

Volume 3 | 2017

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 criminal statutes, with protection orders closely following. Provisions concerning families and children and miscellaneous protections for survivors were also a common topic. 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:

- visitation

Idaho:

- protective order in child welfare

Iowa:

- GPS tracking and domestic abuse statutes;
- protective order and justifiable use of deadly force; and
- termination of parental rights.

Kansas:

- custody

Kentucky:

- batterer intervention and inmate drug program; and
- crime victims compensation.
- housing and protection orders and mandatory reporting of domestic violence; and
- temporary orders and custody.

Mississippi:

- fault divorce and domestic violence; and
- protection orders.

New Mexico:

- termination of parental rights and rape

North Dakota:

- confidentiality;
- elder abuse;
- probation; and
- sexual assault protection order.

Oklahoma:

- victim protective order and law enforcement

Utah:

- bigamy;
- domestic violence related amendments;
- sexual extortion;
- stalking; and
- strangulation.

Virginia:

- confidentiality;
- crimes;
- protective orders and absentee voting; and
- residential care facilities.

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

ARKANSAS—VISITATION

§ 9-27-325, regarding visitation, was amended to expressly allow visitation by a parent to a child who is the subject of a juvenile case. Such visitation may be canceled if, among other things, the parent “exhibits behavior that may create an unsafe environment for a child.”

IDAHO—PROTECTIVE ORDER IN CHILD WELFARE

§ 16-1602 was amended to include in the definition of “protective order” orders issued “following an adjudicatory hearing to preserve the unity of the family and to ensure the best interests of the child, pursuant to section 16-1619(10), Idaho Code.” The protective order is to have the same effect as a domestic violence protection order.

IOWA—GPS TRACKING AND DOMESTIC ABUSE STATUTES

The Iowa Legislature amended its statutes governing stalking to include stalking by global positioning satellite (GPS). Specifically, § 708.11 was amended to revise the definition of “course of conduct” to include “repeatedly utilizing a technological device to locate, listen to, or watch a person

without legitimate purpose” and to define stalking to include when:

The person purposefully engages in a course of conduct directed at a specific person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened or to fear that the person intends to cause bodily injury to, or the death of, that specific person or a member of the specific person’s immediate family; and

The person has knowledge or should have knowledge that a reasonable person would feel terrorized, frightened, intimidated, or threatened or fear that the person intends to cause bodily injury to, or the death of, that specific person or a member of the specific person’s immediate family by the course of conduct.

§ 708.11A was enacted to create the crime of unauthorized placement of a global positioning device, which is “when the person, without the consent of the other person, places a global positioning device on the other person or an object in order to track the movements of the other person without a legitimate purpose.”

§ 902.13 was enacted to set forth a minimum sentence for certain domestic abuse assault offenses, providing that a person who has been convicted of a third or subsequent domestic abuse assault offense shall be denied parole or work release until they have served between one-fifth to the maximum term of the sentence. Further, the sentencing court shall determine, after examining all pertinent information, the minimum term of confinement required to be served before a person may be paroled or placed on work release.

§ 903A.2 was amended to state that an inmate required to participate in a domestic abuse treatment program shall not be eligible for a reduction of sentence unless they participate and complete such program as established by the director.

§ 904A.4 was amended to direct the board of parole to develop a risk assessment validated for domestic abuse-related offenses in consultation with the department of corrections. And § 905.16 was created to allow for the supervision of a person placed on probation, parole, work release, or other conditional release for a domestic abuse assault by an electronic tracking and monitoring system.

IOWA—PROTECTIVE ORDER AND JUSTIFIABLE USE OF DEADLY FORCE

The Iowa Legislature enacted legislation authorizing the use of deadly force in certain circumstances. Specifically, § 704.2A was enacted to provide that a person is presumed to have a reasonable belief that deadly force is necessary to avoid injury or risk to one’s life or safety or the life of another in certain circumstances, including unlawful entry onto the person’s premises or unlawfully removing or attempting to remove a person against their will from premises occupied by the person using force. The presumption does not apply, however, when the person against whom force is used sought to remove their child, grandchild, or someone they otherwise have lawful custody or lawful guardianship of. The presumption also does not apply when “[t]he person against whom the force is used has the right to be in, or is a lawful resident of, the dwelling, place of business or employment, or occupied vehicle of the person using force, and a protective or no-contact order is not in effect against that person against whom force is used.”

