

1 S.47

2 Introduced by Senator Sears

3 Referred to Committee on Judiciary

4 Date: January 22, 2013

5 Subject: Court procedure; crimes; protection orders

6 Statement of purpose of bill as introduced: This bill proposes to amend
7 provisions relating to notice, appeals, and content of protection orders and to
8 provide enhanced penalties for domestic assault in violation of a protection
9 order issued in another jurisdiction.

10 An act relating to protection orders and second degree domestic assault

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

12 ~~Sec. 1. 12 V.S.A. § 5135 is amended to read.~~

13 § 5135. SERVICE

14 (a) A complaint or ex parte temporary order or final order issued under this
15 chapter shall be served in accordance with the Vermont Rules of Civil
16 Procedure and may be served by any law enforcement officer. Orders against
17 stalking or sexual assault shall be served at the earliest possible time and shall
18 take precedence over other summonses and orders, with the exception of abuse
19 prevention orders issued pursuant to 15 V.S.A. chapter 21. Orders shall be
20 served in a manner calculated to ensure the safety of the plaintiff. Methods of

1 ~~service which include advance notification to the defendant shall not be used.~~

2 The person making service shall file a return of service with the court stating
3 the date, time, and place that the order was delivered personally to the
4 defendant. A defendant who attends a hearing held under section 5133 or 5134
5 of this title at which a temporary or final order is issued and who receives
6 notice from the court on the record that the order has been issued shall be
7 deemed to have been served.

8 * * *

9 Sec. 2. 33 V.S.A. § 5115 is amended to read:

10 § 5115. PROTECTIVE ORDER

11 (a) On motion of a party or on the court's own motion, the court may make
12 an order restraining or otherwise controlling the conduct of a person if the
13 court finds that such conduct is or may be detrimental or harmful to a child.

14 (b) The person against whom the order is directed shall be served with
15 notice of the motion and the grounds therefor and be given an opportunity to
16 be heard.

17 (c) Upon a showing that there is a risk of immediate harm to a child, the
18 court may issue a protective order ex parte. A hearing on the motion shall be
19 held no more than 10 days after the issuance of the order. A person who
20 attends a hearing held under this section at which a protective order is issued

1 ~~and who receives notice from the court on the record that the order has been~~
2 ~~issued shall be deemed to have been served with notice of the order.~~

3 (d) The court may review any protective order at a subsequent hearing to
4 determine whether the order should remain in effect.

5 (e) A person who is the subject of an order issued pursuant to this section
6 and who intentionally violates a provision of the order that concerns contact
7 between the child and that person shall be punished in accordance with 13
8 V.S.A. § 1030.

9 Sec. 3. 12 V.S.A. § 5136 is amended to read:

10 § 5136. PROCEDURE

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

15 (b) The ~~court administrator~~ Court Administrator is authorized to contract
16 with public or private agencies to assist plaintiffs to seek relief and to gain
17 access to superior court. Law enforcement agencies shall assist in carrying out
18 the intent of this section.

19 (c) The ~~office~~ Office of the ~~court administrator~~ Court Administrator shall
20 ensure that the superior court has procedures in place so that the contents of
21 orders and pendency of other proceedings can be known to all courts for cases

1 ~~in which an order against stalking or sexual assault proceeding is related to a~~
2 criminal proceeding.

3 (d) Notwithstanding any provision of law to the contrary, an order issued
4 pursuant to sections 5133 and 5134 of this title shall not be stayed pending an
5 appeal.

6 Sec. 4. 15 V.S.A. § 1103 is amended to read:

7 § 1103. REQUESTS FOR RELIEF

8 (a) Any family or household member may seek relief from abuse by
9 another family or household member on behalf of him or herself or his or her
10 children by filing a complaint under this chapter. The plaintiff shall submit an
11 affidavit in support of the order.

