

# Volume 4 | 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 protections for survivors in areas such as confidentiality and landlord-tenant, followed closely by provisions regarding protection orders, prevention efforts, and measures concerning families and children. Revisions to criminal statutes remained common as well. Please direct any comments or inquiries to Kevitt Adler, Program Attorney, at [kadler@ncjfcj.org](mailto:kadler@ncjfcj.org), or Amanda Kay, Senior Program Attorney, at [akay@ncjfcj.org](mailto:akay@ncjfcj.org).

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

#### Connecticut:

- domestic violence crimes

#### Florida:

- domestic violence injunctions

#### Indiana:

- fatality reviews

#### Maine:

- domestic violence crimes; and
- landlord and tenant, eviction.

#### Montana:

- expungement

#### Nebraska:

- protection orders

#### Nevada:

- child protection;
- discrimination;
- education;
- guardian and ward;

- landlord tenant;
- parental termination;
- protection orders; and
- sealing criminal records.

### **New York:**

- task forces

### **North Dakota:**

- confidentiality

### **Oklahoma:**

- legal practitioner training

### **Tennessee:**

- child support;
- firearms; and
- protection orders and firearms.

### **Vermont:**

- child abuse; and
- victims' rights.

### **Washington:**

- crimes

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

### **CONNECTICUT—DOMESTIC VIOLENCE CRIMES**

§ 53a-181d was amended to redefine “course of conduct” for purposes of second degree and third degree stalking to include the use of electronic or social media and “emotional distress” to mean significant mental or psychological suffering or distress that may or may not require medical or other professional treatment or counseling. § 53a-181e was amended to broaden the definition of stalking in the third degree to include recklessly causing another person to suffer emotional distress.

§§ 53a-64aa, 53a-64bb, and 53a-64cc were amended to define “suffocation” as the obstruction of a person’s nose or mouth with the intent to impede the ability of that person to breathe. The new definition of suffocation is included in the offenses of first degree, second degree, and third degree strangulation or suffocation.

§§ 53a-222 and 53-a-222a were amended to enhance penalties for first degree and second degree violation of conditions of release when a defendant violates conditions of release that involve:

- imposing any restraint upon the person or liberty of a person in violation of the conditions of release; or

- threatening, harassing, assaulting, molesting, sexually assaulting, or attacking a person in violation of the conditions of release.

§ 54-91a was amended to provide that no defendant convicted of a felony involving family violence for which the punishment may include imprisonment may be sentenced or have the case otherwise disposed of until a written report of investigation by a probation officer has been presented to and considered by the court. A presentence investigation may not be waived by the sentencing judge or prosecuting official when the defendant is convicted of a felony involving family violence, the punishment for which may include imprisonment.

### **FLORIDA—DOMESTIC VIOLENCE INJUNCTIONS**

§§ 741.30 and 784.046 were amended to extend the repeal dates for exemptions from public record requirements for personal identifying and location information of petitioners requesting notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, dating violence and other actions related to the injunction held by the clerks and law enforcement agencies.

### **INDIANA—FATALITY REVIEWS**

§ 12-18-8-6, regarding county domestic violence fatality review teams, was amended to expand their scope to include near fatalities. § 12-18-8-8 was amended to list some relevant records to review, including medical records, autopsy reports, and mental health reports. § 12-18-8-17 was amended to make members of a domestic violence fatality review team and individuals invited to meetings immune from liability with some exceptions, among other things. §§ 12-8-9-1, et seq., were enacted to create a statewide domestic violence fatality review committee to, among other things, identify trends and advise the general assembly and governor.

### **MAINE—DOMESTIC VIOLENCE CRIMES**

§ 17-1204 was amended to provide that when a person is convicted of certain domestic violence crimes and the court does not order a condition of probation that the person complete a certified batterers' intervention program, the court shall make findings on the record of the court's reasons for not ordering the person to complete a batterers' intervention program. If a plea agreement submitted to the court does not contain a provision ordering the person to complete a batterers' intervention program, the attorney for the State shall indicate, in a writing submitted to the court, the basis for the plea agreement's not including completion of a batterers' intervention program as a condition of probation.

