that the cameras will not be used to record an interview with a crime victim without the victim's express consent. A parent or guardian can consent on behalf of a minor victim. Any recording must be consistent with the attorney general's model protocols for sexual assault, domestic violence, and stalking, when applicable.

NEW HAMPSHIRE—ABSENTEE BALLOTS:

New Hampshire amended § 657:15 to allow statewide candidates to request a statewide list of voters who requested absentee ballots, except for voters who presented a valid protection order.

PENNSYLVANIA—TAX CREDITS FOR HOUSING ASSISTANCE:

Pennsylvania amended § 8904-A of Title 72 to provide for tax credits to any business that engages or contributes to a neighborhood organization engaged in specified activities, including housing assistance for victims of domestic violence.

RHODE ISLAND—CAMPUS VIOLENCE:

Rhode Island enacted § 16-76.2-2 to grant amnesty from prosecution for code of conduct violations for any use of alcohol or drugs by a person reporting an incident of violence at a college or university, defined by newly enacted § 16-76.2-1 as including domestic violence, dating violence, stalking, and sexual assault.

RHODE ISLAND—DOMESTIC VIOLENCE PREVENTION FUND:

Rhode Island enacted § 12-29-12 to establish the Domestic Violence Prevention Fund, to fund evidence-based practices to prevent domestic and dating violence. The Fund is to be administered by the state coalition, with the help of an advisory committee, including the coalition's executive director, the attorney general, representatives of domestic violence and dating violence programs, and the director of health and human services.

RHODE ISLAND—FIREARM SURRENDER PROTOCOL:

Rhode Island enacted § 11-47-5.3 to establish a firearm surrender protocol for felony domestic violence offenses. The protocol requires surrender within 24 hours of prohibition to a law enforcement agency or a federally licensed Firearms dealer, with proof of the surrender to be filed with the court within 48 hours. § 12-29-5 was amended to require the record of conviction to include a prohibition

on firearms and to require the court to inform the defendant of the prohibition; also, any firearm used in the commission of the offense leading to the conviction is forfeited to the state.

RHODE ISLAND—ORDERS OF PROTECTION, UTILITY SERVICE:

Rhode Island enacted § 11-35-20.1 to prohibit a person served with an order of protection from causing the interruption of any utility service and providing that any such interruption constitutes harassment. If the person wishes to remove their name from the utility bill, they must seek a court order first.

VERMONT—MARRIAGE LICENSE FEES:

Vermont amended § 1712 of Title 32 to increase the marriage license fee by \$15, with the funds to go to the Domestic and Sexual Violence Fund.

*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 fvinfo@ncjfcj.org.