12 * * *

13 (c)(1) The court shall make such orders as it deems necessary to protect the
14 plaintiff or the children, or both, if the court finds that the defendant has
15 abused the plaintiff, and:

16 * * *

17 (2) The court order may include the following:

18 (A) an order that the defendant refrain from abusing the plaintiff, his
19 or her children, or both and from interfering with their personal liberty,
20 including restrictions on the defendant's ability to contact the plaintiff or the
21 children in person, by phone, or by mail and restrictions prohibiting the

1 ~~defendant from coming within a fixed distance of the plaintiff, the children, the~~

2 plaintiff's residence, or other designated locations where the plaintiff or

3 children are likely to spend time;

4 (B) an order that the defendant immediately vacate the household and
5 that the plaintiff be awarded sole possession of a residence;

6 (C) a temporary award of parental rights and responsibilities in
7 accordance with the criteria in section 665 of this title;

8 (D) an order for parent-child contact under such conditions as are
9 necessary to protect the child or the plaintiff, or both, from abuse. An order for
10 parent-child contact may if necessary include conditions under which the
11 plaintiff may deny parent-child contact pending further order of the court;

12 (E) if the court finds that the defendant has a duty to support the
13 plaintiff, an order that the defendant pay the plaintiff's living expenses for a
14 fixed period of time not to exceed three months;

15 (F) if the court finds that the defendant has a duty to support the child
16 or children, a temporary order of child support pursuant to chapter 5 of this
17 title, for a period not to exceed three months. A support order granted under
18 this section may be extended if the relief from abuse proceeding is
19 consolidated with an action for legal separation, divorce, or parentage;

1 ~~(C) an order concerning the possession, care, and control of any~~
2 animal owned, possessed, leased, kept, or held as a pet by either party or a
3 minor child residing in the household; :

4 (H) An order that the defendant return all of the plaintiff's or
5 plaintiff's children's personal documentation in his or her possession,
6 including immigration documentation, passports, birth certificates, and
7 identification cards.

8 * * *

9 Sec. 5. 15 V.S.A. § 1104 is amended to read:

10 § 1104. EMERGENCY RELIEF

11 (a) In accordance with the rules of civil procedure, temporary orders under
12 this chapter may be issued ex parte, without notice to defendant, upon motion
13 and findings by the court that defendant has abused plaintiff, his or her
14 children, or both. The plaintiff shall submit an affidavit in support of the order.
15 Relief under this section shall be limited as follows:

16 (1) ~~upon~~ Upon a finding that there is an immediate danger of further
17 abuse, an order may be granted requiring the defendant:

18 (A) to refrain from abusing the plaintiff, his or her children, or both,
19 or from cruelly treating as defined in 13 V.S.A. § 352 or 352a or killing any
20 animal owned, possessed, leased, kept, or held as a pet by either party or a
21 minor child residing in the household; ~~and~~

1 ~~(B) to refrain from interfering with the plaintiff's personal liberty, the~~
2 personal liberty of plaintiff's children, or both; and

3 (C) to refrain from coming within a fixed distance of the plaintiff, the
4 plaintiff's children, the plaintiff's residence, or other designated locations
5 where the plaintiff or plaintiff's children are likely to spend time.

6 (2) ~~upon~~ Upon a finding that the plaintiff, his or her children, or both
7 have been forced from the household and will be without shelter unless the
8 defendant is ordered to vacate the premises, the court may order the defendant
9 to vacate immediately the household and may order sole possession of the
10 premises to the plaintiff;

11 (3) ~~upon~~ Upon a finding that there is immediate danger of physical or
12 emotional harm to minor children, the court may award temporary custody of
13 these minor children to the plaintiff or to other persons.

14 * * *

15 Sec. 6. 15 V.S.A. § 1152 is amended to read:

16 § 1152. ADDRESS CONFIDENTIALITY PROGRAM; APPLICATION;

17 CERTIFICATION

18 * * *

19 (f) The Washington County Superior Court shall have jurisdiction over
20 petitions for protective orders filed by program participants pursuant to
21 12 V.S.A. §§ 5133 and 5134, to sections 1103 and 1104 of this title, and to

1 ~~33 V.S.A. § 5115. A program participant may file a petition for a protective~~
2 ~~order in the county in which he or she resides or in Washington County to~~
3 ~~protect the confidentiality of his or her address.~~

4 Sec. 7. 13 V.S.A. § 1044 is amended to read:

5 § 1044. SECOND DEGREE AGGRAVATED DOMESTIC ASSAULT

6 (a) A person commits the crime of second degree aggravated domestic
7 assault if the person:

8 (1) commits the crime of domestic assault and such conduct violates:

9 (A) specific conditions of a criminal court order in effect at the time
10 of the offense imposed to protect that other person;

11 (B) a final abuse prevention order issued under ~~section 15 V.S.A.~~
12 ~~§ 1103 of Title 15~~ or a similar order issued in another jurisdiction;

13 (C) an order against stalking or sexual assault issued under 12 V.S.A.
14 ~~chapter 178 of Title 12~~ or a similar order issued in another jurisdiction; or

15 (D) an order against abuse of a vulnerable adult issued under
16 33 V.S.A. chapter 69 of Title 33 or a similar order issued in another
17 jurisdiction.

