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RCDV:CPC

Resource Center on Domestic Violence: Child Protection and Custody

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Welcome to the next issue of legislative news from the Resource Center on Domestic Violence: Child Protection and Custody! This update continues coverage of state legislation passed in 2017, and the primary focus was on revisions to criminal statutes and miscellaneous protections for survivors. Prevention and treatment efforts such as task forces and training, as well as provisions regarding families and children, were other common topics. Please direct any comments or inquiries to Lynelle Hartway, Program Manager, at lhartway@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:

California:

- Canadian protection orders
- evidence
- recording of communications

Colorado:

- sealing records
- victim access to records
- domestic violence offender management board
- domestic violence fatality review board
- domestic violence reports

Delaware:

- insurance
- teen dating violence education

Hawaii: Uniform Family Law Arbitration Act

Illinois:

- collaborative process act
- cyberstalking
- wireless telephone numbers
- protection orders
- child welfare

Maine:

- nursing

Michigan:

- emergency relief

Missouri:

- exemption from criminal charges

New Hampshire:

- child welfare

New Jersey:

- closed circuit testimony

New York:

- advisory boards

Oregon:

- stalking and GPS
- traditional health care
- child care
- text messaging

- residency restrictions
- protection orders

Rhode Island:

- sexual exploitation protection orders
- crime victim compensation
- home-visiting services
- human trafficking

Texas:

- task forces

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

CALIFORNIA—CANADIAN PROTECTION ORDERS

§ 6450, et seq., of the Family Code were enacted to adopt the Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act, which authorizes the enforcement of a valid Canadian domestic violence protection order under certain conditions. § 6453 prescribes the criteria for a determination of the validity of a protection order under these provisions, and § 6454 authorizes the registration of such a protection order in the Domestic Violence Restraining Order System. § 6452 requires a law enforcement officer of this state to enforce a protection order under these provisions upon determining that there is probable cause to believe that a valid protection order exists and has been violated.

CALIFORNIA—EVIDENCE

California amended § 1037.1 of the Evidence Code to expand the scope of the domestic violence privilege. The law previously made communications between a domestic violence survivor and a domestic violence counselor privileged, allowing the survivor to resist the communications' disclosure and to prevent the counselor from disclosing. "Domestic violence counselor" was defined as a certain type of employee of a domestic violence victim service organization. This bill expanded the definition of that type of organization to include a program in an institution of higher education with the primary mission to provide support or advocacy services to victims of domestic violence.

CALIFORNIA—RECORDING OF COMMUNICATIONS

The general rule in California is that both parties must consent to a recording of a confidential communication, and § 633.5 of the Penal Code makes such a recording a crime absent consent of all parties. The statute has exceptions, however, if the recording is to be used as evidence for the court of certain specified crimes. § 633.5 was amended to add domestic violence to this list of such crimes, and § 633.6 of the Penal Code was similarly amended to state that a victim of domestic violence seeking a restraining order from a court may record communications made to them by the perpetrator for the purpose of providing that evidence to the court to support the requested order.

COLORADO—SEALING RECORDS

§ 24-72-708 was amended to allow a defendant to seal records of a municipal violation, other than misdemeanor assault or battery involving domestic violence, even if the defendant was convicted of

a subsequent crime, if the subsequent crime meets the following requirements:

The defendant was convicted of a single offense that was not a felony and did not involve domestic violence, unlawful sexual behavior, or child abuse;

The offense occurred within three years of the final disposition of criminal proceedings related to the conviction the defendant is seeking to have sealed or three years of the date of the defendant's release from supervision related to the conviction that the defendant is seeking to have sealed; and

The defendant has not been convicted of a felony, misdemeanor, or misdemeanor traffic offense in the ten years since the date of the final date of criminal proceedings against him for the subsequent criminal case or in the ten years since the date of the defendant's release from supervision for the subsequent case, whichever is later.