IOWA—TERMINATION OF PARENTAL RIGHTS

§ 600A.5, regarding termination of parental rights, was amended to allow a petitioner to file the petition in a different county of the same judicial district if the petitioner alleges that they have a legitimate concern for their or the child's safety or security. Under such circumstances the court is directed to keep confidential the residence and domicile of the child and the petitioner.

KENTUCKY—BATTERER INTERVENTION AND INMATE DRUG PROGRAM

§ 439.654 was enacted to set forth required and permissive elements of a reentry drug supervision pilot program for certain offenders. In particular, participants may be ordered to, among other things, comply with domestic violence counseling with a certified domestic violence treatment provider.

KENTUCKY—CRIME VICTIMS COMPENSATION

§ 49.010 was enacted to establish the Kentucky Claims Commission, which assumes the duties of the former Board of Claims, Board of Tax Appeals, and Crime Victims Compensation Board. New § 49.020 sets forth the powers and authority of the Commission. § 346.030, which had established the Crime Victims Compensation Board, was repealed. §§ 346.010 to 346.200 were amended and renumbered to reassign the former Board's duties to the new Commission. In particular, § 346.130 was renumbered as § 49.370 and maintained the \$25,000 maximum award to an individual victim.

KANSAS—CUSTODY

§ 23-3203, which lists the factors a court must consider in determining child custody, residency and parenting time, was amended to revise language regarding domestic abuse. Previously the statute listed "spousal abuse, either emotional or physical." That language was changed to "domestic abuse," including either "[a] pattern or history of physically or emotionally abusive behavior or threat thereof used by one person to gain or maintain domination and control over an intimate partner or household member" or "an act of domestic violence, stalking or sexual assault."

KENTUCKY—HOUSING AND PROTECTION ORDERS AND MANDATORY REPORTING OF DOMESTIC VIOLENCE

The Kentucky Legislature made multiple changes to their statutes regarding domestic violence. First, § 383.300 was enacted to expand protections for tenants who are protected by domestic violence protective orders, interpersonal protective orders, and pretrial release no contact orders, including temporary and emergency orders. These tenants are called "protected tenants." A landlord cannot terminate, fail to renew, refuse to enter into, or otherwise retaliate in the renting or leasing of a residence because of a person's status as a "protected person" (who is not also restrained from contacting another protected tenant). Further, the legislature made it a defense to an action for possession of a rented or leased residential property that the tenant is a protected tenant and the notice to vacate is substantially based on acts which violated the tenant's protective order or led to the issuance of the protective order, including complaints of noise, disturbance, or repeated presence of peace officers. The bill allows for a protected tenant to change the locks to the dwelling after informing the landlord of their intent to do so. A protected tenant, who obtains a valid protection order after entering into a lease or rental agreement, may terminate the lease or rental agreement by providing the landlord with written notice of termination at least thirty days before termination and a copy of the valid protective order. If the protective order is obtained before the lease or rental agreement, the protected tenant would in addition need to demonstrate a safety concern to the landlord that arises after execution of the lease. The released tenant is liable for rent due under the lease or agreement prorated to the effective date of the termination but shall not receive a negative

credit entry, a negative character reference, or be liable for fees due solely to the early termination of the tenancy. A named individual (person restrained by a protective order), regardless of whether the individual is a named party to the lease or rental agreement, is deemed to have interfered with the terminated lease or rental agreement between the landlord and tenant and shall be civilly liable for all economic losses incurred by the landlord for the early lease termination. If the protected tenant and the named individual are co-tenants, a landlord may refuse access to the property to a named individual unless the named individual is specifically permitted access by court order, terminate the named individual's rental agreement or lease, evict the named individual, and seek damages for unpaid rents or any damages resulting from a violation of the order. § 383.302 was enacted to prohibit termination based on the tenant calling the police, and any such term is unenforceable.

