

# Volume 6 | 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!

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 revisions to protection order and criminal statutes. Miscellaneous protections for survivors were other common topics. Please direct any comments or inquiries to Lynelle Hartway, Program Manager, at [lhartway@ncjfcj.org](mailto:lhartway@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:

**Alaska:**

- violation of protective order

**Colorado:**

- expungement

**Connecticut:**

- stalking protection orders
- bail and pretrial procedures
- protection orders and schools

**Florida:**

- child welfare and domestic violence
- batterers' intervention program

**Hawaii:**

- firearms

**Maryland:**

- gambling
- firearms
- advanced health care directives

**Missouri:**

- domestic assault and address confidentiality

**Nevada:**

- child care licensing

**North Carolina:**

- domestic violence homicide
- protection orders

**Ohio:**

- protection orders

**Oregon:**

- harassment
- visitation orders involving deployed parents
- certificate of good standing

**South Carolina:**

- victim advocacy

**Texas:**

- child protection order
- protective orders
- foreign judgments
- education and dating violence
- bond
- evidence
- protective orders and confidentiality
- definition of family violence

- confidential communications
- effect of protection order for ward
- writ to retrieve personal property

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

### **ALASKA—VIOLATION OF PROTECTIVE ORDER**

Alaska amended several provisions related to enforcement and violation of protective orders. § 11.56.740 was amended to provide that for purposes of the crime of violating a protective order, a protective order means an order that is recognized, as specified. § 12.30.027 was amended to prohibit judges from ordering or permitting a person to return to a petitioner's residence or place of employment if the petitioner has a recognized protective order directed against the person. § 12.55.011 was amended to require the court to provide a victim at the time of sentencing with certain information about an offender's sentence or release, if practicable. § 12.65.130 was amended to require the state child fatality review, with certain exceptions, to review a report of a death of a child within 48 hours of the report being received by the medical examiner, if a recognized protective order has been in effect during the previous year in which the petitioner or respondent was a member of the deceased child's immediate family or household. Finally, § 18.66.140 was amended to provide that a protective order issued in another jurisdiction has the same effect and must be recognized and enforced in the same manner as a protective order issued by a court of the state, if the protective order is issued by a court of the United States, a court of another state or territory, a United States military tribunal, or a tribal court; related to domestic violence; and entitled to full faith and credit.

### **COLORADO—EXPUNGEMENT**

Colorado amended and enacted several new provisions relating to expungement of juvenile records. In particular, § 19-1-306 was amended to require the court each year to review juvenile court files and to send the notice to the prosecuting attorney that effectively begins the process of possible expungement for certain offenses. Misdemeanors involving domestic violence are among the offenses for which the court is directed to send the notice.

### **CONNECTICUT—STALKING PROTECTION ORDERS**

§ 46b-16a, which provides for protection orders for victims of sexual abuse, sexual assault, or stalking, was amended to add a definition of stalking as "two or more willful acts, performed in a threatening, predatory or disturbing manner of: harassing, following, lying in wait for, surveilling, monitoring or sending unwanted gifts or messages to another person directly, indirectly or through a third person, by any method, device or other means, that causes such person to reasonably fear for his or her physical safety." The statute was further amended to allow applicants to request their location information not be disclosed if the disclosure would jeopardize the health, safety or liberty of the applicant or the applicant's children.

§54-208 was amended to allow a victim of domestic violence, sexual assault, or child abuse seeking compensation from the Office of Victim Services to withhold information regarding health insurance or treatment information if the victim believes disclosure would cause undue harm.

§ 54-209 was amended to provide that when family violence has been alleged, the Office of Victim Services or, on review, a victim compensation commissioner may order the payment of compensation for personal injury suffered by a victim as reported in an application for a restraining

order or civil protection order, an affidavit supporting such an application, or on the record of the court, provided such restraining order or civil protection order was granted following a hearing or as disclosed to a domestic violence counselor or a sexual assault counselor.