### **MAINE—LANDLORD AND TENANT, EVICTION**

§ 14-6002 was amended to include termination of a tenancy at will upon 7 days' written notice in the event the landlord can show that the tenant or the tenant's guest or invitee is the perpetrator of violence, a threat of violence or sexual assault against another tenant, a tenant's guest, the landlord or the landlord's employee or agent. This provision does not apply to a tenant who is a victim of domestic violence, sexual assault, or stalking who has taken reasonable action under the circumstances to comply with the landlord's request for protection of the tenant, another tenant, a tenant's guest or invitee, the landlord or the landlord's employee or agent of the landlord's property.

## **MONTANA—EXPUNGEMENT**

§ 46-18-1101 was enacted to allow individuals convicted of misdemeanor offenses to petition the court to expunge their records. The court is directed to expunge the records if the person meets certain criteria. However, expungement may not be presumed if the offender has a conviction for, among other things, partner or family member assault, stalking, or violation of a protective order.

## **NEBRASKA—PROTECTION ORDERS**

§ 28-311.11 was enacted to allow victims of sexual assault to file a petition for a sexual assault protection order with the clerk of the district court. The petition must state the events and dates of acts constituting sexual assault. The order is effective for one year but may be renewed. The renewal may be ex parte pending a hearing if it reasonably appears that the petitioner risks irreparable harm if the court waits for notice. New § 28-311.12 directs courts to give full faith and credit to foreign sexual assault protection orders if the issuing court had personal and subject matter jurisdiction; the respondent had reasonable notice and an opportunity to be heard; and the order was not rendered against both parties, unless the respondent in that proceeding filed a cross petition and the issuing court made specific findings of sexual assault offenses against both parties. § 25-2740, defining domestic relations matters, and § 28-311.04, providing for a higher level offense if conduct was in violation of a protection order, were both amended to include sexual assault protection orders. § 28-1206, which already prohibited possession of deadly weapons by certain people, expanded the prohibition to subjects of harassment or sexual assault protection orders. § 43-283.01 was amended to state that if a child was conceived as a result of sexual assault and the biological parent was convicted of the crime, that parent is not a part of the child's family for the purpose of the law's requirement that reasonable efforts be taken to preserve and reunify the family. Finally, § 42-924 was amended to allow renewal of a domestic violence protection order for one year.

## **NEVADA—CHILD PROTECTION**

§ 432B.393 was amended to allow child protection agencies to create an in-home safety plan to help protect a child and to make whether they did so a factor for a court to consider in determining whether the agency made reasonable efforts to protect the child. "In-home safety plan" is defined as a plan created by an agency to ensure the protection of a child in their home, including managing potential threats.

## **NEVADA—DISCRIMINATION**

§ 217.420 was amended to require that any applicant for a grant from the Account for Aid for Victims of Domestic Violence must provide services without discrimination on the basis of sexual orientation, gender identity, or expression. The statute previously only listed the bases of race, religion, color, age, sex, marital status, national origin, and ancestry.

## **NEVADA—EDUCATION**

Senate Bill 108 was enacted to instruct the State Board of Education to create a subcommittee to study the manner in which to include certain instruction in the three units of required social studies credits, including among other things domestic violence. The Board was directed to submit a report to the Legislature to consider at the next legislative session.

## **NEVADA—GUARDIAN AND WARD**

As part of a substantial revision of the guardianship statutes, the provisions for minor wards were removed from NRS Chapter 159, revised, and reenacted in new Chapter 159A. In particular, §159.061, which formerly stated that the parents of a minor, if qualified and suitable, are preferred over all others for appointment as guardian for a minor, was repealed. In its place, § 159A.061 was enacted to establish a presumption that a parent who petitions for guardianship of a minor is suitable to serve as guardian, except when a countering presumption is created by showing that:

- the parent is unable to provide for the basic needs of the minor;
- the parent poses a significant risk of physical or emotional danger to the minor; or
- the minor has not been in the care, custody, and control of the parent for the six months immediately preceding the filing of the petition.

Additional factors for the court to consider on this issue include whether the parents or another person has engaged in domestic violence against the proposed protected minor, a parent of the minor, or any other person who resides with the minor. In the event of competing petitions, any finding of unsuitability of a parent must be supported by clear and convincing evidence after a hearing on the merits or an evidentiary hearing. The court is authorized to award temporary guardianship, supported by findings of suitability, pending a trial or evidentiary hearing. The court always is required to act in the best interests of the proposed protected minor.