18 (2) commits the crime of domestic assault; and

19 (A) has a prior conviction within the last 10 years for violating an
20 abuse prevention order issued under section 1030 of this title; or

1 ~~(B) has a prior conviction for domestic assault under section 1042 of~~
2 this title.

3 * * *

4 Sec. 8. EFFECTIVE DATE

5 ~~This act shall take effect on July 1, 2013.~~

Sec. 1. 12 V.S.A. § 5135 is amended to read:

§ 5135. SERVICE

(a) A complaint or ex parte temporary order or final order issued under this chapter shall be served in accordance with the Vermont Rules of Civil Procedure and may be served by any law enforcement officer. Orders against stalking or sexual assault shall be served at the earliest possible time and shall take precedence over other summonses and orders, with the exception of abuse prevention orders issued pursuant to 15 V.S.A. chapter 21. Orders shall be served in a manner calculated to ensure the safety of the plaintiff. Methods of service which include advance notification to the defendant shall not be used. The person making service shall file a return of service with the court stating the date, time, and place that the order was delivered personally to the defendant. A defendant who attends a hearing held under section 5133 or 5134 of this title at which a temporary or final order is issued and who receives notice from the court on the record that the order has been issued shall be deemed to have been served.

* * *

Sec. 2. 33 V.S.A. § 6935 is amended to read:

§ 6935. FINDINGS AND ORDER

(a) If the court finds that the defendant has abused, neglected, or exploited the vulnerable adult, the court shall make such order as it deems necessary to protect the vulnerable adult. The plaintiff shall have the burden of proving abuse, neglect, or exploitation by a preponderance of the evidence. Relief shall be granted for a fixed period of time, at the expiration of which the court may extend any order, upon motion of the plaintiff, for such additional time as it deems necessary to protect the vulnerable adult from abuse, neglect, or exploitation. The court may modify its order at any subsequent time upon motion by either party and a showing of a substantial change in circumstances. If the motion for extension or modification of the order is made by an interested person, notice shall be provided to the vulnerable adult, and

the court shall determine whether the vulnerable adult is capable of expressing his or her wishes with respect to the motion and, if so, whether the vulnerable adult wishes to request an extension or modification. If the court determines the vulnerable adult is capable of expressing his or her wishes and does not wish to pursue the motion, the court shall dismiss the motion.

(b) Every order under this subchapter shall contain the name of the court, the names of the parties, the date of the petition, the date and time of the order, and shall be signed by the judge.

(c) Form complaints and form orders shall be provided by the court administrator and shall be maintained by the clerks of the courts.

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

(e) A defendant who attends a hearing under this section at which a protective order is issued and who receives notice from the court on the record that the order has been issued shall be deemed to have been served with notice of the order.

Sec. 3. 12 V.S.A. § 5136 is amended to read:

§ 5136. PROCEDURE

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

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

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

(d) Notwithstanding any provision of law to the contrary, an order issued pursuant to sections 5133 and 5134 of this title shall not be stayed pending an appeal.

Sec. 4. 15 V.S.A. § 1103 is amended to read:

§ 1103. REQUESTS FOR RELIEF

(a) Any family or household member may seek relief from abuse by another family or household member on behalf of him or herself or his or her children by filing a complaint under this chapter. The plaintiff shall submit an affidavit in support of the order.

** * **

(c)(1) The court shall make such orders as it deems necessary to protect the plaintiff or the children, or both, if the court finds that the defendant has abused the plaintiff, and:

** * **

(2) The court order may include the following:

(A) an order that the defendant refrain from abusing the plaintiff, his or her children, or both and from interfering with their personal liberty, including restrictions on the defendant's ability to contact the plaintiff or the children in person, by phone, or by mail and restrictions prohibiting the defendant from coming within a fixed distance of the plaintiff, the children, the plaintiff's residence, or other designated locations where the plaintiff or children are likely to spend time;

(B) an order that the defendant immediately vacate the household and that the plaintiff be awarded sole possession of a residence;

(C) a temporary award of parental rights and responsibilities in accordance with the criteria in section 665 of this title;