### **CONNECTICUT—BAIL AND PRETRIAL PROCEDURES**

§ 54-64a, concerning pretrial procedures, was amended to prohibit the court from imposing financial conditions of release on an arrested person charged with a misdemeanor offense unless the person is charged with family violence as defined. It also amended § 54-53a to provide that if a person is detained for a misdemeanor that is a family violence crime, the court shall remove the financial conditions on release unless the court makes a finding on the record that there is a likely risk the person will fail to appear in court, attempt to obstruct justice or intimidate a juror or witness, or engage in conduct that threatens the safety of another person.

### **CONNECTICUT—PROTECTION ORDERS AND SCHOOLS**

Previous law provided for notification by the clerk of the court to schools and institutions of higher education of restraining orders, civil protection orders, and standing criminal protective orders affecting students. Connecticut amended several sections to clarify that such notice was required only if the victim provided the clerk with the school's name and address, specifically, §§ 46b-15, 46b-16a, 46b-38c, 53a-40e, 54-1k, and 54-82r. § 46b-15 was further amended to provide that the school of a minor child protected by the protection order must also be notified, if the victim so requests and provides the school's name and address.

### **FLORIDA—CHILD WELFARE AND DOMESTIC VIOLENCE**

§ 39.301, related to initiation of protective investigations in child welfare, was amended to require a separate safety plan to be issued by a child protective investigator for a perpetrator of domestic violence if the perpetrator can be located using reasonable efforts. Also, § 39.504, concerning injunctions in child welfare, was amended to require that if there is a pending dependency hearing regarding a child whom an injunction is sought to protect, the same judge must hear both proceedings and provides that the court may enter an injunction based on specified evidence if the alleged offender cannot be located after a diligent search.

### **FLORIDA—BATTERERS' INTERVENTION PROGRAM**

§ 741.281 was amended to specify that a person must complete a batterers' intervention program ordered as a condition of probation in certain circumstances. § 741.283 was amended to increase the minimum term of imprisonment for domestic violence in certain circumstances, including commission of domestic violence that intentionally causes bodily harm in the presence of a child under the age of 16 years who is a family or household member of the victim or perpetrator. § 741.30 was amended to prohibit the award of attorney fees in specified domestic violence proceedings. Finally, § 775.08435 was amended to prohibit the withholding of adjudication of guilt for a crime of domestic violence as specified unless the state attorney requests it in writing or the court makes written findings that the withholding of adjudication is reasonably justified.

### **HAWAII--FIREARMS**

§ 134-2 governs permits to acquire firearms. The statute was amended to require notice when an application is denied because the applicant is prohibited from owning or possessing a firearm, as follows:

In all cases, the chief of police of the applicable county shall, within ten business days from the date of denial, send written notice of the denial including the identity of the applicant and the reasons for the denial to the prosecuting attorney in the county where the permit was denied,

the Attorney General, the United States Attorney for the District of Hawaii, and the director of public safety;

If the permit to acquire was denied because the applicant is subject to a protection order, the chief of police shall, within three business days from the date of denial, send written notice of the denial to the court that issued the order;

When the director of public safety receives notice that an applicant has been denied a permit because of a prior criminal conviction, the director of public safety shall determine whether the applicant is currently serving a term of probation or parole, and if the applicant is serving such a term, send written notice of the denial to the applicant's probation or parole officer.

## **MARYLAND—GAMBLING**

§ 9-1A-33 of the State Government Article was enacted to enumerate the stated purposes of the already-existing Problem Gambling Fund in the Department of Health and Mental Hygiene, including services for victims of domestic violence.

## **MARYLAND—FIREARMS**

§ 5-101 of the Public Safety Law was amended to provide that, for purposes of firearm regulation, the definition of "convicted of a disqualifying crime" includes a case in which a person received probation before judgment for assault in the second degree that is a domestically related crime.

## **MARYLAND—ADVANCED HEALTH CARE DIRECTIVES**

§ 5-602 of the Health-General Law provides that any competent individual may make a written or electronic advance directive regarding the provision of health care to that individual or the withholding or withdrawal of health care from the individual. This provision was amended to prohibit an individual from making decisions about health care if the individual is the subject of an interim, temporary, or final protection order. Also, § 5-605, which provides that when a health care agent has not been appointed, specified individuals or groups may make decisions about health care for a person who has been certified to be incapable of making an informed decision or whose health care agent is unavailable, was amended to provide that an individual may not make decisions about health care under these circumstances if the individual is the subject of an interim, temporary, or final protective order.

