

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 154  
3 entitled “An act relating to enhanced penalties for assaulting an employee of  
4 the Family Services Division of the Department for Children and Families and  
5 to criminal threatening” respectfully reports that it has considered the same and  
6 recommends that the House propose to the Senate that the bill be amended by  
7 striking out all after the enacting clause and inserting in lieu thereof the  
8 following:

9 Sec. 1. FINDINGS

10 The General Assembly finds the following:

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

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

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

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

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

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

2 § 5131. DEFINITIONS

3 As used in this chapter:

4 (1)(A) ~~“Course of conduct” means a pattern of conduct composed of~~  
5 ~~two or more acts over a period of time, however short, evidencing a continuity~~  
6 ~~of purpose~~ two or more acts over a period of time, however short, in which a  
7 person follows, monitors, surveils, threatens, or makes threats about another  
8 person, or interferes with another person’s property. This definition shall  
9 apply to acts conducted by the person directly or indirectly, and by any action,  
10 method, device, or means. Constitutionally protected activity is not included  
11 within the meaning of “course of conduct.”

12 (B) As used in subdivision (A) of this subdivision (1), threaten shall  
13 not be construed to require an express or overt threat.

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 fear of unlawful sexual conduct, unlawful restraint,~~  
17 ~~bodily injury, or death. [Repealed.]~~

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

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

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

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

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

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

18                 ~~(B)~~ that the person engaging in the conduct knows or should know  
19          would cause a reasonable person to:

20                 (A) fear for his or her safety or the safety of a family member; or

1            ~~(B) would cause a reasonable person~~ suffer substantial emotional  
2            distress as evidenced by:

3                    (i) a fear of unlawful sexual conduct, unlawful restraint, bodily  
4            injury, or death; or

5                    (ii) significant modifications in the person’s actions or routines,  
6            including moving from an established residence, changes to established daily  
7            routes to and from work that cause a serious disruption in the person’s life,  
8            changes to the person’s employment or work schedule, or the loss of a job or  
9            time from work.

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

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

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

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

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

20            [Repealed.]

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

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

4 (a) A person, other than a family or household member as defined in  
5 15 V.S.A. § 1101(2), may seek an order against stalking or sexual assault on  
6 behalf of ~~him~~ him- or herself or his or her children by filing a complaint under  
7 this chapter. A minor 16 years of age or older may file a complaint under this  
8 chapter seeking relief on his or her own behalf. The plaintiff shall submit an  
9 affidavit in support of the order.

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

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

20 (1) ~~Evidence~~ evidence of the plaintiff's past sexual conduct with the  
21 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 sexually assaulted the plaintiff, or has been convicted of stalking  
7 or sexually assaulting the plaintiff, the court shall order the defendant to stay  
8 away from the plaintiff or the plaintiff's children, or both, and may make any  
9 other ~~such~~ order it deems necessary to protect the plaintiff or the plaintiff's  
10 children, or both.

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

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

1 stalked or sexually assaulted the plaintiff during the pendency of the order to  
2 extend the terms of the order. The court may modify its order at any  
3 subsequent time upon motion by either party and a showing of a substantial  
4 change in circumstance.

5 \* \* \*

6 Sec. 4. 13 V.S.A. § 1021 is amended to read:

7 § 1021. DEFINITIONS

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

9 \* \* \*

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

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

15 Subchapter 7. Stalking

16 § 1061. DEFINITIONS

17 As used in this subchapter:

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

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

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

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

7           ~~(3) “Harassing” means actions directed at a specific person, or a~~  
8           ~~member of the person’s family, which would cause a reasonable person to fear~~  
9           ~~unlawful sexual conduct, unlawful restraint, bodily injury, or death, including~~  
10           ~~verbal threats, written, telephonic, or other electronically communicated~~  
11           ~~threats, vandalism, or physical contact without consent~~ “Course of conduct”  
12           means two or more acts over a period of time, however short, in which a  
13           person follows, monitors, surveils, threatens, or makes threats about another  
14           person, or interferes with another person’s property. This definition shall  
15           apply to acts conducted by the person directly or indirectly, and by any action,  
16           method, device, or means. Constitutionally protected activity is not included  
17           within the meaning of “course of conduct.”

18           (B) As used in subdivision (A) of this subdivision (1), threaten shall  
19           not be construed to require an express or overt threat.

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



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

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

6           (4) “Stalk” means to engage purposefully in a course of conduct directed  
7           at a specific person that the person engaging in the conduct knows or should  
8           know would cause a reasonable person to fear for his or her safety or the safety  
9           of another or would cause a reasonable person substantial emotional distress.

10       § 1062. STALKING

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

13       § 1063. AGGRAVATED STALKING

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

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

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

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

21               (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 the  
10 defendant was not provided actual notice that the course of conduct was  
11 unwanted.

12 Sec. 6. 13 V.S.A. § 1028 is amended to read:

13 § 1028. ASSAULT OF ~~LAW ENFORCEMENT OFFICER, FIREFIGHTER,~~  
14 ~~EMERGENCY MEDICAL PERSONNEL MEMBER, OR HEALTH~~  
15 ~~CARE WORKER~~ PROTECTED PROFESSIONAL; ASSAULT  
16 WITH BODILY FLUIDS

17 (a) A person convicted of a simple or aggravated assault against a ~~law~~  
18 ~~enforcement officer, a firefighter, a health care worker, or a member of~~  
19 ~~emergency medical personnel as defined in 24 V.S.A. § 2651(6)~~ protected  
20 professional as defined in subdivision (d)(1) of this section while the ~~officer,~~  
21 ~~firefighter, health care worker, or emergency medical personnel member~~

1 protected professional is performing a lawful duty, or with the intent to prevent  
2 the protected professional from performing his or her lawful duty, in addition  
3 to any other penalties imposed under sections 1023 and 1024 of this title, shall:

4 (1) for the first offense, be imprisoned not more than one year;

5 (2) for the second offense and subsequent offenses, be imprisoned not  
6 more than 10 years.

7 (b)(1) No person shall intentionally cause blood, vomitus, excrement,  
8 mucus, saliva, semen, or urine to come in contact with a ~~person designated in~~  
9 ~~subsection (a) of this section~~ protected professional while the person is  
10 performing a lawful duty.

11 (2) A person who violates this subsection shall be imprisoned not more  
12 than one year or fined not more than \$1,000.00, or both.

13 \* \* \*

14 (d) ~~For purposes of~~ As used in this section:

15 (1) “Protected professional” shall mean a law enforcement officer, a  
16 firefighter, a health care worker, an employee of the Family Services Division  
17 of the Department for Children and Families, or any emergency medical  
18 personnel as defined in 24 V.S.A. § 2651(6).

19 (2) “Health care facility” shall have the same meaning as defined in  
20 18 V.S.A. § 9432(8); ~~and.~~

1           (3) “Health care worker” means an employee of a health care facility or  
2 a licensed physician who is on the medical staff of a health care facility who  
3 provides direct care to patients or who is part of a team-response to a patient or  
4 visitor incident involving real or potential violence.

5           (e) This section shall not apply to an individual under 18 years of age  
6 residing in a residential rehabilitation facility.

7           Sec. 7. EFFECTIVE DATE

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

9           and that after passage the title of the bill be amended to read: “An act relating  
10 to stalking and enhanced penalties for assault”

11

12           (Committee vote: \_\_\_\_\_)

13

\_\_\_\_\_

14

Representative \_\_\_\_\_

15

FOR THE COMMITTEE