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H.818

Introduced by Representatives Pugh of South Burlington, Grad of Moretown,
and Ram of Burlington

Referred to Committee on

Date:

Subject: Crimes and criminal procedure; breach of the peace; stalking

Statement of purpose of bill as introduced: This bill proposes to amend the
definitions related to civil orders of protection against stalking and sexual
assault and the criminal stalking law, and to establish prohibited defenses in a
criminal stalking case.

An act relating to stalking

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The General Assembly finds the following:

(1) Stalking is a serious problem in Vermont and nationwide.

(2) Stalking involves severe intrusions on the victim's personal privacy
and autonomy.

(3) Stalking causes a long-lasting impact on the victim's quality of life
and creates risks to the security and safety of the victim and others even in the
absence of express threats of physical harm.

1 (4) Stalking conduct often becomes increasingly violent over time.

2 (5) There is a strong connection between stalking and domestic violence
3 and sexual assault.

4 Sec. 2. 12 V.S.A. chapter 178 is amended to read:

5 CHAPTER 178. ORDERS AGAINST STALKING
6 OR SEXUAL ASSAULT

7 § 5131. DEFINITIONS

8 As used in this chapter:

9 (1) “Course of conduct” means ~~a pattern of conduct composed of two or~~
10 ~~more acts over a period of time, however short, evidencing a continuity of~~
11 ~~purpose. Constitutionally protected activity is not included within the meaning~~
12 ~~of “course of conduct.”~~ two or more acts in which a person follows, monitors,
13 observes, surveils, threatens, or communicates to or about, another person, or
14 interferes with another person’s property. This definition shall apply to acts
15 conducted by the person directly, indirectly, or through third parties and by any
16 action, method, device, or means.

17 (2) ~~“Following” means maintaining over a period of time a visual or~~
18 ~~physical proximity to another person in such manner as would cause a~~
19 ~~reasonable person to have fear of unlawful sexual conduct, unlawful restraint,~~
20 ~~bodily injury, or death~~ “Emotional distress” means significant mental suffering

1 or distress that may, but does not necessarily, require medical or other
2 professional treatment or counseling.

3 (3) ~~“Lying in wait” means hiding or being concealed for the purpose of~~
4 ~~attacking or harming another person.~~

5 (4) “Nonphysical contact” includes telephone calls, mail, e-mail, social
6 media commentary or comment, or other electronic communication, fax, and
7 written notes.

8 (4) “Reasonable person” means a reasonable person in the victim’s
9 circumstances.

10 (5) “Sexually assaulted the plaintiff” means that the defendant engaged
11 in conduct that meets elements of lewd and lascivious conduct as defined in
12 13 V.S.A. § 2601, lewd and lascivious conduct with a child as defined in
13 13 V.S.A. § 2602, sexual assault as defined in 13 V.S.A. § 3252, aggravated
14 sexual assault as defined in 13 V.S.A. § 3253, use of a child in a sexual
15 performance as defined in 13 V.S.A. § 2822, or consenting to a sexual
16 performance as defined in 13 V.S.A. § 2823 and that the plaintiff was the
17 victim of the offense.

18 (6) “Stalk” means to engage in a course of conduct ~~which consists of~~
19 ~~following or lying in wait for a person, or threatening behavior~~ directed at a
20 specific person ~~or a member of the person’s family, and:~~

21 (A) ~~serves no legitimate purpose; and~~

1 ~~(B)~~ that would cause a reasonable person to fear for his or her safety
2 or the safety of another or would cause a reasonable person substantial
3 emotional distress.

4 (7) “Stay away” means to refrain from knowingly:

5 (A) initiating or maintaining a physical presence near the plaintiff;

6 (B) engaging in nonphysical contact with the plaintiff directly or
7 indirectly; or

8 (C) engaging in nonphysical contact with the plaintiff through third
9 parties who may or may not know of the order.

10 ~~(8) “Threatening behavior”~~ “Threatens” means ~~acts which~~ to act in a
11 manner that would cause a reasonable person to fear unlawful sexual conduct,
12 unlawful restraint, bodily injury, or death, including verbal threats; written,
13 telephonic, or other electronically communicated threats; vandalism; or
14 physical contact without consent. Intent is not required, including an overt
15 statement of intent to physical harm or emotional distress to the person.

16 § 5132. JURISDICTION AND VENUE

17 (a) The Superior Court shall have jurisdiction over proceedings under this
18 chapter.

19 (b) Proceedings under this chapter may be commenced in the county in
20 which the plaintiff resides. If the plaintiff has left his or her residence to avoid
21 being stalked or sexually assaulted, the plaintiff shall have the option to bring

1 an action in the county of the previous residence or the county of the new
2 residence.