## **MISSOURI—DOMESTIC ASSAULT AND ADDRESS CONFIDENTIALITY**

§ 565.076 was amended to provide that the offense of domestic assault in the fourth degree is a class A misdemeanor unless the person has previously been found guilty of the offense of domestic assault or any assault offense which if committed in this state two or more times would be a violation of this section, in which case it is a class E felony. The offenses described in this subsection may be against the same or a different domestic victim. Also, § 589.664 was enacted to provide that no person or entity shall be compelled to disclose an individual's actual address during discovery or a proceeding before a court or other tribunal if the person is participating in the address confidentiality program unless:

There is a reasonable belief that the address is needed in order for the investigation, prosecution, or litigation to proceed; and

There is no other way of obtaining the information.

The program participant shall have an opportunity to present evidence about the potential harm to

safety if the address is disclosed. The court shall consider if the potential harm to the safety of the participant is outweighed by the interest in disclosure. The court will give the secretary proper notice before an individual who is accepted into the program is ordered to disclose his or her actual address, and the secretary shall have the right to intervene in any civil proceeding in which a court is considering ordering a participant to disclose his or actual address.

### **NEVADA—CHILD CARE LICENSING**

Nevada amended a number of laws regarding the licensing of child care facilities. § 431A.170, as amended, requires the Division of Public and Behavioral Health to perform a background check on every applicant for a license, as well as all employees and most residents over the age of 18, to determine whether the person has been convicted of, among other things, a crime of domestic violence pursuant to § 33.018.

### **NORTH CAROLINA—DOMESTIC VIOLENCE HOMICIDE**

§ 14-17 was amended to provide that when murder perpetrated is with malice against a spouse, former spouse, person with whom the defendant lives or has lived, a person with whom the defendant is or has been in a dating relationship, or a person with whom the defendant shares a child in common, there shall be a rebuttable presumption that the murder was willful, deliberate, and premeditated and it shall be deemed to be murder in the first degree if the perpetrator has been convicted of one of the following offenses involving the same victim:

An act of domestic violence;

A violation of a domestic violence protective order when the same victim is the subject of the domestic violence protective order;

Communicating a threat;

Stalking;

Cyberstalking; or

Domestic criminal trespass.

### **NORTH CAROLINA—PROTECTION ORDERS**

§ 50B-4 was amended to ensure that domestic violence victims are protected by clarifying that a valid protective order remains in effect at the trial court level throughout the pendency of an appeal by an aggrieved party, unless the court finds that a stay is necessary in the interest of justice. Also, § 50B-3 was amended to provide that upon the written request of either party at a hearing after notice or service of process, the court may modify any protection order after a finding of good cause.

### **OHIO—PROTECTION ORDERS**

§ 2929.27 was amended to specify the circumstances when service of a protection order or consent agreement upon a person is not necessary for a person to be convicted of the offense of violating a protection order. Specifically, the prosecutor need not prove that a protection order or consent agreement was served if they prove the defendant was shown a copy of it or a judge, magistrate, or law enforcement officer informed the defendant that a protection order or consent agreement had been issued and defendant recklessly violated its terms.

### **OREGON—HARASSMENT**

§ 166.065 was amended to provide that harassment is a Class A misdemeanor if the victim of the offense is a family or household member of the person committing the offense and the offense is committed in the presence of the victim's minor child or stepchild or minor residing within the household of the person or victim. It also defines "electronic threat" and "family or household

member” for purposes of harassment.

### **OREGON—VISITATION ORDERS INVOLVING DEPLOYED PARENTS**

§ 107.145 was amended to provide that courts should prioritize hearing family law matters involving a deployed parent or a parent whose deployment is imminent, avoid unnecessary delays or continuances, and ensure that deployed parents are not denied access to their children because of their deployment. Further, when entering a temporary order, the court may include a provision allowing or requiring reasonable visitation between the child of a deployed parent and a stepparent, grandparent or other family member related to the child with whom the child has an ongoing relationship. The court shall consider the best interest of the child factors and whether awarding visitation will facilitate the child’s contact with the deployed parent. For purposes of this subsection, a legal parent is presumed to act in the best interests of the child. In making an order under this subsection, the court shall apply a preponderance of the evidence standard.

