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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 continues coverage of state legislation passed in 2017, and the primary focus was on protection orders, including firearms restrictions, and provisions concerning families and children. Criminal statutes and miscellaneous protections for survivors were also a common topic, as well as prevention and treatment efforts. Please direct any comments or inquiries to Kevitt Adler, Program Attorney, at kadler@ncjfcj.org, or Amanda Kay, Senior Program Attorney, at akay@ncjfcj.org.

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

Arkansas:

- Arkansas Child Abuse/Rape/Domestic Violence Commission;
- cell phone plans and domestic violence;
- child maltreatment reports and military;
- Domestic Violence Shelter Act;
- familial or residential status of victims of sexual offenses;
- military order of protection;
- rights of relatives, visitation, endangered adults and wards; and
- sexual extortion and unauthorized dissemination of intimate images or video.

Kentucky:

- Domestic Violence Governor's Council; and
- statute of limitations for sexual offenses.

Mississippi:

- termination of parental rights, sexual assault, & human trafficking; and
- witness intimidation & threats.

Montana:

- offender intervention programs.

North Dakota:

- Canadian protection orders;
- school, extracurricular activities, and protection orders; and
- weapons surrender in protection order cases.

Utah:

- campus advocates and confidentiality;
- conditions for release and domestic violence; and
- domestic violence and firearms restrictions.

Virginia:

- address confidentiality programs, sexual violence, and human trafficking;
- custody and schools;
- landlord tenant and domestic violence;
- law enforcement certification, suspension, and revocation;
- vulnerable adults and financial exploitation.

Wyoming:

- antique firearms exemption to prohibition;
- minors and domestic violence services;
- protection of parental rights.

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

ARKANSAS—ARKANSAS CHILD ABUSE/RAPE/DOMESTIC VIOLENCE COMMISSION

§ 20-82-201 was amended to increase the term length for membership of the Arkansas Child Abuse/Rape/Domestic Violence Commission from 2 to 5 years, to reduce the number of members from 30 to 22, to add the requirement of a member with a background in human trafficking or related area of study, and to eliminate, among others, the requirement that one member be the representative of a victim witness program.

ARKANSAS—CELL PHONE PLANS AND DOMESTIC VIOLENCE

§ 9-15-103 was enacted to give courts the authority to order transfer of a wireless device, in a separate order directed to the wireless service provider, within a domestic violence protection order proceeding. The purpose is to allow a petitioner to maintain their existing wireless telephone number or the wireless number of a minor child in the petitioner's care by ordering the transfer of billing responsibilities for and the rights to the telephone number to the petitioner if the petitioner proves by a preponderance of the evidence that the petitioner or the minor child are the primary users of the wireless telephone numbers ordered to be transferred.

ARKANSAS—CHILD MALTREATMENT REPORTS AND MILITARY

§ 12-18-500 was amended to require the notification of the applicable Department of Defense family advocacy program (which addresses domestic abuse and child abuse in military families) when a report is made involving as the alleged victim a child of an active duty service member. §§ 12-18-620 and 12-18-710 were amended to allow for the family advocacy program to have access to information regarding pending investigations, and §§ 12-18-813, 12-18-909, and 12-18-910 were amended to allow the program to have other reports and findings.

ARKANSAS—DOMESTIC VIOLENCE SHELTER ACT

The Arkansas legislature created the “Arkansas Domestic Violence Shelter Act,” §§ 9-6-101 to 9-6-111. In particular, § 9-6-102 was enacted to define “domestic violence” as “(A) [p]hysical harm, bodily injury, or assault against an individual in a dating relationship by the other individual in the dating relationship or against a member of a family or household by another member of the family or household; (B) [m]ental harm caused by the infliction of fear of imminent physical harm, bodily injury, or assault against an individual in a dating relationship by the other individual in the dating relationship or against a member of a family or household by another member of the family or household; or (C) [s]exual conduct between family or household members or between individuals in a dating relationship, whether minors or adults, that constitutes a crime under the laws of this state.”

§ 9-6-103 calls for the Department of Finance and Administration to establish the “Arkansas Domestic Violence Shelter Grant Program” to evaluate shelters receiving funds, promulgate rules for evaluating shelters, adopt a uniform system of recordkeeping for shelters, provide training and technical assistance to shelters to ensure minimum standards of service delivery, serve as a clearinghouse for information related to domestic abuse, and to provide educational programs on domestic abuse for the general public, victims, and other persons as needed. § 9-6-106 sets out operational requirements of shelters receiving funds through this program, § 9-6-107 imposes recordkeeping requirements, and § 9-6-108 lists training requirements for board members, staff, and volunteers with shelters. § 9-6-110 requires the Department of Finance and Administration to provide an annual report to certain legislative committees which include information regarding the incidence of domestic violence in the state based on information obtained by the shelters; a description of the shelters that meet the requirements and receive funds; and the number of persons assisted by the shelters that receive funds. § 9-6-111 provides that information in these reports is confidential and must not be disclosed in a manner that could identify an individual or a facility.