The bill also makes changes to the duties of professionals working with victims of domestic abuse. § 209A.010 now includes dating violence and reads, "The purpose of this chapter is to identify victims of domestic violence and abuse and dating violence and abuse, to link those victims to services and to provide protective or therapeutic services for those who choose to accept them." § 403.785 was amended, eliminating the mandatory reporting of all domestic violence in Kentucky, and § 209A.100 was enacted to set forth a more narrow requirement to first discuss the report with a victim before contacting law enforcement. § 209A.110 was enacted to provide that the professional must make a report if the professional believes that the death of a victim is related to domestic or dating violence; child abuse or neglect is involved; or the person suspected of being abused is, due to mental or physical dysfunction, a vulnerable adult unable to protect him or herself without the assistance of others. § 209A.120 was enacted to require law enforcement responding to domestic violence to complete a designated form; if law enforcement suspects that a child or vulnerable adult is being abused, the form must be filed and the incident reported. § 209A.130 was enacted to state that designated professionals must provide victims of both domestic and dating violence with educational information related to domestic and dating violence, including about local domestic and sexual violence programs and information on accessing protection orders. "Professional" under the new § 209A.020 is defined to include physicians, osteopathic physicians, coroners, medical examiners, medical residents, medical interns, chiropractors, nurses, dentists, optometrists, emergency medical technicians, paramedics, licensed mental health professionals, therapists, cabinet employees, child-care personnel, teachers, school personnel, ordained ministers or their denominational equivalents, victim advocates, or any organization or agency employing any of these professionals.

KENTUCKY—TEMPORARY ORDERS AND CUSTODY

§ 403.280, regarding temporary orders of custody, was amended to provide that an agreed upon temporary custody agreement and mutually agreed plan for parenting time shall become the temporary custody order of the court if the court confirms that the agreement adequately provides for the welfare of the child. Further, the amendment added a presumption that in making an order the parents shall have temporary joint custody with equally shared parenting time, rebuttable by a preponderance of the evidence. If the court deviates from any agreement between the parties, specific findings of fact and conclusions of law must be included in the order. Any temporary orders shall also address how physical exchange of the child will take place. Finally, temporary custody orders may be modified when there is a material and substantial change in circumstances.

MISSISSIPPI—FAULT DIVORCE AND DOMESTIC VIOLENCE

§ 93-5-1 was amended to add the language "including spousal domestic abuse" to the seventh

cause for a fault divorce, “habitual cruel and inhuman treatment.” They further added that spousal domestic abuse may be established through “reliable testimony of a single credible witness, who may be the injured party,” that the spouse attempted to cause, or purposely, knowingly, or recklessly caused bodily injury or put the other spouse in fear of imminent serious bodily injury, or that the spouse engaged in a pattern of behavior of threats or intimidation, emotional or verbal abuse, forced isolation, sexual abuse, or stalking, if it rises above unkindness, rudeness, incompatibility, or want of affection.

MISSISSIPPI—PROTECTION ORDERS

§§ 97-3-65 and 97-3-101, regarding statutory rape and sexual battery, respectively, were amended to allow the court upon conviction to issue a criminal sexual assault protection order protecting the victim from the offender. The order must last for a minimum of two years following expiration of any sentence, including probation and parole. The statute makes it a misdemeanor to knowingly violate such an order. § 99-3-7 received a small amendment to reference violation of “criminal domestic violence or sexual assault” protection orders in the context of arrests by law enforcement (previously criminal protection order), and § 93-21-25 was amended to require the clerk to enter the new order along with the previous kinds in the Mississippi Protection Order Registry.

NEW MEXICO—TERMINATION OF PARENTAL RIGHTS AND RAPE

§ 40-16-1 was enacted to allow a biological parent to petition the court to terminate the parental rights of a child’s other biological parent when that other biological parent has been convicted of criminal sexual penetration and that criminal sexual penetration resulted in the conception of the child. The court shall grant the petition if it determines by clear and convincing evidence that the child was conceived as a result of the crime. If the child involved in the proceeding is subject to the Indian Child Welfare Act (ICWA), the burden of proof is beyond a reasonable doubt and the petitioner shall otherwise meet the requirements of ICWA.