COLORADO—VICTIM ACCESS TO RECORDS

§ 24-72-702 was amended to provide that a prosecuting attorney or law enforcement agency may release to the victim in a sealed case copies of police reports or any protection order issued in the sealed case if the victim demonstrates a need for the reports or court orders for a lawful purpose. The prosecuting attorney's staff or the staff of the law enforcement agency may discuss the sealed case, the results of the sealing proceedings, and information related to any victim services available to the victim. Also, § 24-72-702.5, which provides for an expedited procedure for sealing criminal records in certain circumstances, was amended to require the prosecutor to notify the victim if the offense was a domestic violence crime and set a return date for a hearing within 42 days.

COLORADO—DOMESTIC VIOLENCE OFFENDER MANAGEMENT BOARD

§ 16-11.8-103, which governs the Domestic Violence Offender Management Board, was amended as follows:

Continues the domestic violence offender management board within the department of public safety through 2022;

Provides that members serve without compensation;

Adds the requirement that the standardized procedure for the treatment evaluation of domestic violence offenders include a procedure for when a treatment provider recommends that an offender does not need treatment; and

Provides that members serve for a four-year term.

COLORADO—DOMESTIC VIOLENCE FATALITY REVIEW BOARD

§ 24-31-702 was enacted to provide for the creation, membership, purpose, and duties of the Colorado domestic violence fatality review board. The board includes the attorney general or his or her designee who shall act as chair, and at least seventeen but not more than twenty members to be appointed by the attorney general to include, among others:

a domestic violence advocate representing a shelter or other domestic violence service organizations who may not testify without consent of the victim;

a representative of a statewide nonprofit organization that offers training and expert advice to domestic violence programs that serve survivors of domestic violence, dating violence, and stalking; and

two domestic violence survivors.

The review board shall coordinate with review teams to collect data, review and analyze data and

prepare recommendations for the legislature.

§ 24-31-703 was enacted to create similar local and regional teams to review fatal and near-fatal domestic violence incidents. Further, new § 24-31-704 provides that information, documents, records, notes, memoranda, and data of the review board and the review teams are not subject to subpoena, discovery, or introduction into evidence in any action in any court or before any tribunal, board, agency, or person and may not be exhibited or disclosed in any way unless the information was obtained from another source that is separate and apart from the review board or review teams.

COLORADO—DOMESTIC VIOLENCE REPORTS

§ 12-36-135 was amended to remove the requirement that medical professionals report to local law enforcement an injury that occurred as result of domestic violence if the victim of the injury is at least 18 years of age and indicates a preference that the injury not be reported, unless the professional is required to report it to law enforcement because it was caused by a gunshot or stabbing. If the professional does not report the domestic violence injury to law enforcement at the victim's request, the professional is required to document the request in the victim's medical record. If the professional reports the domestic violence injury, the professional shall make a good-faith effort to inform the victim confidentially of his or her intent to do so. The professional shall refer the victim to a victim's advocate or provide the victim with information concerning services available to victims of abuse. The professional will not be held liable for any act or omission of the victim's advocate or any agency that provide such services to the victim.

DELAWARE—INSURANCE

§ 2304 of Title 18 was amended to provide that nothing in the provisions protecting victims of abuse from discriminatory insurance practices shall be construed to prohibit a person from declining to issue a life insurance policy insuring the life of an individual who is or has been the subject of abuse if the perpetrator of the abuse is the applicant or would be the owner of the insurance policy. Further, nothing in these provisions shall be construed to prohibit a person from underwriting or rating a risk on the basis of a preexisting physical or mental condition, even if such condition has been caused by abuse, provided that the person underwrites or rates such condition in the same manner with respect to an insured or applicant who is not a victim of abuse. The fact that an individual is, has been, or may be the subject of abuse may not be considered a physical or mental condition.

DELAWARE—TEEN DATING VIOLENCE

Delaware amended and enacted several sections relating to bullying and other issues in schools. New § 4161 of Title 14 defines teen dating violence, among other things. § 4162 was enacted to require certain school employees to receive two hours of teen dating violence and sexual assault training. Finally, newly enacted § 4166 requires schools to have a teen dating violence and sexual assault policy, which must include guidelines on mandatory reporting and confidentiality as well as a protocol for responding to incidents.