ARKANSAS—FAMILIAL OR RESIDENTIAL STATUS OF VICTIMS OF SEXUAL OFFENSES

§ 16-10-140 was enacted to encourage the Administrative Office of the Courts to individually track or design a method to track the familial or residential status of the victim of a sex offense in relation to the offender. The method must also protect against revealing the identity of the victim.

ARKANSAS—MILITARY ORDER OF PROTECTION

§ 5-53-134 was amended to state that a service member commits the offense of violation of a military order of protection if certain military officials with the authority to do so order a military order of protection against the service member, the service member receives actual or otherwise lawful notice of the order, and the service member knowingly violates a condition of the order. Further, the statute sets forth that the prosecution of such a violation does not prohibit the ordering official from pursuing appropriate disciplinary actions against the service member under the Military Code of Arkansas.

The amendment also allows a law enforcement officer to take into custody without a warrant a person whom the officer has probable cause to believe is subject to a military order of protection and has violated the terms of the order. The law enforcement agency must then notify the office of the Adjutant General of the Arkansas National Guard within 24 hours. The Arkansas National Guard

then has 48 hours to take custody of the service member or the law enforcement agency shall release the service member.

A “military order of protection” is defined in the amendment as “an official command directed at a service member for the purpose of preventing violent and threatening acts against” a current or former spouse; a child, step-child, parent, step-parent, sibling, guardian, or ward; someone who is or has cohabitated in the past with the service member; someone who is or has been in a dating relationship with the service member; has had an intimate sexual relationship with the service member; or someone who has made allegations against the service member for violations of the punitive articles of sexual misconduct.

§ 9-15-302 was amended to add military orders of protection to the type of orders that are afforded full faith and credit, and § 9-15-303 was amended to add them to the provision affording law enforcement with immunity from liability.

ARKANSAS—RIGHTS OF RELATIVES, VISITATION, ENDANGERED ADULTS AND WARDS

The legislature passed legislation to protect the rights of relatives of vulnerable adults and wards. Identical provisions were passed to two parts of Arkansas law, one pertaining to endangered or impaired adults and one to wards. § 9-20-103 (endangered or impaired adults) and § 28-65-101 (wards) were amended to define a relative as including the spouse, children, grandchildren, parent, or sibling of the endangered or impaired adult or ward. § 9-20-123 was enacted to provide that if a relative has reason to believe and facts to substantiate that belief that the Department of Human Services is unreasonably interfering with or denying visitation between the relative and an endangered or an impaired adult, the relative can file a petition seeking reasonable visitation. Similarly, § 28-65-110 was enacted to provide that a relative of a ward can seek visitation if they have reason to believe and facts to substantiate that the guardian of the ward or another person is unreasonably interfering with or denying them visitation.

The new statutes further provide that if the endangered or impaired adult or the ward objects to visitation with the petitioning relative, the relative shall prove by a preponderance of the evidence that the endangered or impaired adult or ward was unduly influenced by the department, the guardian, or another. If an endangered or impaired adult consents to the visitation, does not object to the visitation, or is unable to express their consent or objection to the visitation, the department, guardian, or other person shall prove by a preponderance of the evidence that the petitioning relative physically abused, exploited, neglected, sexually abused, or otherwise maltreated the endangered or impaired adult, ward, or another adult, or visitation between the petitioning relative and the endangered adult or impaired adult or ward would be harmful to the mental health or physical well-being of the endangered or impaired adult or ward to overcome the presumption that visitation between the petitioning relative and the endangered or impaired adult or ward is in their best interest.

The legislature further amended § 28-65-106 to state that a ward retains the right to communicate, visit, or interact with any person of the ward’s choosing. If the ward is unable to give express consent to that communication, visitation, or interaction due to physical or mental condition, the consent of the ward may be presumed by a guardian or court based on their prior relationship.