NORTH DAKOTA—CONFIDENTIALITY

North Dakota law allows for public access to the records of public entities, with certain exceptions. One exception, codified at § 44-04-18.20, applies to personal information which if released could reasonably be used to locate or identify an alleged victim of domestic violence or other offenses. The statute previously referred to records maintained by a “law enforcement facility,” but was amended to refer instead to a “criminal justice agency” or “correctional facility.” The law also previously stated that the information may be redacted from the record before release, but the amendment removed that language, leaving it simply as exempt.

NORTH DAKOTA—ELDER ABUSE

§ 10-04 was enacted to address financial exploitation of adults 65 or older or otherwise vulnerable. The statute requires qualified individuals, including broker-dealers and investment advisors, to report financial exploitation of covered adults to the department of human services and the commissioner if they reasonably believe it has occurred. They may also delay a transaction or disbursement on the same basis. The statute further provides that the qualified individual is immune from liability for reporting or for delaying the transaction.

NORTH DAKOTA—PROBATION

§ 12.1-32-07.4 was enacted, creating a presumption for probation for certain offenses, unless the

court finds certain aggravating factors or a listed exception applies, including if the offense involved domestic violence.

NORTH DAKOTA—SEXUAL ASSAULT PROTECTION ORDER

§ 12.1-31-01.2 was enacted to create a sexual assault restraining order for “[a]n individual who is the victim of sexual assault or the parent, stepparent, or guardian of a minor who reasonably believes the minor is a victim of sexual assault.” A petition must allege facts sufficient to show name of the alleged victim, the alleged individual who committed the sexual assault, and that the individual committed the sexual assault. If the petition alleges reasonable grounds to believe the individual committed a sexual assault, the court may enter a temporary restraining order pending a full hearing. That order includes prohibitions on the following: harassing, stalking, or threatening the individual requesting the order; appearing at the individual’s residence, school, and place of employment; and any contact with the individual. For the court to issue a final protection order, the court must find, after a hearing, that “there are reasonable grounds to believe the respondent committed sexual assault.”

OKLAHOMA—VICTIM PROTECTIVE ORDER AND LAW ENFORCEMENT

§ 3311 of Title 70 was amended to require Council on Law Enforcement Education and Training (CLEET) certified peace officers to report all criminal proceedings against them and to report when a victim protective order has been issued against the officer, including emergency and final orders of protection. Failure to do so may be cause for CLEET to initiate an action against the officer.

UTAH—BIGAMY

§ 76-7-101 was amended to increase the offense level for the crime of bigamy in certain circumstances. Previously, bigamy was a third degree felony. The amendment added several conditions which elevate it to a second degree felony, including when the accused is convicted during the same prosecution of domestic abuse, child abuse, or human trafficking. The amendment also somewhat limited the definition of bigamy; previously the individual needed to either purport to marry a married person or cohabit with them, but with the amendment the person must both marry and cohabit. The amendment further introduced several affirmative defenses, including that the offender has taken steps to protect the safety of a minor child of a bigamous relationship.

UTAH—DOMESTIC VIOLENCE RELATED AMENDMENTS

Utah amended multiple statutes related to domestic violence. First, § 77-36-1 was amended to expressly include an order issued as a condition of probation within the term “protective order.” § 77-36-2.6, governing pretrial protective orders, was amended to add language requiring courts to “identify the individual designated by the victim to communicate between the defendant and the victim if and to the extent necessary for family related matters.” § 77-36-5.1, concerning conditions of probation for a person convicted of a domestic violence offense, was amended to designate enforcement of restitution to the victim to be in accordance with the Crime Victims Restitution Act. The amendment also created a “continuous protective order” and set out the procedure required for such an order. This order to limit contact between the perpetrator and victim is to be issued with a conviction of a domestic violence offense unless the court determines by clear and convincing evidence that the victim does not have a reasonable fear of future harm or abuse. A perpetrator can request a hearing on the order, but the order shall be in effect while the hearing is pending. Such orders are permanent and can include the following relief:

- Enjoin the perpetrator from threatening to commit or committing an act of domestic violence against a victim, other family, or household member;
- Prohibit the perpetrator from harassing, telephoning, contacting, or otherwise communicating with the victim either directly or indirectly;
- Prohibit the perpetrator from going to the victim’s residence, school, workplace, or a specific place frequented regularly by the victim or any designated family or household members;
- Direct the perpetrator to pay restitution to the victim; and
- Any other order considered necessary to protect the victim and members of the victim’s family or household members.

