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Resource Center on Domestic Violence: Child Protection and Custody

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Welcome to the next issue of legislative news from the Resource Center on Domestic Violence: Child Protection and Custody! This update begins coverage of state legislation passed in 2017, and the primary focus was on revisions to criminal statutes and provisions governing protection orders. 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:

Arkansas:

- domestic battery;
- domestic violence training;
- internet stalking of a child;
- mental evaluation of criminal defendants; and
- probation and parole.

Guam:

- interfering with reporting of family violence; and
- strangulation.

Illinois:

- Sentencing

Massachusetts:

- Recall elections

New Jersey:

- Orders of protection and sex offenses

North Dakota:

- Domestic violence protection orders

South Dakota:

- mental illness hold; and
- orders of protection.

Virginia:

- family life education and curricula;
- presentence investigations and report;
- removal of child; and
- school security officers and firearms.

Virgin Islands:

- Protective order proceedings

Washington:

- Extreme risk protection orders

Summaries of the legislation are set forth below. For complete information, please consult the bills and statutes themselves.

ARKANSAS – DOMESTIC BATTERY

The Arkansas legislature amended § 5-26-303 to make the definition for domestic battering in the first degree more consistent with battery in the first degree by adding language that a person commits domestic battering in the first degree if, with the purpose to cause physical injury to a family or household member, the person causes such an individual physical injury with a firearm.

ARKANSAS—DOMESTIC VIOLENCE TRAINING

Arkansas enacted §17-26-419, which requires cosmetology schools to establish a domestic violence and sexual assault awareness training course and requires students to complete one hour of training to be eligible for an examination. Further, the new section grants students who complete the training with immunity from civil and criminal liability for acting in good faith or failing to act during the course of their employment regarding information concerning potential domestic violence or sexual assault.

ARKANSAS—INTERNET STALKING OF A CHILD

Arkansas amended § 5-27-306 to expand the crime of “Internet stalking of a child” from the use of a computer or internet services to include “any means of electronic communication” used to seduce, solicit, lure, or entice a child for the purpose of engaging in sexual intercourse, sexually explicit conduct, or deviate sexual activity. The statute was also amended to include the arranging of a meeting with another person who holds themselves out as a person with authority over a child in order to seduce, solicit, lure, or entice the child to engage in sexual intercourse, sexually explicit conduct, or deviate sexual activity.

ARKANSAS—MENTAL EVALUATION OF CRIMINAL DEFENDANTS

Arkansas repealed former § 5-2-301(2), defining “[c]apacity of the defendant to have the culpable mental state,” and replaced it with an amendment to § 5-2-312, defining “[l]ack of criminal

responsibility.” Similarly, § 5-2-301(6) was amended to add to the definition of “[m]ental disease or defect” the significant impairment in cognitive function as a result of a progressively deteriorating neurological condition. Section 5-2-305, related to the mental health examination of a defendant, was repealed and replaced with §§ 5-2-327 (Examination of defendant – Fitness to proceed) and 5-2-328 (Examination of defendant – Affirmative defense of lack of criminal responsibility). These changes were incorporated by amendment to the statutes on specified crimes, including harassment (§5-71-208), harassing communications (§ 5-71-209), and stalking (§ 5-71-229).

ARKANSAS—PROBATION AND PAROLE

Arkansas enacted the Criminal Justice Efficiency and Safety Act of 2017, which included amendments to existing laws governing probation and parole. Section 16-93-101 was amended to exclude from the definition of “serious condition violations” certain offenses, including a “misdemeanor offense of harassment or stalking or that contains a threat of violence to a victim, or a threat of violence to a family member of the victim of the offense for which the defendant was placed on probation or parole.”*

GUAM—INTERFERING WITH THE REPORTING OF FAMILY VIOLENCE

Guam enacted §§ 30.300 and 19.81 of Title 9 to create the offense of interfering with the reporting of family violence, a third degree felony, which occurs when a person commits an act of family violence and intentionally, knowingly, or recklessly prevents or attempts to prevent the victim or a witness to call 911, obtain medical assistance, or report the incident to law enforcement.