3 § 5133. REQUESTS FOR AN ORDER AGAINST STALKING OR
4 SEXUAL ASSAULT

5 (a) A person, other than a family or household member as defined in
6 15 V.S.A. § 1101(2), may seek an order against stalking or sexual assault on
7 behalf of ~~him~~ him- or herself or his or her children by filing a complaint under
8 this chapter. The plaintiff shall submit an affidavit in support of the order.

9 (b) Except as provided in section 5134 of this title, the court shall grant the
10 order only after notice to the defendant and a hearing. The plaintiff shall have
11 the burden of proving by a preponderance of the evidence that the defendant
12 stalked or sexually assaulted the plaintiff.

13 (c) In a hearing under this chapter, neither opinion evidence of nor
14 evidence of the reputation of the plaintiff's sexual conduct shall be admitted.
15 Evidence of prior sexual conduct of the plaintiff shall not be admitted;
16 provided, however, where it bears on the credibility of the plaintiff or it is
17 material to a fact at issue and its probative value outweighs its private
18 character, the court may admit any of the following:

19 (1) ~~Evidence~~ evidence of the plaintiff's past sexual conduct with the
20 defendant.;

1 (2) ~~Evidence~~ evidence of specific instances of the plaintiff's sexual
2 conduct showing the source of origin of semen, pregnancy, or disease; or

3 (3) ~~Evidence~~ evidence of specific instances of the plaintiff's past false
4 allegations of violations of 13 V.S.A. chapter 59 or 72.

5 (d)(1) If the court finds by a preponderance of evidence that the defendant
6 has stalked or has been convicted of sexually assaulting the plaintiff, the court
7 shall order the defendant to stay away from the plaintiff or the plaintiff's
8 children, or both, and may make any other such order it deems necessary to
9 protect the plaintiff or the plaintiff's children, or both.

10 (2) If the court finds by a preponderance of evidence that the defendant
11 has sexually assaulted the plaintiff and there is a danger of the defendant
12 further harming the plaintiff, the court shall order the defendant to stay away
13 from the plaintiff or the plaintiff's children, or both, and may make any other
14 such order it deems necessary to protect the plaintiff or the plaintiff's children,
15 or both. The court may consider the defendant's past conduct as relevant
16 evidence of future harm.

17 (e) Relief shall be granted for a fixed period, at the expiration of which
18 time the court may extend any order, upon motion of the plaintiff, for such
19 additional time as it deems necessary to protect the plaintiff or the plaintiff's
20 children, or both. It is not necessary for the court to find that the defendant
21 stalked or sexually assaulted the plaintiff during the pendency of the order to

1 extend the terms of the order. The court may modify its order at any
2 subsequent time upon motion by either party and a showing of a substantial
3 change in circumstance.

4 (f) No filing fee shall be required.

5 (g) Every order under this chapter shall contain the name of the court, the
6 names of the parties, the date of the petition, and the date and time of the order
7 and shall be signed by the judge.

8 (h) Form complaints and form orders for an “Order Against Stalking or
9 Sexual Assault” shall be provided by the Court Administrator and shall be
10 maintained by the clerks of the courts.

11 (i) When findings are required under this section, the court shall make
12 either written findings of fact or oral findings of fact on the record.

13 (j) Every final order issued under this section shall bear the following
14 language: “VIOLATION OF THIS ORDER IS A CRIME SUBJECT TO A
15 TERM OF IMPRISONMENT OR A FINE, OR BOTH, AND MAY ALSO BE
16 PROSECUTED AS CRIMINAL CONTEMPT PUNISHABLE BY FINE OR
17 IMPRISONMENT, OR BOTH.”

18 (k) Affidavit forms required pursuant to this section shall bear the
19 following language: “MAKING FALSE STATEMENTS IN THIS
20 AFFIDAVIT IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT
21 OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 2904.”

1 (l) A finding by the court pursuant to this chapter that the defendant stalked
2 or sexually assaulted the plaintiff shall not be admissible in any subsequent
3 civil proceedings for the purpose of establishing liability.

4 § 5134. EMERGENCY RELIEF

5 (a) In accordance with the Vermont Rules of Civil Procedure, a person
6 other than a family or household member as defined in 15 V.S.A. § 1001(2)
7 may file a complaint for a temporary order against stalking or sexual assault.
8 Such complaint shall be filed during regular court hours. The plaintiff shall
9 submit an affidavit in support of the order. The court may issue a temporary
10 order under this chapter ex parte, without notice to the defendant, upon motion
11 and findings by the court that the defendant has stalked or sexually assaulted
12 the plaintiff. The court may order the defendant to stay away from the plaintiff
13 or the plaintiff's children, or both, and may make any other such order it deems
14 necessary to protect the plaintiff or the plaintiff's children, or both.