HAWAII—UNIFORM FAMILY LAW ARBITRATION ACT

Chapter 6585 was enacted to adopt the Uniform Family Law Arbitration Act. In particular, § 6585-1 requires an arbitrator to be trained in identifying domestic violence and child abuse, unless waived by the parties. § 6585-12 provides that, if a party is subject to a protection order or an arbitrator determines there is a reasonable basis to believe a party's safety or ability to participate effectively

in arbitration is at risk, the arbitrator shall stay the arbitration and refer the parties to court. The arbitration shall not proceed unless the party at risk affirms the arbitration agreement in a record and the court makes certain determinations, including that the affirmation is informed and voluntary, and reasonable procedures are in place to protect against use of the process to harm, harass, or intimidate.

ILLINOIS—COLLABORATIVE PROCESS ACT

Illinois enacted the Collaborative Process Act. § 90/15 of Chapter 750 generally allows parties to enter into a collaborative process agreement, through which they attempt to resolve a divorce action without the use of the courts. § 90/20 provides that the process is voluntary and contemplates attorneys representing parties solely within the process and not in court. Following enactment, the Illinois Supreme Court adopted Supreme Court Rule 294, disqualifying attorneys who represented the parties in the collaborative process from representing them in court. New § 90/30 states that nothing in the agreement may prohibit a party from seeking an order of protection pursuant to the Illinois Domestic Violence Act.

ILLINOIS—CYBERSTALKING

§ 5/12-7.5 of Chapter 720 was amended to add to the definition of cyberstalking the act of placing a monitoring device or spyware on an electronic communication device as a means to harass another person, in combination with one of three further acts: transmitting a threat to that person or their family; placing the person or their family in reasonable apprehension of physical harm; or soliciting any criminal act against the person or their family.

ILLINOIS—WIRELESS TELEPHONE NUMBERS

§ 5/112A-14 of Chapter 725, regarding criminal protection orders, and § 60/214 of Chapter 750, regarding civil protection orders, were amended to allow a court issuing an order of protection to include relief ordering a wireless telephone service provider to transfer to the petitioner the right to continue to use a telephone number and to terminate the respondent's use of the number. The petitioner then assumes all financial responsibility for the number.

ILLINOIS—PROTECTION ORDERS

Illinois amended and enacted numerous sections of its laws, relating to protection orders and both civil and criminal remedies. § 5/112A-1.5 of Chapter 725 was enacted to set forth a statement of purpose for all types of protection orders, and § 5/112A-2.5 was enacted to list the types of orders a court may enter in conjunction with a delinquency petition or a criminal prosecution: an order of protection, in cases of domestic violence, which existed under prior law; a civil no-contact order, in cases involving sexual offenses, which is new; and a stalking no-contact order, in cases involving stalking offenses, also new. Substantial amendments to § 5/112A-3 delineate new definitions to apply to civil no-contact orders and stalking no-contact orders, while the previous definitions for domestic violence orders still apply. § 5/112A-4 was amended to set forth the persons protected by each type of order, while newly enacted § 5/112A-4.5 specifies who may petition for each type of order. § 5/112A-5 was amended to state that a petition need not disclose the petitioner's address. New § 5/112A-5.5 requires the petition to be filed while the criminal case is pending, before disposition, whether by dismissal, acquittal, or sentencing. § 5/112A-11.5 was enacted to direct the court to grant a petition for a protective order if the court finds *prima facie* evidence of any of the appropriate crimes; among other things, a complaint charging a crime of domestic violence is

sufficient, and the court may not require physical injury on the person of the victim to issue an order. § 5/112A-14, regarding remedies available for domestic violence protection orders, was amended to add possible remedies for when the petitioner and respondent attend the same school, including transfer of respondent to a different school, and lists factors to consider in determining the appropriate remedy. New § 5/112A-14.5 delineates the remedies available in a civil no-contact order and other details, and new § 5/112A-14.7 contains the remedies for stalking no-contact orders. § 112A-22.3 was enacted to specify that even if a petition is withdrawn or an individual is found not guilty, that alone does not require dismissal or vacation of a protective order. Violation of a domestic violence protection order is already a crime under § 5/12-3.4 of Chapter 720, and newly enacted § 5/12-3.8 criminalizes violation of a civil no-contact order, while new § 5/12-3.9 acts similarly for a stalking no-contact order. Several other provisions that mention protection orders received conforming amendments.