GUAM—STRANGULATION

Guam enacted § 19.80 of Title 9 to create the offense of strangulation, defined as “knowingly or intentionally, against the will of another, impedes the normal breathing or circulation of the blood of another by applying pressure to the throat or neck or by blocking the nose or mouth of another.” Strangulation is a felony of the third degree. Also, § 30.10 of Title 9 was amended to include this offense in the definition of family violence when done to a family or household member.

ILLINOIS—SENTENCING

Section 3930/7 was amended to give the Illinois Criminal Justice Information Authority the power to conduct strategic planning and provide technical assistance to implement comprehensive trauma recovery services for violent crime victims in underserved communities, including behavior health, financial recovery, family support and relocation assistance, and support in navigating the legal system. Section 5/3-6-3 was amended to eliminate the prohibition on awarding more than 90 days of sentence credit for good conduct in serious crimes, including sexual assault, child abuse, domestic violence, and stalking cases. Instead, it adds a case-by-case evaluation of the history of the conviction and results of any available risk/needs assessment.

MASSACHUSETTS—RECALL ELECTIONS

Massachusetts enacted § 3-13 of the charter for the town of Norwell to permit the recall from office of an elected town-wide official for certain reasons, including a conviction for domestic violence.

NEW JERSEY—ORDERS OF PROTECTION AND SEX OFFENSES

Section 2C:14-14 was amended to provide that, when a protection order application is filed and alleges “nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such

conduct” against an unemancipated minor by a parent or guardian, the application must be forwarded to the Department of Children and Families instead of proceeding; the Department will then determine whether to pursue the protection order. Sections 2C:14-18 and 2C:29-9 were also amended concerning proper court jurisdiction and severity levels for certain contempt actions resulting from violations of a protective order.

NORTH DAKOTA—DOMESTIC VIOLENCE PROTECTIVE ORDERS

North Dakota amended its statutes relating to the registry of protection orders, orders prohibiting contact, and restraining orders by adding protection orders or orders of no contact under §§ 12.1-31.2-02 and 14-07.1-02 to the orders the bureau maintains in its registry; setting out specifics regarding the orders and modifications of orders the bureau will enter into the National Crime Information Center database (NCIC), including temporary orders; and the notification to the local law enforcement agency with jurisdiction over the residence of the protected party.

The state also added the language, “or at a later date if good cause is shown” to §§ 14-07.1-02 and 14-07.1-03, allowing hearings on applications for domestic violence protection orders to be continued beyond the statutorily prescribed 14 days upon a showing of good cause.

Finally, § 14-07.1 was enacted to establish a domestic violence court as a form of treatment court, allowing a district court to require an individual who has committed a crime involving domestic violence or who has violated a domestic violence protection order to complete domestic violence treatment under the domestic violence court program as a condition of probation.

SOUTH DAKOTA—MENTAL ILLNESS HOLD

South Dakota law includes a mandatory arrest policy for domestic abuse perpetrators, but in other contexts, when a peace officer has probable cause to believe a person requires emergency intervention, the officer may apprehend the person and transport them to an appropriate regional facility on a mental illness hold. South Dakota enacted 25-10-44 to provide that a peace officer who believes that a domestic abuse perpetrator has a severe mental illness that makes the person an imminent danger to self or others may initiate a mental illness hold and transport the person to an appropriate regional facility in lieu of arrest.

SOUTH DAKOTA—ORDERS OF PROTECTION

Section 25-10-3.1 was amended to limit eligibility for a protection order based on a previous romantic relationship only when the relationship was within the past 12 months.