ARKANSAS—SEXUAL EXTORTION AND UNAUTHORIZED DISSEMINATION OF INTIMATE IMAGES OR VIDEO

§ 5-14-113 was enacted to create the offense of “sexual extortion.” Sexual extortion is defined as when a person: (1) with the purpose to coerce another to engage in sexual contact or sexually explicit conduct, (2) with the purpose to produce or distribute a recording of a person in a state of nudity or engaging in explicit conduct, or (3) knowingly causes another person to engage in sexual contact or sexually explicit conduct or to produce or distribute a recording of a person in a state of nudity or engaging in sexually explicit conduct, communicates a threat to damage the property or harm the reputation of the person or to produce or distribute a recording of the other person engaged in sexually explicit conduct or depicted in a state of nudity. § 5-14-101 was amended to include in the definition of “recording” an image or a video. Under new § 5-14-113, sexual extortion is a class B felony and also is the list of disqualifying offenses for certain employment or licensure and the list of offenses that require registration as a sex offender.

KENTUCKY—DOMESTIC VIOLENCE GOVERNOR’S COUNCIL

§ 403.700, which established the Governor’s Council on Domestic Violence and Sexual Assault, was repealed. § 403.705 was amended to provide that local protocols developed by local domestic violence coordinating councils must be consistent with nationally recognized practices, rather than with a model set by the Council, and § 403.707 was amended to reassign the authority to appoint certain members to the Sexual Assault Response Team Advisory Committee to other agencies or organizations.*

KENTUCKY—STATUTE OF LIMITATIONS FOR SEXUAL OFFENSES

§ 413.2485 was enacted to revise the limitations on civil actions brought to recover damages for injury or illness suffered as a result of an act or series of acts against a person eighteen (18) or older that meets the criteria of certain sex offenses, including rape, sexual abuse, sexual misconduct, human trafficking and promoting human trafficking where the offense involves commercial sexual activity, incest, and video voyeurism. Pursuant to § 531.100, video voyeurism is the use of any camera, videotape, or other image recording device for the purpose of observing, viewing, photographing, filming, or videotaping sexual images without the person’s consent and using, divulging any image so obtained for consideration, or distributing by visual medium, electronic mail, the Internet, or commercial on-line service. This new section requires that such actions shall be brought before whichever expires last: within five (5) years of the act or last of the series of acts by the perpetrator; within five (5) years of the date the victim knew or should have known of the act; within five (5) years of knowledge or identity of the perpetrator; or within five (5) years of the conviction of the civil defendant for one of the sex offenses previously set out in the statute. No prior criminal prosecution or conviction for the acts is required to bring such a civil action. The legislature also increased the time limitations set out in § 413.249 for the same or similar offenses against a person less than eighteen (18), therefore constituting childhood sexual assault or sexual abuse, from the previous limit of five (5) years to ten (10) years from the commission of the act; date the victim knew or should have known of the act; after the victim attains the age of eighteen (18) years; and added a fourth, within ten (10) years of the conviction of a civil defendant for an offense included in the definition of childhood sexual abuse or sexual assault, whichever expires last.

MISSISSIPPI—TERMINATION OF PARENTAL RIGHTS, SEXUAL ASSAULT, & HUMAN

TRAFFICKING

§ 93-15-119(1) was amended to allow a court to terminate the parental rights of a parent when, after an evidentiary hearing, the court finds by clear and convincing evidence that a parent has committed an unlawful sexual act against the other parent and that the child was conceived as a result of this act. A criminal conviction for the unlawful sexual act is not required.

MISSISSIPPI—WITNESS INTIMIDATION & THREATS

The Mississippi legislature amended its laws concerning witness intimidation, rendering of criminal assistance, evidence tampering, and other related statutes:

- § 97-9-101 was amended to add “oral or written statements provided under oath to law enforcement during a felony criminal investigation” to the definition of “testimony”;
- § 97-9-103 was amended to provide that one commits the crime of rendering criminal assistance if one threatens, harasses, or intimidates a witness; provides false testimony under oath to the government, provides false information under oath; or attempts to prevent law enforcement from discovering facts related to another’s criminal activity;
- § 97-9-105 amended the definition of “hindering prosecution,” to include preventing or attempting to prevent law enforcement from discovering facts related to another’s criminal activity or providing false information under oath exonerating or incriminating another person;
- § 97-9-113 amended the definition of “intimidating a witness” to add subsections covering harassment or intimidation or attempts to threaten, harass, or intimidate a witness or person reasonably expected to be a witness; attempts to influence the testimony of a witness or person reasonably expected to be a witness by rendering criminal assistance to another being investigated or charged; or solicitation, encouragement, or request of a witness to provide false information intended to defeat or defend against an existing criminal charge or ongoing investigation;
- § 97-9-115 amended the definition of “tampering with a witness” to include the solicitation, encouragement, threats, harassment or intimidation or attempts thereof a witness in an effort to prevent or dissuade the witness from testifying or to provide false statements to exonerate or incriminate another person of a crime; and
- § 97-9-125 amended the definition of the crime of “tampering with physical evidence” to add threats, harassment or intimidation of a witness or a person reasonably believed may be a witness to not provide physical evidence, to hide, destroy or alter physical evidence, or solicits, encourages, or assists another person to destroy, hide, or conceal evidence of any type reasonably likely to be used as evidence during the prosecution of a criminal act.

