

Volume 8 | 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 prevention and treatment efforts such as task forces, domestic violence programs, training, and provisions regarding batterer intervention programs. Criminal statutes and miscellaneous protections for survivors 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:

Alaska:

- parole and pre-trial detention

California:

- strangulation
- abuse training
- custody petitions
- disclosure of records
- criminal protective orders
- civil protective orders
- record sealing
- child welfare
- trauma recovery centers
- victim confidentiality
- education
- temporary release
- task forces
- gender transition and name changes
- gun violence restraining orders
- law enforcement
- public benefits

Massachusetts:

- confidentiality

New Jersey:

- definitions

New York:

- confidentiality

Ohio:

- Teen Dating Awareness Month
- domestic violence funding

Pennsylvania:

- task forces
- volunteers
- domestic violence funding

Rhode Island:

- employment
- felony assault
- criminal diversion program
- batterer intervention programs
- child support
- protective orders and firearms
- justice reinvestment policies

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

ALASKA—PAROLE AND PRE-TRIAL DETENTION

Alaska amended § 12.30.006 to expand pre-trial detention to certain class C felonies. Previously the law allowed those accused to be detained up to 48 hours, to give the prosecutor time to demonstrate why they should not be released, if they were charged with a class A or B felony and not previously determined to be low risk. The amendment expands the categories of people subject to the 48-hour detainer to add several class C felonies, including crimes of domestic violence, regardless of the defendant's risk assessment level.

CALIFORNIA—STRANGULATION

§§ 13701 and 13730 of the Penal Code require law enforcement agencies to enact certain specific policies relating to arrests of domestic violence offenders and to record certain details of domestic violence-related calls. § 13701 was amended to require law enforcement agencies to provide domestic violence victims with a statement informing them that “strangulation may cause internal injuries” and “encouraging the victim to seek medical attention.” § 13730 was amended to require law enforcement to record whether a domestic violence-related call involved strangulation or suffocation. It also requires the Attorney General to report on the number of such cases.

CALIFORNIA—ABUSE TRAINING

California amended several code provisions related to licensing of barbers, cosmetologists, and others, effective 2019. § 7314.3 of the Business and Professions Code was amended to require the advisory committee to the State Board of Barbering and Cosmetology to provide advice and recommendations regarding awareness of physical and sexual abuse. § 7389 was amended to require the Board to adopt a health and safety course that includes “physical and sexual assault awareness,” to be taught in approved schools. § 7314.5 was enacted to permit the Board to promote awareness in various ways, and § 7319.7 was enacted to provide that licensees are not required to act on information obtained through their employment regarding physical or sexual abuse, unless otherwise required by law.

CALIFORNIA—CUSTODY PETITIONS

California amended § 3170 of the Family Code, which previously instructed courts to set potentially contested issues in a child custody case down for mediation, to allow a party to an existing case to request mediation before filing a petition or motion to obtain or modify a child custody order and to allow the court to set that issue for mediation. This amendment is effective only until 1/1/2020.

CALIFORNIA—DISCLOSURE OF RECORDS

California enacted § 6254.4.5 of the Government Code, creating an exception to the California Public Records Act, which generally requires state and local agencies to disclose their records to the public, for among other things video and audio recordings related to crimes of domestic violence.

CALIFORNIA—CRIMINAL PROTECTIVE ORDERS

California amended § 136.2 of the Penal Code to allow a court to issue a protective order to any witness of a crime of domestic violence upon the defendant's conviction for that crime, if the court finds by clear and convincing evidence that the witness was harassed by the defendant. The law

previously allowed the court to issue such an order for the benefit of the victim, but did not provide for the protection of witnesses.

CALIFORNIA—CIVIL PROTECTIVE ORDERS

California amended § 527.6 of the Code of Civil Procedure, concerning orders prohibiting harassment, and enacted § 6301.5 of the Family Code, concerning domestic violence protection orders, to give minors a mechanism by which to keep their information confidential when that information was obtained by the court in the course of issuing a protective order. The court is authorized but not required to issue a confidentiality order if it finds that the minor's right to privacy overcomes the right of public access to information; there is a substantial probability of prejudice to the minor's interest if their information is not kept confidential; the order is narrowly tailored; and no less restrictive means of protecting the minor's privacy exists.

CALIFORNIA—RECORD SEALING

California enacted § 851.91 of the Penal Code to allow people arrested but not convicted of a crime to have their arrest sealed as a matter of right unless, in pertinent part, the offense for which they were arrested or the offense listed in the accusatory pleading, if any, was "[d]omestic violence, if the petitioner's record demonstrates a pattern of domestic violence arrests, convictions, or both." In that case, the application may only be granted if they can show that the sealing is in the interest of justice. § 851.92 was enacted to set forth the procedure for sealing arrest records, and other sections of the Penal Code received conforming amendments.

