

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~~
22 ~~of purpose. Constitutionally protected activity is not included within the~~

1 meaning of “course of conduct.” two or more acts over a period of time,

2 however short, with a continuity of purpose, in which a person intentionally:

3 (a) threatened the plaintiff with physical harm by written or spoken
4 words, or by actions, that would cause a reasonable person to fear for his or her
5 safety; or

6 (b) followed or surveilled the plaintiff, in person or by electronic
7 means, without legitimate reason and in a manner that would cause a
8 reasonable person to fear for his or her safety; or

9 (c) engaged in conduct that would cause a reasonable person to fear
10 unlawful sexual conduct, unlawful restraint, bodily injury, or death, including
11 verbal threats; vandalism; or physical contact without consent, and as a result
12 would cause a reasonable person to fear for his or her own safety or would
13 cause a reasonable person substantial emotional distress.

14 in which a person follows, monitors, observes, surveils, or threatens/makes
15 threats to or about, or communicates to or about, another person, or interferes
16 with another person’s property. This definition shall apply to acts conducted
17 by the person directly, indirectly, or to or through third parties and by any
18 action, method, device, or means. Constitutionally protected activity is not
19 included within the meaning of “course of conduct.”

20 (B) As used in subdivision (A) of this subdivision, threaten shall not be
21 construed to require an express or overt act.

22

1 (2) ~~“Following” means maintaining over a period of time a visual or~~
2 ~~physical proximity to another person in such manner as would cause a~~
3 ~~reasonable person to have fear of unlawful sexual conduct, unlawful restraint,~~
4 ~~bodily injury, or death~~ “Emotional distress” means significant mental suffering
5 or distress that may, but does not necessarily, require medical or other
6 professional treatment or counseling.

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

9 (4) ~~“Nonphysical contact” includes telephone calls, mail, e-mail, social~~
10 ~~media commentary or comment, or other electronic communication, fax, and~~
11 ~~written notes.~~

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

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

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

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

6 (B) ~~that~~ the person engaging in that conduct knows or should know
7 would cause a reasonable person to fear for his or her safety or the safety of a
8 another, or suffer other emotional distress.

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

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

11 (B) engaging in nonphysical contact with the plaintiff directly or
12 indirectly; or

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

15 (8) ~~“Threatening behavior” means acts which would cause a reasonable~~
16 ~~person to fear unlawful sexual conduct, unlawful restraint, bodily injury, or~~
17 ~~death, including verbal threats,; written, telephonic, or other electronically~~
18 ~~communicated threats,; vandalism,; or physical contact without consent.~~

19 “Threaten” shall not be construed to require an intent to threaten, whether
20 established by an overt statement of intent to cause physical harm or by any
21 other means.

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

1 § 5133. REQUESTS FOR AN ORDER AGAINST STALKING OR
2 SEXUAL ASSAULT

3 (a) A person, other than a family or household member as defined in
4 15 V.S.A. § 1101(2), may seek an order against stalking or sexual assault on
5 behalf of ~~him~~ him- or herself or his or her children by filing a complaint under
6 this chapter. The plaintiff shall submit an affidavit in support of the order.

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

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

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

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

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

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

2 § 1021. DEFINITIONS

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

4 * * *

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

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

10 Subchapter 7. Stalking

11 § 1061. DEFINITIONS

12 As used in this subchapter:

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

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

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

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

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

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

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

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

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

21 (4) Stalk means to purposefully/intentionally engage in a course of
22 conduct the person engaging in the conduct knows or should know directed at

1 a specific person and the person engaging in that conduct knows or should
2 know that the course of conduct would cause a reasonable person to fear for
3 his or her safety or the safety of a third person, or suffer other emotional
4 distress.

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

13 § 1062. STALKING

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

16 § 1063. AGGRAVATED STALKING

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

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

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

- 1 (3) has been previously convicted of an offense an element of which
2 involves an act of violence against the same person; ~~or~~
3 (4) the person being stalked is under ~~the age of~~ 16 years of age; or
4 (5) had a deadly weapon, as defined in section 1021 of this title, in his or
5 her possession while engaged in the act of stalking.

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

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

11 § 1064. DEFENSES

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

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

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

17 Sec. 4. 12 V.S.A. § 5133 is amended to read: 3 § 5133.

18 **REQUESTS FOR AN ORDER AGAINST STALKING OR SEXUAL**
19 **ASSAULT**

20 (a) A person, other than a family or household member as defined in 15
21 V.S.A. § 1101(2), may seek an order against stalking or sexual
22 assault on behalf of him- or herself or his or her children by filing a

1 complaint under this chapter. The plaintiff shall submit an affidavit
2 in support of the order. A minor 16 years of age or older may seek
3 relief on his or her own behalf if the minor is currently or was
4 previously engaged in a sexual or dating relationship with defendant.

5 (b) Sec. 5. 12 V.S.A. § 5134 is amended to read: 15 § 5134.

6 EMERGENCY RELIEF (a) In accordance with the Vermont Rules
7 of Civil Procedure, a person other than a family or household
8 member as defined in 15 V.S.A. § 1001(2) may file a complaint for a
9 temporary order against stalking or sexual assault. The complaint
10 shall be filed during regular court hours. The plaintiff shall submit an
11 affidavit in support of the order. A minor 16 years of age or older
12 may seek relief on his or her own behalf if the minor is currently or
13 was previously engaged in a sexual or dating relationship with
14 defendant. The court may issue a temporary order under this chapter
15 ex parte, without notice to the defendant, upon motion and findings
16 by the court that the defendant has stalked or sexually assaulted the
17 plaintiff. The court may order the defendant to stay away from the
18 plaintiff or the plaintiff's children, or both, and may make any other
19 such order it deems necessary to protect the plaintiff or the plaintiff's
20 children, or both.

21 Sec. 5. EFFECTIVE DATE

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

1 (Committee vote: _____)

2

3

Representative _____

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FOR THE COMMITTEE