

Volume 1 | 2018

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 includes coverage of state legislation passed in 2018, and it focuses primarily on protections for survivors, family law, protection orders, and criminal statutes. Please direct any comments or inquiries to 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:

- confidentiality

Delaware:

- pretrial release

District of Columbia:

- homeless services
- health insurance

Florida:

- firearms
- education

Georgia:

- adoption

Illinois:

- parole

Indiana:

- medical consent

Maryland:

- employment
- termination of parental rights

Michigan:

- child care licensing
- child abuse

Nebraska:

- definitions
- confidentiality

New Jersey:

- employment
- public benefits
- protective orders
- service contracts

New Mexico:

- definitions
- confidentiality
- training

Oregon:

- firearms possession

Puerto Rico:

- employment

South Dakota:

- child custody
- law enforcement

Tennessee:

- state councils

Virginia:

- protective orders

West Virginia:

- law enforcement
- child custody
- confidentiality

Wyoming:

- child custody

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

CALIFORNIA—CONFIDENTIALITY

California amended §§ 2262, 2263, and 2265 through 2270 of its Elections Code to allow for voter preregistration through reporting by the Department of Motor Vehicles. The law previously allowed for regular voter registration in this way, and the new law adds preregistration for people who are at least 16 years old, which becomes effective on the date they turn 18. Under § 2267(a), just as with registration, voter preregistration records remain confidential for, among others, domestic violence victims.

DELAWARE—PRETRIAL RELEASE

Delaware made substantial amendments to its bail statutes, §§ 2101 to 2116 of Title 11. Among other changes, § 2104(e)(1) as amended requires that a court considering a defendant's pre-trial release under circumstances "involving suspected domestic or intimate partner violence . . . consider the results, if available, of an instrument designed to assess the likelihood or predicted severity of future violence against the alleged victim." The statute specifies that the results are not binding on the court, but a factor that must be considered. The statute previously required courts to consider an "objective risk assessment instrument" in all cases; the new version appears to consider two different instruments, an "empirically developed risk assessment instrument," if available, to assess the defendant's likelihood of pretrial success in all cases, and the additional tool developed for domestic violence assessments. Pretrial success is defined in § 1202, as amended, as the defendant's compliance with orders to appear in court and not to commit any new offenses.

DISTRICT OF COLUMBIA—HOMELESS SERVICES

The District of Columbia passed the Homeless Services Reform Amendment Act of 2017, enacting a number of new sections located at § 4-751.01 et seq. Among other things, new § 4-751.01 expanded the definition of "homeless" for the purposes of service provision to include unaccompanied youths with a history of domestic violence or childhood abuse, who also have no other permanent housing and have experienced "persistent instability," meaning at least two moves in the 60 days preceding their application for assistance. The definition also includes any individual or family fleeing domestic violence who lacks another residence and the resources to obtain permanent housing. § 4-753.02 provides that, although the mayor must presume that any individual with an ownership interest in safe housing or listed on a lease is not eligible for shelter, that presumption does not apply to those fleeing domestic violence.

DISTRICT OF COLUMBIA—HEALTH INSURANCE

The District of Columbia amended several provisions regarding certain health protocols related to women's contraceptives and now requires that insurers cover certain services. In particular, § 31-3834.02 was enacted to require that individual or group health plans, as well as health insurance coverage through Medicaid or the D.C. Healthcare Alliance program, must cover women's screening and counseling for interpersonal and domestic violence.

FLORIDA—FIREARMS

Florida enacted the Risk Protection Order Act, codified at § 790.401. The new law gives law enforcement a way to petition a court for an order, called a risk protection order, preventing individuals at high risk of harming themselves or others from obtaining a gun. Among other things, the statute directs law enforcement to provide notice to any family or household member who may be at risk of violence, including referrals to appropriate resources, such as "domestic violence . . . resources." In considering the petition, the court is directed to consider, among other things, whether the respondent was convicted in any state of a crime of domestic violence. The rules of evidence in this proceeding are the same as those in a domestic violence injunction proceeding under § 741.30.

FLORIDA—EDUCATION

Florida created a new scholarship program and amended the requirements for, among other things, private schools participating in state-sponsored scholarship programs. One of the new requirements, enacted as § 1002.421, is that the owner or operator of the school undergo a background check, pursuant to which they must not have been convicted of, or be awaiting final disposition of, a crime of domestic violence pursuant to § 741.28.