15 (b) Every order issued under this section shall contain the name of the
16 court, the names of the parties, the date of the petition, and the date and time of
17 the order and shall be signed by the judge. Every order issued under this
18 section shall state upon its face a date, time, and place that the defendant may
19 appear to petition the court for modification or discharge of the order. This
20 opportunity to contest shall be scheduled as soon as reasonably possible, which
21 in no event shall be more than 10 days from the date of issuance of the order.

1 At such hearings, the plaintiff shall have the burden of proving by a
2 preponderance of the evidence that the defendant stalked or sexually assaulted
3 the plaintiff. If the court finds that the plaintiff has met his or her burden, it
4 shall continue the order in effect and make such other orders as it deems
5 necessary to protect the plaintiff or the plaintiff's children, or both.

6 (c) Form complaints and form orders shall be provided by the Court
7 Administrator and shall be maintained by the clerks of the courts.

8 (d) Every order issued under this chapter shall bear the following language:
9 "VIOLATION OF THIS ORDER IS A CRIME SUBJECT TO A TERM OF
10 IMPRISONMENT OR A FINE, OR BOTH, AND MAY ALSO BE
11 PROSECUTED AS CRIMINAL CONTEMPT PUNISHABLE BY FINE OR
12 IMPRISONMENT, OR BOTH."

13 (e) Affidavit forms required pursuant to this section shall bear the
14 following language: "MAKING FALSE STATEMENTS IN THIS
15 AFFIDAVIT IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT
16 OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 2904."
17 § 5135. SERVICE

18 (a) A complaint or ex parte temporary order or final order issued under this
19 chapter shall be served in accordance with the Vermont Rules of Civil
20 Procedure and may be served by any law enforcement officer. A court that
21 issues an order under this chapter during court hours shall promptly transmit

1 the order electronically or by other means to a law enforcement agency for
2 service.

3 (b) A defendant who attends a hearing held under section 5133 or 5134 of
4 this title at which a temporary or final order under this chapter is issued and
5 who receives notice from the court on the record that the order has been issued
6 shall be deemed to have been served. A defendant notified by the court on the
7 record shall be required to adhere immediately to the provisions of the order.
8 However, even when the court has previously notified the defendant of the
9 order, the court shall transmit the order for additional service by a law
10 enforcement agency.

11 (c) Orders against stalking or sexual assault shall be served by the law
12 enforcement agency at the earliest possible time and shall take precedence over
13 other summonses and orders, with the exception of abuse prevention orders
14 issued pursuant to 15 V.S.A. chapter 21. Orders shall be served in a manner
15 calculated to ensure the safety of the plaintiff. Methods of service which
16 include advance notification to the defendant shall not be used. The person
17 making service shall file a return of service with the court stating the date,
18 time, and place that the order was delivered personally to the defendant.

19 (d) If service of a notice of hearing issued under section 5133 or 5134 of
20 this title cannot be made before the scheduled hearing, the court shall continue

1 the hearing and extend the terms of the order upon request of the plaintiff for
2 such additional time as it deems necessary to achieve service on the defendant.

3 § 5136. PROCEDURE

4 (a) Except as otherwise specified in this chapter, proceedings commenced
5 under this chapter shall be in accordance with the Vermont Rules of Civil
6 Procedure and shall be in addition to any other available civil or criminal
7 remedies.

8 (b) The Court Administrator is authorized to contract with public or private
9 agencies to assist plaintiffs to seek relief and to gain access to Superior Court.
10 Law enforcement agencies shall assist in carrying out the intent of this section.

11 (c) The Office of the Court Administrator shall ensure that the Superior
12 Court has procedures in place so that the contents of orders and pendency of
13 other proceedings can be known to all courts for cases in which an order
14 against stalking or sexual assault proceeding is related to a criminal
15 proceeding.

16 (d) Unless otherwise ordered by the court, an order issued pursuant to
17 sections 5133 and 5134 of this title shall not be stayed pending an appeal.

1 § 5137. FILING ORDERS WITH LAW ENFORCEMENT PERSONNEL;
2 DEPARTMENT OF PUBLIC SAFETY PROTECTION ORDER
3 DATABASE

4 (a) Police departments, sheriff's departments, and State Police district
5 offices shall establish procedures for filing notice against stalking or sexual
6 assault orders issued under this chapter and for making their personnel aware
7 of the existence and contents of such orders.

8 (b) Any court in this State that issues a notice against a stalking or sexual
9 assault order under this chapter shall transmit a copy of the order to the
10 Department of Public Safety's protection order database.