## **NEVADA—LANDLORD TENANT**

Nevada law allows tenants who are victims of domestic violence to terminate their lease on 30 days' notice, accompanied by certain documentation. § 118A.345 was amended to include victims of harassment, sexual assault, and stalking.

## **NEVADA—PARENTAL TERMINATION**

§ 128.105 was amended to add as a basis for terminating parental rights that the child was conceived as a result of a sexual assault for which the natural parent was convicted.

## **NEVADA—PROTECTION ORDERS**

§§ 33.110 et seq., were enacted to adopt the Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act. In particular, § 33.146 allows state courts to enforce Canadian protection orders similarly to state orders, as long as the order identifies the parties; the order is valid and not expired; the issuing court had personal and subject matter jurisdiction; and the adverse party had reasonable notice and the opportunity to be heard. Also, § 33.143 directs law enforcement to enforce facially valid orders.

## **NEVADA—PROTECTION ORDERS**

§ 33.020, regarding domestic violence protection orders, was amended to allow a hearing on an extended protection order to be continued if the adverse party has not been served in time for the original hearing date. The law previously required that a hearing on an application for an extended order be held within 45 days of the application of the order. The amendment allows the court to set a date for a second hearing within 90 days of the first, if the adverse party was not served and fails to appear at the first hearing and there is a showing that law enforcement after due diligence was unable to serve or that the adverse party sought to avoid service by concealment. Under similar conditions, the court can set a third hearing within 90 days of the second. § 33.080 was amended to

provide that a temporary order is extended for those periods. Also, § 33.060 was amended to require law enforcement to serve notice of the second and third hearings.

### **NEVADA—SEALING CRIMINAL RECORDS**

§179.245 was amended in two separate bills to revise the waiting period for persons convicted of certain crimes before being authorized to petition the court for sealing of their records of criminal history relating to the conviction. In particular, for persons convicted of a battery which constitutes domestic violence (§ 200.485), other than a felony, the period remains seven years. For persons convicted of misdemeanor battery (§ 200.481), harassment (§ 200.571), stalking (§ 500.575), or violation of a temporary or extended protection order, the waiting period is two years after the date of release from actual custody or after the date when the person is no longer under a suspended sentence, whichever occurs later. For other misdemeanor crimes, the waiting period was reduced to one year.

### **NEW YORK—TASK FORCES**

§ 216 of the Executive Law was amended to create a hate crime task force within the bureau of criminal investigation. Its duties include issuing reports informing people of prohibitions against discrimination on the basis of, among other things, domestic violence victim status. § 212 of the Judiciary Law was also amended to make translation services available to all family and supreme courts to assist in the translation of protection orders, to require the court to report on the use of translation services, and to direct the office of court administration to oversee a pilot program to develop best practices for interpretation for orders of protection in criminal court. § 169 of the Family Court Act and §§ 240 and 252 of the Domestic Relations Law were amended to require the office of court administration to provide translation and interpretation of civil orders of protection.

### **NORTH DAKOTA—CONFIDENTIALITY**

§ 14-07.1-18 was amended to specify that a domestic violence shelter’s identifying information is exempt from disclosure pursuant to public records laws.

### **NORTH DAKOTA—CONFIDENTIALITY**

North Dakota amended several sections related to victim confidentiality. § 12.1-34-01 now contains a broader definition of victim, including those who suffer harm as a result of the commission or attempted commission of a crime or delinquent act against them (previously only criminal act, although specifying the standard of proof of probable cause). “Victim” also includes family of a minor, incompetent, incapacitated, or deceased person, and the amendment expanded the definition of family member to include grandchildren as well as any person with a relationship substantially similar to the enumerated ones (spouse, child, sibling, parent, grandparent, grandchild, legal guardian, or custodian). § 12.1-34-02 was amended to give victims additional rights, including the right to prevent disclosure of confidential information and to be allowed to confer with the prosecuting attorney. They must also be advised of their right to seek the advice of an attorney. New § 12.1-34-08 directs the attorney general to develop a card containing the rights of victims to be distributed to all crime victims.