GEORGIA—ADOPTION

Georgia amended several statutes, substantially changing its adoption rules and procedures. In particular, § 19-8-18 was amended to add 14 factors a court is required to consider when deciding whether adoption is in the best interests of the child; one such factor includes any evidence of family violence.

ILLINOIS—PAROLE

Illinois amended 730 § 5/3-3-7, relating to parole or mandatory supervised release, to add a new subsection instructing the Department of Corrections to conduct a risk assessment on all subjects, placing some on high-level supervision and others on low-level supervision, the former of which is a term to be defined by the Department based on evidence-based and research-based practices. Low-level supervision requires checking in with an officer via phone or electronically. High-level subjects include those found to be at a moderate or high risk of recidivism or on parole or release for listed crimes, including forcible felonies and felonies requiring sex offender registration.

INDIANA—MEDICAL CONSENT

Indiana amended and enacted several sections relating to health care. § 16-36-1-5(a), which received minor amendments, lists in order of priority individuals who may give consent for a medical procedure when the patient is incapable of consent. Newly enacted § 16-36-1-9.5 limits that section by providing that certain individuals are not eligible to provide consent for another, including: a spouse who is legally separated or has a pending divorce or other proceeding in court with the patient; an individual subject to a protective order directing them to avoid contact with the patient; or an individual subject to a pending criminal charge in which the patient was the alleged victim.

MARYLAND—EMPLOYMENT

Maryland enacted the Healthy Working Families Act, codified at §§ 3-1301 through 3-1311 of the Labor and Employment Code. § 3-1304 requires employers of 15 or more employees (with exceptions for certain employers and certain employees, see § 3-1303) to provide employees with paid sick and safe leave, with certain limitations. Under § 3-1305, employers must allow employees to use earned sick and safe leave for listed absences related to domestic violence, sexual assault, or stalking against the employee or a family member, specifically:

- When the leave is needed to obtain medical or mental health attention;
- To obtain services from a victim services organization;
- To obtain legal services or proceedings; or
- During temporary relocation.

MARYLAND—TERMINATION OF PARENTAL RIGHTS

Maryland enacted §§ 5-1401 through 5-1405, creating a new cause of action through which a court may terminate a parent's parental rights when the child was conceived through nonconsensual sexual conduct. § 5-1402 is the key provision, stating that the court must find that the parent whose rights are being terminated either has been convicted of an act of nonconsensual conduct against the other parent resulting in the child's conception or must be shown by clear and convincing evidence to

have committed such an act. Further, the court must find by clear and convincing evidence that the termination is in the child's best interests. If the parents were married at the time of conception, the statute requires a criminal conviction unless the parents were separated in accordance with a protective order and remained separated since conception.

MICHIGAN—CHILD CARE LICENSING

Michigan amended several provisions regarding regulation of child care and foster care providers, including criminal background checks for all staff members and enacted several new sections. The new § 722.115r provides that a covered individual fails the background check, and is ineligible for the position (whether it be childcare licensee, childcare staff, or adult household member), if the person was convicted of, among other things, felony spousal abuse or domestic violence.

MICHIGAN—CHILD ABUSE

Michigan amended § 722.622 to limit the definition of “negligent treatment” of a child. The statute previously defined the term as failure to provide adequate food, clothing, shelter or medical care. The bill appended the qualifying language, “though financially able to do so, or by failure to seek financial or other reasonable means to provide adequate food, clothing, shelter, or medical care.” The new language could help a domestic violence survivor suffering from economic abuse to keep her children.

NEBRASKA—DEFINITIONS

Nebraska amended § 29-119 to expand the definition of “victim” to include, among other things, any person who has had a personal confrontation with an offender as a result of domestic assault in the first, second, or third degree. The previous version of the law listed several crimes, but did not specifically include domestic assault. This definition applies for the purpose of county attorneys’ and prosecuting attorneys’ duty to consult with the victim regarding a plea agreement. It also applies to any presentence investigation and report ordered to be prepared by a court, which must include the victim’s statements if possible.