§ 77-36-5.1 now requires the victim receive notice of the imminent release of the person who is subject to the continuous protective order before they are released if the victim has provided the law enforcement agency contact information. Law enforcement shall also provide written notice to the person being released that a violation of the continuous protective order is a class A misdemeanor, a separate domestic violence offense, and subject to increased penalties. Conforming amendments were made to add the language “or continuous protective order” to the types of protective orders contemplated under §§ 77-36-2.4, 77-36-5, 75B-7-105, and 75-7-115. Finally, § 75B-7-115, regarding dismissal of a protective order, was amended to include the language “[n]otwithstanding the other provisions of this section, a continuous protective order may not be modified or dismissed except as provided in Subsection 77-36-5.1(6).”

UTAH—SEXUAL EXTORTION

§ 76-5b-204 was enacted to create the crime of sexual extortion. The statute generally criminalizes individuals 18 or older who attempt to coerce, successfully or not, a victim into sex or into producing a sex tape by threatening them or by threatening to distribute an intimate image or video of them. The crime becomes aggravated sexual extortion under certain conditions, including when the individual occupied a position of special trust in relation to the victim.

UTAH—STALKING

§ 76-5-106.5 was amended to allow a conviction for stalking or attempted stalking to serve as an application for a permanent criminal stalking injunction. The statute previously only referred to a conviction for stalking.

UTAH—STRANGULATION

§ 76-5-103 was amended to expand the definition of aggravated assault to include any act of strangulation. The act is enhanced from a third degree felony to a second if it results in serious bodily injury or produces loss of consciousness.

VIRGINIA—CONFIDENTIALITY

§ 2.2-3706, which generally requires law enforcement to provide certain records to the appropriate parties, was amended to require records of completed unattended death investigations to be released to the parent or spouse of the decedent or other family, unless the person is a person of interest or a suspect.

VIRGINIA—CRIMES

§ 18.2-57.3 allows persons charged with a first offense of assault and battery against a family or

household member to be placed on local community-based probation without a finding of guilt, pursuant to certain requirements. It was amended to add the requirement that the person waive their right to appeal and consent to a finding of facts sufficient to justify a finding of guilt. The person has 10 days to move to withdraw consent, whereupon a hearing is held, guilt adjudicated, and if guilty, sentence imposed accordingly.

VIRGINIA—PROTECTIVE ORDERS AND ABSENTEE VOTING

§ 24.2-700 was amended to add “any person granted a protective order” to the list of registered voters that may vote by absentee ballot. § 24.2-701 was amended to require the voter, in their application for absentee ballot, to include the name of the county or city in Virginia or the state that issued the protective order.

VIRGINIA—RESIDENTIAL CARE FACILITIES

§§ 37.2-416 and 37.2-506, which govern hiring and shared living arrangements in licensed residential care facilities and community services boards, respectively, were amended to require the organization to conduct a background check of, among others, employees, those in shared living arrangements, applicants to be a sponsored residential service provider, and anyone employed or living with a sponsored residential service provider. The organization may not hire or permit to share a living arrangement anyone convicted of certain offenses. The sections also contain exceptions to that rule. Previously, one exception allowed the organization to hire someone convicted of not more than one misdemeanor offense of assault and battery or the same against a family or household member if 10 years had elapsed, unless they committed the offense while employed in a direct care position. The amendment expands the exception to also apply to anyone sponsored as a residential service provider or permitted to enter into a shared living arrangement. It also created a similar exception for sponsored residential service providers with adults living in the home or employees who fit the same facts.

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.