MONTANA—OFFENDER INTERVENTION PROGRAMS

§ 44-7-210 was enacted to require the Montana board of crime to adopt statewide standards for offender intervention programs (batterer intervention programs in domestic violence cases) that are evidenced-informed. § 44-4-311 was amended to require programs that receive funding to meet these standards, and § 45-5-206 was amended to require that, when imposing a sentence for a partner or family assault that includes a batterer intervention program, the program must meet these standards.

NORTH DAKOTA—CANADA AND PROTECTION ORDERS

§§ 14-07.5-01 to 14-07.5-07 were enacted to adopt the Uniform Recognition and Enforcement of Canadian Protection Orders Act. §14-07.5-01 defines a “Canadian domestic violence protection

order” as “a judgement or part of a judgement or order issued in a civil proceeding by a court of Canada under the law of the issuing jurisdiction which relates to domestic violence and prohibits a respondent from:

- Being in physical proximity to a protected individual or following a protected individual;
- Directly or indirectly contacting or communicating with a protected individual;
- Being within a certain distance or a specified place or location associated with a protected individual; or
- Molesting, annoying, harassing, or engaging in threatening conduct directed at a protected individual.”

The new chapter authorizes nonjudicial and judicial enforcement of an order (§§ 14-07.5-02 and 14-07.5-03), registration of an order (§ 14-07.5-04), the immunity associated with the good faith enforcement of an order in compliance with this chapter (§ 14-07.5-05), and the penalty for violation of a Canadian domestic violence protection order (§ 14-07.5-07).

NORTH DAKOTA—SCHOOL, EXTRACURRICULAR ACTIVITIES, AND PROTECTION ORDERS

§ 15.1-09 was enacted to state that the board of a school district shall prohibit a student from participating in any extracurricular activity if the student has an order prohibiting contact pursuant to § 12.1-31.2-02 when an individual has been charged with or arrested for a crime of violence or threat of violence, stalking, harassment, or sex offense; a disorderly conduct restraining order pursuant to § 12.1-31.2 (with disorderly conduct including human trafficking or attempted human trafficking); or a protection order issued against the student at the request of another student or employee of the school. The board shall also prohibit a student from participating in any extracurricular activity if the student has pled guilty or been convicted of certain offenses.

NORTH DAKOTA—WEAPONS SURRENDER IN PROTECTION ORDER CASES

§ 14-07.1-02(g) was amended to allow for the surrender of weapons to be in the manner and at the time and place determined by the law enforcement officer designated in the city or county in which the respondent resides. If the firearm or dangerous weapon is not surrendered, law enforcement may arrest the respondent and take possession of the firearm or dangerous weapon.

UTAH—CAMPUS ADVOCATES AND CONFIDENTIALITY

§§ 53B-27-101 to 53B-27-202 were enacted as a statutory scheme governing “Student Rights and Responsibilities” regarding confidentiality when a victim seeks advocacy services provided by an institution of higher learning. In particular, § 53B-27-202 prohibits the disclosure of confidential communications related to advocacy services addressing sexual harassment, sexual assault, rape, domestic violence, dating violence, or stalking at an institution of higher learning unless the victim gives written and informed consent to the disclosure; the person has an obligation to disclose the confidential communication as a mandatory reporter of abuse or neglect of a child; abuse, neglect, or exploitation of a vulnerable adult; a therapist’s duty to warn of physical harm; the disclosure is required by federal law; or a court orders the disclosure. § 53-27-201 defines the types of advocates included in the statute. Also, § 77-38-204 was amended to clarify that notwithstanding the new statute, its confidentiality provision governed for communications between a victim and sexual assault counselor.

UTAH—CONDITIONS FOR RELEASE AND DOMESTIC VIOLENCE

§ 77-20-2.5 formerly governed the conditions for release after an arrest for domestic violence. The statute was renumbered to § 77-20-3.5 and amended to add as qualifying offenses child abuse or neglect; commission of domestic violence in the presence of a child; abuse, neglect, or exploitation of a vulnerable adult; and sexual offenses. The provisions do not apply to a person arrested for a qualifying offense if that person is a minor unless the offense is domestic violence. The amended statute provides that a pretrial or sentencing protective order supersedes a jail release agreement or jail release court order. Finally, the amendment requires the releasing agency to provide a copy of the jail release agreement or jail release court order to the arrested person before releasing them.