NEBRASKA—CONFIDENTIALITY

Nebraska enacted the Automatic License Plate Reader Privacy Act, codified at §§ 60-3201 et seq., which limits the ability of government agencies to use automatic license plate readers and any data collected thereby. § 60-3209 states that if a government entity is presented with a protective order protecting the driver of a vehicle, and the vehicle is registered jointly with the abuser or solely in the abuser’s name, the information from the license plate cannot be disclosed except related to use in a criminal case or as part of a license plate match for certain law enforcement purposes.

NEW JERSEY—EMPLOYMENT

New Jersey enacted § 11A:2-6a to require the Civil Service Commission to develop a uniform domestic violence policy for all public employers to adopt. The policy must include a declaration encouraging domestic violence victims to contact human resources; a confidential method to report domestic violence to human resources; a confidentiality policy for human resources; a listing of domestic violence resources; a requirement that employee records related to domestic violence be kept separate from the rest of their file; an explanation of the requirements of the New Jersey SAFE Act (which requires domestic violence-related leave); and a plan for the employer to address domestic violence-related performance issues.

NEW JERSEY—PUBLIC BENEFITS

New Jersey amended § 44: 10-51(a), allowing for the state to grant emergency assistance benefits to individuals or families who are homeless or imminently homeless as a result of domestic violence, as

attested to by a signed statement of the applicant. This is an exception to the rule that only recipients of Work First New Jersey (which includes the state's implementation of Temporary Aid for Needy Families (TANF)) and individuals receiving Supplemental Security Income (SSI, for low-income people with disabilities) can receive emergency assistance. Emergency assistance benefits include food, shelter, rental assistance, moving expenses, and other benefits.

NEW JERSEY—PROTECTIVE ORDERS

New Jersey enacted §§ 2C:40-27 and 40-28 and amended several other sections relating to the regulation of drones. Among other things, the bill creates new crimes relating to the dangerous or illicit operation of drones. The new §2C:40-28(f) specifies that it is a violation of any order restraining contact with a person or location for the subject individual to knowingly operate a drone within a distance of the person or location that would violate the order. § 2C:40-28(g) specifies that a conviction of any of the new crimes does not merge with, among other things, contempt of a domestic violence order.

NEW JERSEY—SERVICE CONTRACTS

New Jersey enacted a series of statutes to allow domestic violence victims to terminate a contract with a cable television company (§ 48:5A-11.13), telephone company (§ 48:5A-17-38), or direct satellite provider (§ 56:12-98) without paying an early termination fee or any similar charge. The victim must make the request in writing, and within one year of the request the victim must provide to the company a copy of a permanent restraining order from any jurisdiction as proof.

NEW MEXICO—DEFINITIONS

New Mexico amended several sections to add suffocation and strangulation to the definitions located in the Family Violence Protection Act (§ 40-13-2), the Crimes Against Household Members Act (§ 30-3-11), and the Abuse and Neglect Act (§ 32A-4-2). § 30-3-16 was also amended to include aggravated battery by suffocation or strangulation as a third degree felony.

NEW MEXICO—CONFIDENTIALITY

New Mexico enacted the Confidential Substitute Address Act to provide for the confidentiality of a domestic violence victim's address in public records. Under § 40-13B-3, a victim must apply in writing with the secretary of state to take advantage of the program, explaining among other things their concern for their or another household member's safety; that they have confidentially relocated in the past 90 days, or will do so within 90 days; and that they designate the secretary of state as agent for service of process. § 40-13B-4 provides that, once certified, the secretary of state then designates a confidential substitute address to forward mail to. In addition, § 40-13B-8 states that records in this program are restricted to approved staff members who must, among others things, complete a domestic violence training course.

NEW MEXICO—TRAINING

New Mexico amended § 29-7-4.1 to require that the police officer basic training and mandatory annual domestic abuse training include information on strangulation.

OREGON—FIREARMS POSSESSION

Oregon amended and enacted several provisions regarding a ban on firearms possession for individuals convicted of certain crimes or who are the subject of protective orders. In particular, § 166.255 was amended to broaden the scope of the firearms provision for protective orders, applying the ban to individuals who are the subject of orders that protect their family or household member, or the child of a family or household member. The statute previously applied only to orders protecting their intimate partner, child, or intimate partner's child. The amendment also expanded the scope of the

conviction-related ban, applying it to people convicted of certain crimes whose victims were a family or household member, or a child or ward; the language previously included only family members. Amendments to §§ 166.412 and 166.436 made substantial changes to procedures related to attempted gun sales to prohibited owners.