ILLINOIS—CHILD WELFARE

Illinois enacted § 5/7.4a of Chapter 325, instituting a pilot domestic violence co-location program to place trained domestic violence services in field offices of the Department of Children and Family Services. The program is intended to help children in families experiencing domestic violence through a strength-based and trauma-informed collaborative support program.

MAINE—NURSING

Maine amended § 1963 of Title 22 to restore public health nursing services by making such services mandatory rather than discretionary. Further, § 1963, as amended, lists the services the program must provide, including early identification of persons at risk of domestic violence and appropriate referrals to community-based services. § 1964 was enacted to require all open positions to be filled, and § 1965 was enacted to require office support and staff for such positions.

MICHIGAN—EMERGENCY RELIEF

In a long appropriations bill, Michigan enacted a section stating that, for the purpose of qualifying for state emergency relief, an individual is considered homeless while temporarily living with others to escape domestic violence. § 645 of 2017 Mich. Legis. Serv. P.A. 107 (H.B. 4323). The bill also stated that a victim of domestic violence may be exempt from the 3- to 36-month limit on receiving food assistance under 7 U.S.C. § 2015. § 653 of 2017 Mich. Legis. Serv. P.A. 107 (H.B. 4323). These provisions were not codified.

MISSOURI—EXEMPTION FROM CRIMINAL CHARGES

§ 195.205 was enacted to provide that a person who in good faith seeks or obtains medical assistance for someone who is experiencing a drug or alcohol overdose or other medical emergency or a person experiencing an overdose or other medical emergency who seeks medical assistance for himself or herself or is the subject of a good faith request for assistance shall not be arrested, charged, prosecuted, convicted, have his or her property subject to civil forfeiture or otherwise penalized for violating a restraining order if the evidence for the arrest, charge, prosecution, conviction, seizure, or penalty was gained as a result of seeking or obtaining medical assistance.*

NEW HAMPSHIRE—CHILD WELFARE

§ 169-C:3 was amended to define “serious impairment,” for purposes of child protection, as a substantial weakening or diminishment of a child’s emotional, physical, or mental health or of a child’s safety and general well-being. The circumstances to be considered in determining the likelihood that a child may suffer serious impairment include exposure to incidents of domestic or sexual violence.

NEW JERSEY—CLOSED CIRCUIT TESTIMONY

New Jersey amended § 2A:84A-32.4, adding crimes of domestic violence and several others to the list of crimes for which a court may order trial testimony by the victim or witness by closed circuit television. The court may only issue the order if it finds by clear and convincing evidence that there is a substantial likelihood the victim or witness would suffer severe emotional or mental distress if required to testify in court.

NEW YORK—ADVISORY BOARDS

New York amended § 575 of the Executive Law, adding one additional member to the domestic violence advisory council, the superintendent of the division of state police, and to add a representative from the office of victim services to the domestic violence fatality review team.

OREGON—STALKING AND GPS

§ 163.715 was enacted to make it a crime to put a GPS device on someone’s motor vehicle without their consent. Normally this is a Class A misdemeanor, but the offense becomes a Class C felony if, among other things, the offender is subject to a court order prohibiting them from contacting the other person.

OREGON—HEALTH CARE

Oregon amended and enacted a number of sections regarding health care workers, including § 413.600, establishing the Traditional Health Workers Commission, and § 414.665, finding “traditional health worker” and requiring the Oregon Health Authority to adopt qualifications and requirements. Section 9 of the bill, which was not codified in the Oregon Revised Statutes, directs the Attorney General and the Director of the Oregon Health Authority to develop and implement a plan to incorporate advocates for domestic and sexual violence survivors into the workforce of traditional healthcare workers. 2017 Oregon Laws Ch. 618 (H.B. 2304).