VIRGINIA—FAMILY LIFE EDUCATION AND CURRICULA

Virginia amended § 22.1-207.1:1, requiring high school family life education programs to include prevention of dating violence, domestic abuse, sexual harassment, and sexual violence, to permit the addition of age-appropriate elements on the law and meaning of consent.

VIRGINIA—PRESENTENCE INVESTIGATIONS AND REPORT

Virginia law previously permitted a presentence investigation and report when a plea agreement for specified crimes, including stalking, and required a presentence investigation and report if the defendant pled guilty without a plea agreement or was found guilty after a plea of not guilty. Virginia amended § 19.2-299 to permit the defendant and the prosecutor to waive the requirement and to

include pleas of nolo contendere in the statute.

VIRGINIA—REMOVAL OF CHILD

Virginia amended § 16.1-251, setting forth when reasonable efforts to prevent removing a child from home are not necessary, to include cases where the parent's paternal rights regarding another sibling have been involuntarily terminated; when the parent has been convicted of murder or voluntary manslaughter or the attempt of such offense; when the parent has been convicted of felony assault resulting in serious bodily injury, felony bodily wounding resulting in serious bodily injury, or felon sexual assault, if the victim of the offense was a child of the parent or who the parent resided with at the time of the offense; or if there is clear and convincing evidence that the parent has subjected any child to aggravated circumstances. "Aggravated circumstances" is defined as torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of the conduct was a child of the parent or resided with the parent, including failure to protect, "which conduct or failure to protect (i) evinces wanton or depraved indifference to life or (ii) has resulted in the death or serious bodily injury of a child."*

VIRGINIA—SCHOOL SECURITY OFFICERS AND FIREARMS

Virginia amended §22.1-280.21 regarding the employment of school security officers by allowing eligible school security officers to carry firearms in the performance of their duties. The officer cannot be prohibited by state or federal law from possessing, purchasing, or transporting a firearm, with the effect that individuals subject to protection orders and domestic violence offenders, who are prohibited from possessing, purchasing, or transporting a firearm under federal law, are not eligible for such employment.

VIRGIN ISLANDS—PROTECTIVE ORDER PROCEEDINGS

The Virgin Islands enacted "the Virgin Islands Uniform Guardianship and Protective Proceedings Act" and "the Uniform Adult Guardianship and Protective Proceedings Act." The Uniform Adult Guardianship and Protective Proceedings Act does not allow a guardian to restrict an incapacitated person's right to communicate, visit, or interact unless they move the court for good cause shown for the court to restrict a person's access to the incapacitated person. In determining whether to restrict access, the court may consider whether any protective order has been issued to protect the incapacitated person from the person seeking access; whether abuse, neglect, or financial exploitation by the person of the incapacitated person has happened or is likely to happen; the incapacitated person's wishes to not communicate with the person; and any other factors the court considers relevant. The court can include in the order placement of reasonable time, manner, or place restrictions on communication, visitation, or interaction between the incapacitated person and the person based on the history between them and the wishes of the incapacitated person; require that communication, visitation, or interaction be supervised; or deny access between the person and the incapacitated person if the person poses a threat.

WASHINGTON—EXTREME RISK PROTECTION ORDERS:

Washington enacted §§ 7.94.010 to 7.94.900 as the Extreme Risk Protection Order Act, intended to prevent individuals who are at high risk of harming themselves or others from accessing firearms. In particular, § 7.94.030 permits a petition to be filed by a family or household member or a law enforcement officer or agency, alleging that there's fondant poses a significant danger of causing personal injury to self or others by having a firearm. Section 7.94.040 requires a hearing to be held

within 14 days, where the court must determine whether the evidence shows that the respondent poses a significant danger; the statute lists evidence that may be considered and requirements for the protection order if granted. Section 7.94.050 permits issuance of ex parte orders. Section 7.94.090 sets forth provisions governing the surrender of firearms. Section 7.94.120 establishes penalties for filing a false petition or for violating an extreme risk protection order.

*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.

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