CALIFORNIA—CHILD WELFARE

California amended § 361 of the Welfare and Institutions Code to limit the ability of courts to remove a dependent child from the physical custody of his or her parents "with whom the child did not reside at the time the petition was initiated." The amendment states that the child can only be removed if the juvenile court finds by clear and convincing evidence that there would be "substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child for the parent to live with the child," and that no other reasonable means exist to protect the child.

CALIFORNIA—TRAUMA RECOVERY CENTERS

California enacted legislation to recognize the work of the Trauma Recovery Center at the San Francisco General Hospital and to require the Victim Compensation Board, which helps provide restitution to crime victims and funds trauma recovery centers, to use the evidence-informed Integrated Trauma Recovery Services model developed by the Hospital. The details of the model are set forth in new § 13963.2 of the Government Code and include outreach to various groups; service to crime victims, including victims of domestic violence; and care including mental health services and case management.

CALIFORNIA—VICTIM CONFIDENTIALITY

California amended § 6206 of the Government Code, which previously allowed for domestic violence victims and others to apply with the state to have their address kept confidential, to also apply to victims of human trafficking and to household members, as defined, of victims of domestic violence, sexual assault, stalking, or human trafficking.

CALIFORNIA—EDUCATION

California amended § 51934 of the Education Code to include “[i]nformation about adolescent relationship abuse and intimate partner violence, including the early warning signs thereof” in its mandatory sex education curriculum. It also added human trafficking, including information on setting healthy boundaries and how to safely seek assistance.

CALIFORNIA—TEMPORARY RELEASE

California law prohibits certain arrestees from being released on their own recognizance before a hearing, including those who have previously failed to appear in court three times over the past three years. § 1319.5 of the Penal Code was amended to add several types of offenses, including domestic violence, to the list.

CALIFORNIA—TASK FORCES

California enacted § 18999.8 of the Welfare and Institutions Code to allow each county to establish a homeless adult and family multidisciplinary personnel team. The team is specifically allowed (but not mandated) to include domestic violence victim service organizations.

CALIFORNIA—GENDER TRANSITION, NAME CHANGES

California amended several provisions to allow people to obtain a new birth certificate, name change, and driver’s license based on a sworn statement, rather than the previously required clinically appropriate treatment. This involved the amendment of §§ 1277 and 1278 of the Civil Procedure Law, relating to name changes, which include provisions related to confidentiality of name changes for domestic violence victims. These confidentiality provisions were not changed.

CALIFORNIA—GUN VIOLENCE RESTRAINING ORDERS

California enacted § 14231.5 of the Penal Code to require the Department of Justice to make information relating to gun violence restraining orders contained in the registry available to certain researchers at the University of California Firearm Violence Research Center as well as other researchers at the discretion of the Department of Justice.

CALIFORNIA—LAW ENFORCEMENT

California passed a bill regarding proper practices for law enforcement and others for working with sexual assault victims, including affirming a victim’s right to have a victim advocate present. Among other things, § 264.2 of the Penal Code, which instructed law enforcement to provide victims of crimes of domestic violence a specific card giving them information relevant to domestic violence, was amended to direct law enforcement to give a different card, targeted towards victims of sexual assault, if that card is more applicable.

CALIFORNIA—PUBLIC BENEFITS

California passed a bill to make it easier for domestic violence victims to receive benefits through TANF and CalWORKs. § 11450 of the Welfare and Institutions Code was amended to allow CalWORKs applicants fleeing domestic violence to be eligible for temporary homeless assistance upon provision of a sworn statement attesting thereto, despite any income or assets of the abuser. Also, § 11495.16 was enacted, ordering that all CalWORKs applicants and recipients be informed of domestic violence services. With regard to children, §§ 11253.5 and 11265.8 of the Welfare and Institutions Law were amended to provide that domestic violence constitutes good cause for school nonparticipation and for failure to provide documentation regarding children’s immunization records,

respectively.

MASSACHUSETTS—CONFIDENTIALITY

Massachusetts enacted § 4D of Chapter 19A to, among other things, establish a home care worker registry. The new provision mandates that home care worker agencies report certain information for their workers, except that information for victims of domestic violence, among others, is exempt.

NEW JERSEY—DEFINITIONS

New Jersey amended § 2C:12-1 to add strangulation to its list of acts that constitute aggravated assault. The new language specifies an act in which the perpetrator knowingly or with a depraved heart strangulates someone who is a victim of domestic violence with respect to the perpetrator. The amendment further specifies that this is a crime of the third degree, but the presumption against imprisonment for first offenders does not apply.

NEW YORK—CONFIDENTIALITY

New York amended § 5-508 of the Election Law, allowing domestic violence victims to apply to supreme court, family court, or county court for an order to have any election records regarding them kept separate from any other election records, and that all election-related records not be made available to the public. (Previously, the statute applied only to voter registration records and required application to the supreme court only.)

OHIO—TEEN DATING AWARENESS MONTH

§ 5.2516 was enacted to designate the month of February as “Teen Dating Violence Awareness Month.”