UTAH—DOMESTIC VIOLENCE AND FIREARMS RESTRICTIONS

§ 76-10-503, which lists individuals who are subject to firearms restrictions, was amended to include a respondent or defendant subject to a protective order or child protective order issued after a hearing with notice and opportunity to participate that restrains the person from harassing, stalking, threatening, or engaging in other conduct that would place an intimate partner or a child of an intimate partner in reasonable fear of bodily injury to the intimate partner or child and that includes a finding that they represent a credible threat or that explicitly prohibits the use, attempted use, or threatened use of physical force. The bill also expands these restrictions to persons who have been convicted of the commission or attempted commission of assault or aggravated assault against a current or former spouse, parent, guardian, individual with whom they share a child in common, individual who is cohabitating or has cohabitated with as spouse, parent, or guardian or against an individual similarly situated as a spouse, parent, or guardian.

VIRGINIA—ADDRESS CONFIDENTIALITY PROGRAMS, SEXUAL VIOLENCE, AND HUMAN TRAFFICKING

§ 2.2-515.2, regarding address confidentiality programs for certain crime victims, was amended to include victims of sexual violence. The definition of sexual violence includes conduct prohibited under Virginia's human sex trafficking laws. The amendment also increased the length of time certification is valid, from one year to three, and allows recertification every three years. Finally, the amendment expanded the basis for participation in the program to include a fear of retribution or intimidation.

VIRGINIA—CUSTODY AND SCHOOLS

§ 16.1-278.15 and § 20-124.2 were amended to require that, in a custody or visitation case or proceeding, when a party is prohibited from picking up a child from school or an order affects the school enrollment of a child, the court shall order a party to provide a copy of the order to the school the child is enrolled or will be enrolled in within three business days.

VIRGINIA—LANDLORD TENANT AND DOMESTIC VIOLENCE

§ 55-225.43 was enacted as part of a bill to revise the law governing small landlords, with only a few residential units, to include fewer requirements than imposed on large landlords. In particular, however, the same language protecting domestic violence victims from eviction that applies to large landlords was included in the new statute.

VIRGINIA—LAW ENFORCEMENT CERTIFICATION, SUSPENSION, AND REVOCATION

§ 15.2-1707, regarding the decertification of a law enforcement officer, was amended to specifically include a time limit (within 48 hours of becoming aware) that a sheriff, chief of police, or

administrator has to notify in writing the Criminal Justice Services Board when any certified law enforcement or jail officer has been convicted of or plead guilty or no contest to certain crimes, including any felony offense, any misdemeanor sex offenses, or any domestic assault.

VIRGINIA—VULNERABLE ADULTS AND FINANCIAL EXPLOITATION

§ 63.2-1605 was amended to reorganize the list of occurrences that require notification to local law enforcement regarding adult protective services and to add “suspected financial exploitation of an adult” to the list.

WYOMING—ANTIQUÉ FIREARMS EXEMPTION TO PROHIBITION

§ 6-8-102, which prohibits a person who has previously plead guilty to or been convicted of committing or attempting to commit a violent felony from possessing firearms, was amended to exclude “antique firearms” from the prohibition. § 6-8-403 was amended to add a definition of “antique firearm.”*

WYOMING—MINORS AND DOMESTIC VIOLENCE SERVICES

§ 14-1-102 was enacted to give certain unemancipated minors the right to obtain birth certificates; enter into binding contracts for housing, employment, purchase of motor vehicle, and student loans; admission to postsecondary school; establish a bank account; admission to domestic violence or homeless shelter; and receipt of services as a homeless youth or victim of domestic violence. Minors must be at least 16 years of age; willingly living separate and apart from their parents who consent or acquiesce in the separate living; homeless; and managing their own financial affairs. The statute lists what must be included in an affidavit, which, if in good faith, may be relied upon by those entering into contract with the minor. Further, § 14-3-205, regarding mandatory reporting of child abuse and neglect, was amended to provide that the fact that a child who is at least 16 years of age is homeless does not, in and of itself, constitute a sufficient basis for reporting.

WYOMING—PROTECTION OF PARENTAL RIGHTS

§ 14-2-206 was enacted, entitled “Protection of parental rights.” The statute states that “[t]he liberty of a parent to the care, custody and control of their child is a fundamental right that resides first in the parent” and that “[t]he state, or any agency or political subdivision of the state, shall not infringe the parental right as provided under this section without demonstrating that the interest of the government as applied to the parent or child is a compelling state interest addressed by the least restrictive means.”*

*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.