11 § 5138. ENFORCEMENT

12 (a) Law enforcement officers are authorized to enforce orders issued under
13 this chapter. A foreign abuse prevention order as defined in 15 V.S.A. § 1101
14 shall be accorded full faith and credit throughout this State and shall be
15 enforced as if it were an order of this State. Law enforcement officers may
16 rely upon a copy of any order issued under this chapter or any foreign abuse
17 prevention order. Enforcement may include, ~~but is not limited to,~~ making an
18 arrest in accordance with the provisions of Rule 3 of the Vermont Rules of
19 Criminal Procedure.

20 (b) In addition to the provisions of subsection (a) of this section, violation
21 of an order issued under this chapter may be prosecuted as a criminal contempt

1 under Rule 42 of Vermont Rules of Criminal Procedure. The prosecution for
2 criminal contempt may be initiated by the State's Attorney in the Criminal or
3 Civil Division of the Superior Court in the unit or county in which the
4 violation occurred. The maximum penalty which may be imposed under this
5 subsection shall be a fine of \$1,000.00 or imprisonment for six months, or
6 both. A sentence of imprisonment upon conviction for criminal contempt may
7 be stayed in the discretion of the court, pending the expiration of the time
8 allowed for filing notice of appeal or pending appeal if any appeal is taken.
9 After two years have passed from conviction under this subsection, the court
10 may on motion of the defendant expunge the record of the criminal proceeding
11 and conviction unless the defendant has been convicted of a felony or
12 misdemeanor involving moral turpitude or a violation of a protection order
13 after such initial adjudication.

14 Sec. 3. 13 V.S.A. § 1021 is amended to read:

15 § 1021. DEFINITIONS

16 (a) ~~For the purpose of~~ As used in this chapter:

17 * * *

18 (3) "Deadly weapon" means any firearm, or other weapon, device,
19 instrument, material, or substance, whether animate or inanimate which in the
20 manner it is used or is intended to be used is known to be capable of producing
21 death or serious bodily injury.

1 reasonable person to have a fear of unlawful sexual conduct, unlawful restraint,
2 bodily injury, or death.

3 (3) ~~“Harassing” means actions directed at a specific person, or a~~
4 ~~member of the person’s family, which would cause a reasonable person to fear~~
5 ~~unlawful sexual conduct, unlawful restraint, bodily injury, or death, including~~
6 ~~verbal threats, written, telephonic, or other electronically communicated~~
7 ~~threats, vandalism, or physical contact without consent~~ “Course of conduct”
8 means two or more acts in which a person follows, monitors, observes,
9 surveils, threatens, or communicates to or about another person or interferes
10 with another person’s property. This definition shall apply to acts conducted by
11 the person directly, indirectly, or through third parties and by any action,
12 method, device, or means.

13 (4) ~~“Lying in wait” means hiding or being concealed for the purpose of~~
14 ~~attacking or harming another person.~~

15 (2) “Emotional distress” means significant mental suffering or distress
16 that may, but does not necessarily, require medical or other professional
17 treatment or counseling.

18 (3) “Reasonable person” means a reasonable person in the victim’s
19 circumstances.

20 (4) “Stalk” means to engage in a course of conduct directed at a specific
21 person that would cause a reasonable person to fear for his or her safety or the

1 safety of another or would cause a reasonable person substantial emotional
2 distress.

3 (5) “Threatens” shall have the same meaning as provided in section
4 1021 of this title.

5 § 1062. STALKING

6 Any person who intentionally stalks another person shall be imprisoned not
7 more than two years or fined not more than \$5,000.00, or both.

8 § 1063. AGGRAVATED STALKING

9 (a) A person commits the crime of aggravated stalking if the person
10 intentionally stalks another person, and:

11 (1) such conduct violates a court order that prohibits stalking and is in
12 effect at the time of the offense; ~~or~~

13 (2) has been previously convicted of stalking or aggravated stalking; ~~or~~

14 (3) has been previously convicted of an offense an element of which
15 involves an act of violence against the same person; ~~or~~

16 (4) the person being stalked is under ~~the age of~~ 16 years of age; or

17 (5) had a deadly weapon, as defined in section 1021 of this title, in his or
18 her possession while engaged in the act of stalking.

19 (b) A person who commits the crime of aggravated stalking shall be
20 imprisoned not more than five years or be fined not more than \$25,000.00, or
21 both.

1 (c) Conduct constituting the offense of aggravated stalking shall be
2 considered a violent act for the purposes of determining bail.

3 § 1064. DEFENSES

4 In a prosecution under this subchapter, it shall not be a defense that:

5 (1) the defendant was not provided actual notice that the course of
6 conduct was unwanted; or

7 (2) the defendant did not intend to cause the victim fear or emotional
8 distress.

9 Sec. 5. EFFECTIVE DATE

10 This act shall take effect on July 1, 2016.