OHIO—DOMESTIC VIOLENCE FUNDING

Ohio amended § 4501.21, a large statute designating the recipients of money it receives from its memorial highway program. In particular, the amendments direct certain money to be distributed to certain schools to help fund educational programs in dating violence, human trafficking, and other areas. § 4503.593 was also amended to create a post-traumatic stress license plate contribution fund to issue grants to nonprofit organizations that help victims of violence recover from post-traumatic stress.

PENNSYLVANIA—TASK FORCES

§ 11.321(b) of Title 18 concerns membership of the Victims’ Services Committee, and under prior law, it gave the governor unlimited discretion to appoint nine members. It was amended to require the governor to appoint 19 members from specific groups, including two direct crime victims, representing female and male victims, and the Pennsylvania Coalition Against Domestic Violence.

PENNSYLVANIA—VOLUNTEERS

§ 611.16 of Title 71 (§ 2336 of the 1929 Administrative Code Act) was amended to allow the Department of Human Services to charge up to \$13 to conduct a certification required by state law for employees having contact with children and for adoptive and foster parents. However, such fee is not applicable to, among others, volunteers at a domestic violence shelter.

PENNSYLVANIA—DOMESTIC VIOLENCE FUNDING

Pennsylvania amended §13A63 of Title 4 to provide that 12.5% of the 50% local share of certain gaming facilities must be distributed to the county for the purpose of supporting a domestic violence organization.

RHODE ISLAND—EMPLOYMENT

Rhode Island enacted the Healthy and Safe Families and Workplaces Act, codified as §§ 28-57-1, et seq. The Act generally addresses employers' obligations to give employees a certain amount of paid leave. Among other things, § 28-57-6 obligates covered employers to provide employees with paid time off because the employee or a member of his or her family is a victim of "domestic violence, sexual assault, or stalking." If the employee requires more than three consecutive days off, the employer may ask for documentation, but they cannot require that the documentation explain the "details of the domestic violence, sexual assault, or stalking" unless otherwise required by law. Under new § 28-57-11, if the employer does acquire such information, it must keep it confidential..

RHODE ISLAND—FELONY ASSAULT

Rhode Island amended § 11-5-2 to reduce the punishment for some felony assaults. Previously, the law prescribed a penalty of not more than 20 years' imprisonment for any felony assault, which was defined as "an assault or battery, or both, with a dangerous weapon, or with acid or other dangerous substance, or by fire, or an assault or battery which results in serious bodily injury." The new law retains the same punishment for assaults that result in "serious bodily injury," but reduces the punishment for assaults that result only in "bodily injury or no injury" to 6 or less years. The amendment did not disturb, however, sentence enhancements for assaults that consist of domestic violence under § 12-29-5.

RHODE ISLAND—CRIMINAL DIVERSION PROGRAM

Rhode Island enacted and amended several provisions to create a diversion program for defendants entering certain pleas and expanding the role of its pretrial services unit. § 8-2-39.3 was enacted to allow the superior court to create a diversion program to allow defendants entering into pleas to agree to certain conditions of diversion, including counseling, community service, and restitution. § 12-13-24.1 was amended to, among other things, expand the role of the pretrial services unit to prepare a pre-arraignment report that includes a "lethality and dangerousness assessment" for defendants charged with domestic violence offenses who either have prior domestic violence offenses or show other indications of risk.

RHODE ISLAND—BATTERER INTERVENTION PROGRAMS

Rhode Island amended § 12-29-5.2 to change the standards to be used by the Batterers Intervention Standards Oversight Committee in creating such programs. The law previously mandated that the programs involve "psycho-educational groups," meaning groups of batterers led by a professional trained in batterers intervention programming. Reference to such groups was removed and replaced with the need to use "evidence-informed programming and dosage levels designed to reduce the risk of future violent behavior." The amendment also provides funding for grants for "community-based batterers intervention programs."

RHODE ISLAND—CHILD SUPPORT

Rhode Island amended § 15-5-16.2 to provide that for the purpose of determining a child support order, incarceration may not be treated as voluntary unemployment (unless incarcerated for failure

to pay child support). § 15-5-16.7 was similarly amended for purposes of reviewing child support orders.

RHODE ISLAND—PROTECTIVE ORDERS AND FIREARMS

Rhode Island amended § 8-8.1-3 to allow a protective order, filed for by a domestic violence victim, to include the relief of ordering the defendant to surrender his or her firearms. The amendment set forth various conditions and restrictions associated with the surrender. The defendant may regain possession of the firearms once the order expires, if they remain otherwise entitled to them. Also, at the hearing for the protection order proceeding, the defendant may regain possession upon a showing by clear and convincing evidence that if they regained the firearms they would not pose a danger to the domestic violence victim or to any other person. § 11-47-5 was amended to provide that individuals who were convicted of or plead nolo contendere to certain offenses cannot possess firearms. New offenses include misdemeanor cyberstalking and cyberharassment, as well as violation of a protective order.

RHODE ISLAND—JUSTICE REINVESTMENT POLICIES

Rhode Island enacted § 42-56-5.1 to instruct the Corrections Department to monitor and report on a number of justice reinvestment policies, including batterer intervention programs.

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.