### **OREGON—CERTIFICATE OF GOOD STANDING**

Chapter 137 of the Oregon Laws, 2017, was amended by enacting several temporary provisions, codified without section numbers and placed following § 137.226, to create a process for an individual convicted of certain offenses, which can include domestic violence offenses, to obtain a certificate of good standing if they were compliant with all sentencing provisions, which may include batterer’s intervention or other programs, and met other stated requirements. An employer of an individual with a certificate of good standing is presumed not to be negligent, including against a claim for negligent hiring. These provisions will be automatically repealed on January 2, 2022.

### **SOUTH CAROLINA—VICTIM ADVOCACY**

South Carolina passed the South Carolina Crime Victim Services Act, enacting a number of new laws relating to crime victims’ assistance. § 1-7-1110 was enacted to create a new division of the Attorney General’s office, the South Carolina Crime Victim Services Division. § 1-7-1100 was enacted to eliminate the State Office of Victim Assistance, the South Carolina Crime Victim Ombudsman, and the portion of the Office of Highway Safety and Justice Programs of the Department of Public Safety that administers victim grant and assistance programs, including grants from the Office on Violence Against Women, and transfer them to the new division. Conforming amendments were made to several other statutes.

### **TEXAS—CHILD PROTECTION ORDER**

§ 262.201 of the Family Code, related to certain hearings in suits affecting the parent-child relationship involving the Department of Family and Protective Services, was amended to require the court to issue an appropriate protective order if it finds that a child requires protection from family violence, as defined, by a member of the child’s family or household.

### **TEXAS—PROTECTIVE ORDERS**

Texas amended several sections of the Family Code, primarily to require certain petitions to include a statement regarding whether criminal protective orders under Chapter 7A or Article 17.292 of the Code of Criminal Procedure, or a civil protective order under Title 4 of the Family Code, are in place regarding any party to the suit or a child of any party. § 6.405, regarding

dissolution of marriage; § 102.008, regarding suits affecting the parent-child relationship; and § 160.6035, regarding proceedings to adjudicate parentage, were so amended. § 6.405 previously contained language with respect to civil protective orders, but not the other types of orders.

### **TEXAS—PROTECTIVE ORDERS**

§ 2.273 of the Code of Criminal Procedure was amended to list to whom a law enforcement officer may release a child taken pursuant to § 262.104 of the Family Code (related to taking possession of a child in an emergency without a court order) and to require the officer to take certain other precautionary acts before releasing them. The law requires that the officer search the NCIC protection order database, as well as verify that the person to whom the child is released does not have a protective order issued against them.

### **TEXAS—FOREIGN JUDGMENTS**

§§ 22.0041 and 22.022 of the Government Code were amended to direct the supreme court to adopt rules limiting comity given to foreign judgments and arbitration awards involving marriage and parent-child relationships. Although the substantive limitations in the statute make general reference to public policy and constitutional rights, the language in the bill itself, 2017 Tex. Sess. Law Serv. Ch. 771 (H.B. 45), notes among other things that the Family Code should not be applied to enforce a foreign judgment if the foreign law does not take into account, among other things, whether domestic violence has occurred or is likely to occur in the future.

### **TEXAS—EDUCATION AND DATING VIOLENCE**

§ 51.9366 of the Education Code was enacted to require that postsecondary educational institutions not take disciplinary action against a student who reports certain acts, including dating violence, for any violation by the student of the institution's code of conduct occurring at or near the time of the incident, regardless of the location of the incident, other than a report of the student's own commission of one of the covered acts.

### **TEXAS—EDUCATION AND DATING VIOLENCE**

§ 51.9365 of the Education Code was enacted to require that postsecondary educational institutions allow students to report dating violence and stalking, among other things, anonymously by electronic means.

### **TEXAS—BOND**

§ 17.032 of the Code of Criminal Procedure was amended to revise part of the definition of "violent offense," namely simple assault, to include only assaults that involve domestic violence, as defined in § 71.004 of the Family Code. The definition still includes separate sections for numerous other offenses, including sexual assault and aggravated assault. The same section directs a magistrate to release a defendant on personal bond if, among other things, the defendant is not charged with and has not previously been convicted of a violent offense. The change appears to make bond easier to get in general for those charged with assault, while maintaining the magistrate's ability to set bond for those charged with domestic violence-related assault.

