

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred House Bill No. 818
3 entitled “An act relating to stalking” respectfully reports that it has considered
4 the same and recommends that the bill be amended by striking out all after the
5 enacting clause and inserting in lieu thereof the following:

6 Sec. 1. FINDINGS

7 The General Assembly finds the following:

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

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

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

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

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

17 Sec. 2. 12 V.S.A. § 5131 is amended to read:

18 § 5131. DEFINITIONS

19 As used in this chapter:

20 (1)(A) “Course of conduct” means ~~a pattern of conduct composed of~~
21 ~~two or more acts over a period of time, however short, evidencing a continuity~~

1 ~~of purpose~~ two or more acts over a period of time, however short, in which a
2 person follows, monitors, observes, surveils, or threatens/makes threats to or
3 about, or communicates to or about, another person, or interferes with another
4 person's property. This definition shall apply to acts conducted by the person
5 directly, indirectly, or to or through third parties and by any action, method,
6 device, or means. Constitutionally protected activity is not included within the
7 meaning of "course of conduct."

8 (B) As used in subdivision (A) of this subdivision, threaten shall not
9 be construed to require an express or overt threat.

10 ~~(2) "Following" means maintaining over a period of time a visual or~~
11 ~~physical proximity to another person in such manner as would cause a~~
12 ~~reasonable person to have fear of unlawful sexual conduct, unlawful restraint,~~
13 ~~bodily injury, or death~~ "Emotional distress" means significant mental suffering
14 or distress that may, but does not necessarily, require medical or other
15 professional treatment or counseling.

16 ~~(3) "Lying in wait" means hiding or being concealed for the purpose of~~
17 ~~attacking or harming another person.~~

18 ~~(4) "Nonphysical contact" includes telephone calls, mail, e-mail, social~~
19 ~~media commentary or comment, or other electronic communication, fax, and~~
20 ~~written notes.~~

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

3 (5) “Sexually assaulted the plaintiff” means that the defendant engaged
4 in conduct that meets elements of lewd and lascivious conduct as defined in
5 13 V.S.A. § 2601, lewd and lascivious conduct with a child as defined in
6 13 V.S.A. § 2602, sexual assault as defined in 13 V.S.A. § 3252, aggravated
7 sexual assault as defined in 13 V.S.A. § 3253, use of a child in a sexual
8 performance as defined in 13 V.S.A. § 2822, or consenting to a sexual
9 performance as defined in 13 V.S.A. § 2823 and that the plaintiff was the
10 victim of the offense.

11 (6) “Stalk” means to purposefully/intentionally engage in a course of
12 conduct ~~which consists of following or lying in wait for a person, or~~
13 ~~threatening behavior~~ directed at a specific person ~~or a member of the person’s~~
14 ~~family, and:~~

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

16 ~~(B)~~ that the person engaging in the conduct knows or should know
17 would cause a reasonable person to fear for his or her safety or the safety of
18 another or would cause a reasonable person substantial emotional distress.

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

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

1 (B) engaging in nonphysical contact with the plaintiff directly or
2 indirectly; or

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

5 ~~(8) “Threatening behavior” means acts which would cause a reasonable~~
6 ~~person to fear unlawful sexual conduct, unlawful restraint, bodily injury, or~~
7 ~~death, including verbal threats, written, telephonic, or other electronically~~
8 ~~communicated threats, vandalism, or physical contact without consent.~~
9 ~~”Threaten” shall not be construed to require an intent to threaten, whether~~
10 ~~established by an overt statement of intent to cause physical harm or by any~~
11 ~~other means.~~

12 Sec. 2. 12 V.S.A. § 5133 is amended to read:

13 § 5133. REQUESTS FOR AN ORDER AGAINST STALKING OR
14 SEXUAL ASSAULT

15 (a) A person, other than a family or household member as defined in
16 15 V.S.A. § 1101(2), may seek an order against stalking or sexual assault on
17 behalf of ~~him~~ him- or herself or his or her children by filing a complaint under
18 this chapter. The plaintiff shall submit an affidavit in support of the order.

19 (b) Except as provided in section 5134 of this title, the court shall grant the
20 order only after notice to the defendant and a hearing. The plaintiff shall have

1 the burden of proving by a preponderance of the evidence that the defendant
2 stalked or sexually assaulted the plaintiff.