(D) an order for parent-child contact under such conditions as are necessary to protect the child or the plaintiff, or both, from abuse. An order for parent-child contact may if necessary include conditions under which the plaintiff may deny parent-child contact pending further order of the court;

(E) if the court finds that the defendant has a duty to support the plaintiff, an order that the defendant pay the plaintiff's living expenses for a fixed period of time not to exceed three months;

(F) if the court finds that the defendant has a duty to support the child or children, a temporary order of child support pursuant to chapter 5 of this title, for a period not to exceed three months. A support order granted under this section may be extended if the relief from abuse proceeding is consolidated with an action for legal separation, divorce, or parentage;

(G) an order concerning the possession, care, and control of any animal owned, possessed, leased, kept, or held as a pet by either party or a minor child residing in the household;

~~(H) an order that the defendant return all of the plaintiff's or plaintiff's children's personal documentation in his or her possession, including immigration documentation, birth certificates, and identification cards.~~

(H) an order that the defendant return any personal documentation in his or her possession, including immigration documentation, birth certificates, and identification cards:

(i) pertaining to the plaintiff; or

(ii) pertaining to the plaintiff's children if relief is sought for the children or for good cause shown.

* * *

Sec. 5. 15 V.S.A. § 1104 is amended to read:

§ 1104. EMERGENCY RELIEF

(a) In accordance with the rules of civil procedure, temporary orders under this chapter may be issued ex parte, without notice to defendant, upon motion and findings by the court that defendant has abused plaintiff, his or her children, or both. The plaintiff shall submit an affidavit in support of the order. Relief under this section shall be limited as follows:

(1) ~~upon~~ Upon a finding that there is an immediate danger of further abuse, an order may be granted requiring the defendant:

(A) to refrain from abusing the plaintiff, his or her children, or both, or from cruelly treating as defined in 13 V.S.A. § 352 or 352a or killing any animal owned, possessed, leased, kept, or held as a pet by either party or a minor child residing in the household; ~~and~~

(B) to refrain from interfering with the plaintiff's personal liberty, the personal liberty of plaintiff's children, or both; and

(C) to refrain from coming within a fixed distance of the plaintiff, the plaintiff's children, or the plaintiff's residence.

(2) ~~upon~~ Upon a finding that the plaintiff, his or her children, or both have been forced from the household and will be without shelter unless the defendant is ordered to vacate the premises, the court may order the defendant to vacate immediately the household and may order sole possession of the premises to the plaintiff;

(3) ~~upon~~ Upon a finding that there is immediate danger of physical or emotional harm to minor children, the court may award temporary custody of these minor children to the plaintiff or to other persons.

* * *

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*§ 1152. ADDRESS CONFIDENTIALITY PROGRAM; APPLICATION;
CERTIFICATION*

* * *

(f) The Civil or Family Division of Washington County Superior Court shall have jurisdiction over petitions for protective orders filed by program participants pursuant to 12 V.S.A. §§ 5133 and 5134, to sections 1103 and 1104 of this title, and to 33 V.S.A. § 6935. A program participant may file a petition for a protective order in the county in which he or she resides or in Washington County to protect the confidentiality of his or her address.

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§ 1044. SECOND DEGREE AGGRAVATED DOMESTIC ASSAULT

(a) A person commits the crime of second degree aggravated domestic assault if the person:

(1) commits the crime of domestic assault and such conduct violates:

(A) specific conditions of a criminal court order in effect at the time of the offense imposed to protect that other person;

(B) a final abuse prevention order issued under ~~section~~ 15 V.S.A. § 1103 of Title 15 or a similar order issued in another jurisdiction.

(C) ~~an~~ a final order against stalking or sexual assault issued under ~~chapter 178 of Title 12~~ V.S.A. § 5133 or a similar order issued in another jurisdiction; or

(D) ~~an~~ a final order against abuse of a vulnerable adult issued under ~~chapter 69 of Title 33~~ V.S.A. § 6935 or a similar order issued in another jurisdiction.

(2) commits the crime of domestic assault; and

(A) has a prior conviction within the last 10 years for violating an abuse prevention order issued under section 1030 of this title; or

(B) has a prior conviction for domestic assault under section 1042 of this title.

(3) For the purpose of this subsection, the term "issued in another jurisdiction" means issued by a court in any other state, in a federally recognized Indian tribe, territory, or possession of the United States, in the Commonwealth of Puerto Rico, or in the District of Columbia.

* * *

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2013.