### **TEXAS—EVIDENCE**

§ 38.371 of the Code of Criminal Procedure was amended to expand the use of certain evidentiary rules to certain injuries committed against a child, elderly individual, or disabled individual, defined in

§ 22.04 of the Penal Code, when the individuals involved have a family or dating relationship. The evidentiary rule, set forth in § 38.37 of the Code of Criminal Procedure, allows under certain conditions the admission of evidence of prior bad acts committed by the defendant against the victim for the purpose of proving either's state of mind or the relationship between the two.

### **TEXAS—PROTECTIVE ORDERS AND CONFIDENTIALITY**

§ 82.011 of the Family Code was enacted to allow an applicant for a protective order to ask the court to protect their mailing address. The applicant must disclose their mailing address to the court, and designate another person and their mailing address to receive court documents on the applicant's behalf. The court may then keep their address confidential and prohibit its release to the respondent. Several related sections, previously requiring inclusion of the applicant's address, were amended to permit inclusion of the designated person's address, in conformity with the new section, e.g., §§ 82.041 and 85.007 of the Family Code.

### **TEXAS—DEFINITION OF FAMILY VIOLENCE**

§ 71.004 of the Family Code defines "family violence" by incorporating the definition of "abuse" in § 261.001 of the Family Code. § 261.001 was amended to add "forcing or coercing a child to enter into a marriage" to the definition of abuse, with a conforming amendment to § 71.004.

### **TEXAS—CONFIDENTIAL COMMUNICATIONS**

Chapter 13 of the Family Code was enacted to recognize confidential and privileged communications related to family violence. Specifically, § 93.002 of the Family Code was enacted to provide that a written or oral communication between an advocate and a victim made in the course of advising, advocating for, counseling, or assisting the victim is confidential and may not be disclosed. New § 93.003 provides that a victim has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication. The privilege may be claimed by a victim or a victim's attorney on behalf of the victim; a parent, guardian, or conservator of a victim under 18 years of age; or an advocate or a family violence center on a victim's behalf. Finally, § 93.004 was enacted to state that a confidential communication may be disclosed only to another individual employed by or volunteering for a family violence center for the purpose of furthering the advocacy process; following an in camera review and a determination that the communication is admissible under the Code of Criminal Procedure; to other persons in the context of a support group or group counseling in which a victim is a participant; or for the purposes of reporting abuse of a child abuse or elderly and disabled persons.

### **TEXAS—EFFECT OF PROTECTION ORDER FOR WARD**

§ 1151.056 of the Estates Code was amended to provide that a guardian need not provide information regarding a ward's health and residence to relatives of the ward if a protection order has been issued against the relative in order to protect the ward, without the requirement of seeking a court order releasing the guardian of the duty to provide information as previously required.

### **TEXAS—WRIT TO RETRIEVE PERSONAL PROPERTY**

§ 24A.002 of the Property Code was amended to provide that if a person is unable to enter his or her residence or former residence to retrieve personal property because the current occupant is denying entry, the person may apply for a writ authorizing the person to enter the residence accompanied by a peace officer to retrieve the specific items of personal property, if the applicant



certifies that the applicant is unable to enter the residence because the current occupant has denied access to the residence or poses a clear and present danger of family violence to the applicant or the applicant's dependent. § 24A.0021 of the Property Code was enacted to allow a temporary ex parte writ, without providing notice and hearing, if the court finds at a hearing that the current occupant poses a clear and present danger of family violence to the applicant or the applicant's dependent and the personal harm to be suffered by the applicant or the applicant's dependent will be immediate and irreparable if the application is not granted. The justice of the peace issuing the writ may waive the bond requirement. Further, the justice of the peace may recess a hearing to notify the current occupant by telephone that the current occupant may attend the hearing or bring to the court the personal property listed in the application. The justice of the peace shall reconvene the hearing before the close of business regardless of whether the current occupant intends to attend the hearing or bring the personal property to court. A temporary ex parte writ must state the period, not to exceed five days, during which the writ is valid.

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