### **OKLAHOMA—LEGAL PRACTITIONER TRAINING**

§ 215.28 of Title 19 was amended to require the District Attorneys Council, subject to available funding, to provide and coordinate training and continuing legal education for district attorneys and

their assistants to include dynamics of domestic violence, impact of domestic violence on victims and their children, identifying dominant aggressor, tactics and behaviors of batterers, victim protection orders and full faith and credit, and rights of victims.

§ 60.20 of Title 22 was amended to require the Administrative Office of the Courts, subject to available funding to include the same topics in its annual educational training for members of the judiciary.

### **TENNESSEE—CHILD SUPPORT**

§ 36-2-311, regarding parentage, was amended to limit retroactive child support to five years unless the court determines for good cause a different award in the interests of justice. Good cause includes among other things that the noncustodial parent used threats to delay the imposition of support, or that the custodial parent reasonably feared that establishment of parentage would result in domestic abuse. § 36-5-101, regarding divorce, was similarly amended.

### **TENNESSEE—FIREARMS**

§ 40-14-109 was amended to expand the information a court must give a defendant charged with a domestic violence offense before accepting a guilty plea or allowing them to proceed to trial. The new information generally relates to federal and state laws regarding firearm possession by domestic violence offenders; the statute was previously much less specific in the instructions it prescribed. The bill also amended § 39-13-111 to require that a defendant pleading to or found guilty of a domestic violence offense not only terminate possession of firearms by any lawful means, such as transfer to a third party, but also complete an affidavit of firearms dispossession.

### **TENNESSEE—PROTECTION ORDERS, FIREARMS**

§§ 36-3-626 and 39-17-1365 were enacted to provide that a person who is granted an order of protection is authorized for twenty-one calendar days to carry any handgun that the person legally owns or possesses so long as that person carries a copy of the order of protection on their person. A person who does not apply for a temporary handgun carry permit within this time period shall not be authorized to carry a handgun under this provision once that time period has expired. A person who applies for a temporary handgun carry permit may continue to carry a handgun after the time period has expired while the application is pending, so long as the person keeps a copy of the order of protection and the application receipt provided by the department on their person.

### **VERMONT—CHILD ABUSE**

§ 3401 et seq. of Title 33 were enacted to adopt a number of principles relating to trauma-informed care and addressing early childhood adversity. The act creates the Adverse Childhood Experiences Working Group, tasked with looking at childhood trauma and how to address it, including analyzing existing services, identifying gaps, and considering legislative proposals.

### **VERMONT—VICTIMS' RIGHTS**

§ 3281 of Title 13, titled the Bill of Rights for Sexual Assault Survivors, was enacted to give sexual assault survivors certain rights, including the right to a medical forensic examination at no cost and related rights; the right to consult with a sexual assault advocate; the right to information regarding protective orders; the right to information regarding restitution; and the right to information regarding confidentiality. § 315 of Title 14, regarding intestate succession, was also amended to prevent a

parent from inheriting from a child conceived of sexual assault who is the subject of a parental rights and responsibilities order. § 1103 of Title 14 was amended to specifically allow a court in a protection order to forbid telephone, e-mail, or other electronic communication, as well as third party communication (previously only phone). The communication provision may now apply only to the plaintiff or the plaintiff's children (previously plaintiff or "the children"). § 1104 of Title 14, regarding ex parte orders, was amended to include a no-contact provision with similar language.

## **WASHINGTON—CRIMES**

§ 9A.44.115, which defines voyeurism, was amended to provide for two degrees of offense. Previously the statute only defined voyeurism in the first degree as when, for the purpose of arousing or gratifying anyone's sexual desire, a person knowingly views, photographs or films another person without their knowledge and consent while in a place with a reasonable expectation of privacy, or their intimate areas when they reasonably expect privacy, whether in public or private. The amendment adds voyeurism in the second degree. Second degree voyeurism removes the sexual desire component and replaces it with intent to distribute or disseminate the photograph or film. The amendment provides that second degree voyeurism is not a sex offense for purposes of sentencing or sex offender registration.

### 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](mailto:fvdinfo@ncjfcj.org).