PUERTO RICO—EMPLOYMENT

Puerto Rico enacted the Fiscal Plan Compliance Act, making substantial changes to the government's finances, including public employee fringe benefits. In particular, § 2.04 of the Act allows employees to use up to five days of sick leave per year, as long as they maintain a balance of 12 days, for certain purposes other than a personal illness. One such purpose is for the first appearance of a petitioner, victim, or claimant in any proceeding related to, among other things, domestic violence. The section also provides for paternity leave, but the employee must certify, among other things, that he has not committed domestic abuse. A similar limitation applies to adoption-related leave.

SOUTH DAKOTA—CHILD CUSTODY

§ 25-4A-24 was amended to add nine new factors a court must consider when deciding a request for joint physical custody. The factors generally address a parent's ability and willingness to care for the child, both physically and emotionally; to be a good model for the child; and to provide a stable home environment. The new factors also include "the extent of the child's adjustment in regards to home, school, and community"; whether "a break in attachment with the parent whom the child has formed a closer attachment would cause detriment"; and "[w]hether a parent is guilty of misconduct that may have a harmful effect on the child."

SOUTH DAKOTA—LAW ENFORCEMENT

§ 25-10-36.1 previously provided that a law enforcement officer called to the scene of a domestic abuse complaint is not required to arrest a victim of domestic abuse on an outstanding warrant if (1) the victim is not liable for arrest based on the present incidence of domestic abuse; (2) the outstanding warrant is for a nonviolent misdemeanor offense; and (3) the victim is the custodial parent or immediate caregiver of a minor child. The amendment deleted the third requirement, expanding victims' rights, and made other non-substantive changes. As before, the victim remains subject to arrest 72 hours after the domestic abuse incident.

TENNESSEE—STATE COUNCILS

§§ 4-29-239(a) and 4-29-243(a) were amended to extend the termination date of the domestic violence state coordinating council, created by § 38-12-101, from June 30, 2018, to June 30, 2022.

VIRGINIA—PROTECTIVE ORDERS

§ 16.1-253.1 was amended to expand the relief a court can grant in preliminary protective orders in cases of family abuse to include granting the petitioner and any other family or household member exclusive use and possession of a cellular telephone or electronic device; enjoining the respondent from terminating a cellular telephone number or electronic device before the current contract expires; and enjoining the respondent from using a cellular telephone or other electronic device to locate the petitioner. § 16.1-279.1, governing protective orders, was similarly amended.

WEST VIRGINIA—LAW ENFORCEMENT, CHILD CUSTODY, CONFIDENTIALITY

West Virginia amended and enacted numerous sections related to domestic violence. In particular:

- § 7-10-2 was enacted to require that when humane officers (who generally investigate animal cruelty) form a reasonable suspicion of child or elder abuse, or of domestic violence, they must report that to the appropriate authority – in the case of domestic violence the state police;

- § 48-26-701 was amended to expand the description of information that must be kept confidential by covered programs and shelters, specifying that they must not “disclose, reveal, or release” (previously “disclose”) any written records or personal information, whether encrypted or not (previously written records, with no reference to encryption). Most enumerated exceptions to confidentiality continue to exist with small changes, but one, referring to review by other staff at the same program or shelter, was deleted, and a new exception mandates that batterer intervention program participants authorize certain releases.
- The following were amended with technical, nonsubstantive changes: § 48-9-205, regarding permanent parenting plans; § 48-27-403, regarding the procedures for granting an emergency protective order; § 49-1-201, which includes definitions for, among other things, “battered parent”; and § 51-2A-2, regarding family court jurisdiction.

WYOMING—CHILD CUSTODY

§ 20-2-201(d) was amended to specify that a court in determining custody “shall not favor or disfavor any form of custody.” The law included and still includes language authorizing courts to grant “any combination of joint, shared or sole custody.”



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.

This publication was made possible by Grant Number 90EV0439-04 from the Administration on Children, Youth and Families, Family and Youth Services Bureau, U.S. Department of Health and Human Services. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the U.S. Department of Health and Human Services.