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

9 (1) ~~Evidence~~ evidence of the plaintiff's past sexual conduct with the
10 defendant;

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

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

15 (d)(1) If the court finds by a preponderance of evidence that the defendant
16 has stalked or sexually assaulted the plaintiff, or has been convicted of stalking
17 or sexually assaulting the plaintiff, the court shall order the defendant to stay
18 away from the plaintiff or the plaintiff's children, or both, and may make any
19 other ~~such~~ order it deems necessary to protect the plaintiff or the plaintiff's
20 children, or both.

1 ~~(2) If the court finds by a preponderance of evidence that the defendant~~
2 ~~has sexually assaulted the plaintiff and there is a danger of the defendant~~
3 ~~further harming the plaintiff, the court shall order the defendant to stay away~~
4 ~~from the plaintiff or the plaintiff's children, or both, and may make any other~~
5 ~~such order it deems necessary to protect the plaintiff or the plaintiff's children,~~
6 ~~or both. The court may consider the defendant's past conduct as relevant~~
7 ~~evidence of future harm.~~

8 (e) Relief shall be granted for a fixed period, at the expiration of which
9 time the court may extend any order, upon motion of the plaintiff, for such
10 additional time as it deems necessary to protect the plaintiff or the plaintiff's
11 children, or both. It is not necessary for the court to find that the defendant
12 stalked or sexually assaulted the plaintiff during the pendency of the order to
13 extend the terms of the order. The court may modify its order at any
14 subsequent time upon motion by either party and a showing of a substantial
15 change in circumstance.

16 * * *

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

18 § 1021. DEFINITIONS

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

20 * * *

1 **(b)** As used in this subchapter, ~~(4) “Course~~ “course of conduct” means a
2 pattern of conduct composed of two or more acts over a period of time,
3 however short, evidencing a continuity of purpose. Constitutionally protected
4 activity is not included within the meaning of “course of conduct.”

5 Sec. 4. 13 V.S.A. chapter 19, subchapter 7 is amended to read:

6 Subchapter 7. Stalking

7 § 1061. DEFINITIONS

8 As used in this subchapter:

9 (1) **(A)** ~~“Stalk” means to engage in a course of conduct which consists of~~
10 following, lying in wait for, or harassing, and:

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

12 ~~(B) would cause a reasonable person to fear for his or her physical~~
13 safety or would cause a reasonable person substantial emotional distress.

14 (2) ~~“Following” means maintaining over a period of time a visual or~~
15 physical proximity to another person in such manner as would cause a
16 reasonable person to have a fear of unlawful sexual conduct, unlawful restraint,
17 bodily injury, or death.

18 (3) ~~“Harassing” means actions directed at a specific person, or a~~
19 member of the person’s family, which would cause a reasonable person to fear
20 unlawful sexual conduct, unlawful restraint, bodily injury, or death, including
21 verbal threats, written, telephonic, or other electronically communicated

1 ~~threats, vandalism, or physical contact without consent~~ “Course of conduct”
2 means two or more acts over a period of time, however short, in which a
3 person follows, monitors, ~~observes,~~ surveils, ~~or threatens/makes threats to or~~
4 ~~about, or communicates to or about,~~ another person, or interferes with another
5 person’s property. This definition shall apply to acts conducted by the person
6 directly, indirectly, or ~~to or through third parties~~ and by any action, method,
7 device, or means.

8 (B) As used in subdivision (A) of this subdivision, threaten shall not be
9 construed to require an express or overt threat.

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

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

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

17 (4) “Stalk” means to ~~purposefully/intentionally~~ engage in a course of
18 conduct ~~the person engaging in the conduct knows or should know~~ directed at
19 a specific person that would cause a reasonable person to fear for his or her
20 safety or the safety of another or would cause a reasonable person substantial
21 emotional distress.

1 ~~(5) “Threatens” or “threatening behavior” shall have the same meaning~~
2 ~~as provided in section 1021 of this title means to act in a manner that would~~
3 ~~cause a reasonable person to fear unlawful sexual conduct, unlawful restraint,~~
4 ~~bodily injury, or death, including verbal threats; written, telephonic, or other~~
5 ~~electronically communicated threats; vandalism; or physical contact without~~
6 ~~consent. “Threaten” shall not be construed to require an intent to threaten,~~
7 ~~whether established by an overt statement of intent to cause physical harm or~~
8 ~~by any other means.~~

9 § 1062. STALKING

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

12 § 1063. AGGRAVATED STALKING

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

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

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

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

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

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

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

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

8 § 1064. DEFENSES

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

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

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

14 Sec. 5. EFFECTIVE DATE

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

16 (Committee vote: _____)

17 _____

18 Representative _____

19 FOR THE COMMITTEE