OREGON—CHILD CARE

Oregon passed a bill, 2017 Oregon Laws Ch. 672 (H.B. 3067), allowing two counties to establish pilot “CourtCare” programs to provide childcare for jurors as well as individuals transacting business in or near court. The legislature noted in its findings that domestic violence, among other things, causes individuals to need come to court, but that lack of childcare is a barrier that can prevent effective participation in court proceedings. The bill was not codified.

OREGON—TEXT MESSAGING

§ 137.540 was amended to specify that for certain crimes, including domestic violence, a court may set as a term of probation that the individual is prohibited from using Internet websites that provide anonymous text message services.

OREGON—RESIDENCY RESTRICTIONS

§ 137.540 was amended to provide that if a person is released on probation after a conviction for stalking or for violating a court's stalking protective order, the court may include as a condition of probation reasonable residency restrictions. If the victim later moves within the prohibited distance from the probationer, the court cannot then require the probationer to move for that reason. § 144.102 was similarly amended regarding post-prison supervision.

OREGON—PROTECTION ORDERS

§§ 166.525 to 166.543 were enacted to provide for extreme risk protection orders, enjoining a person from having a deadly weapon under specified circumstances. New § 166.525 defines deadly weapon as a firearm or anything else designed for and capable of causing death or serious physical injury. § 166.527 directs the court to consider a number of factors in deciding whether to issue the order, including whether the person has a history of violence and whether the person was ever convicted of, among other things, an offense constituting domestic violence. The court must issue the order if it finds by clear and convincing evidence that the respondent presents a risk in the near future of suicide or physical injury to another person. §§ 166.530 to 166.543 set forth various procedures related to the proceeding as well as providing for enforcement of the order by law enforcement, including criminal penalties contained in § 166.543.

RHODE ISLAND—SEXUAL EXPLOITATION PROTECTION ORDERS

§ 15-15-1 was amended to define sexual exploitation of a child under the age of 18 years, and § 15-15-3 was amended to permit the court to issue a protection order, in the same process as domestic violence protection orders, to protect a minor from sexual exploitation. The petition may be filed by a person, or a parent, custodian, or legal guardian on behalf of a minor child or the director of the department of children, youth and families (DCYF) or its designee for a child in the custody of the DCYF suffering from sexual exploitation.

RHODE ISLAND—CRIME VICTIM COMPENSATION

§ 12-25-17 was amended to define a "secondary victim" for purposes of crime victim compensation to mean a child who suffers an emotional injury as a direct result of witnessing a homicide or incident of domestic violence, and § 12-25-19 was amended to provide that a secondary victim or their guardian, child advocate, or legal representative on behalf of the secondary victim may apply for compensation. Finally, § 12-25-21 was amended to provide that the administrator may issue an award of up to \$1,500 for expenses related to psychiatric care and mental health counseling for a secondary victim, provided that the secondary victim provides proper documentation that the psychiatric care and mental health counseling have been actually and reasonably incurred as a direct result of witnessing the homicide of a victim or a domestic violence incident against a victim. Compensation may not be paid upon the secondary victim reaching the age of 18 years.

RHODE ISLAND—HOME-VISITING SERVICES

§ 23-13.7-2 was amended to require the department of health to include in its state home-visiting report an annual estimate of the number of children born to families facing significant risk factors known to impair child development, which include a history of child maltreatment, domestic abuse, or other types of violence, and a plan to gradually expand access to the existing evidence-based family home-visiting programs.

RHODE ISLAND—HUMAN TRAFFICKING

Rhode Island repealed Chapter 11-67 of the General Laws and replaced it with Chapter 67.1, titled the Uniform Act on Prevention of and Remedies for Human Trafficking. § 11-67.1-9 lists aggravating circumstances for human trafficking, including if the defendant obtained the victim from, among other things, a domestic violence shelter. § 11-67.1-22 directs law enforcement to complete the appropriate forms for a victim to apply for a T- or U-visa when applicable.

TEXAS—TASK FORCES

As part of legislation revising and adding to provisions regarding the Maternal Mortality and Morbidity Task Force, § 34.0055 the Health and Safety Code was enacted to instruct the Health and Human Services Commission, in consultation with the task force, to make available to physicians and others a substance use and domestic violence screening tool and to review and promote related educational materials, including posting on the commission's website.

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.

