

## Senate proposal of amendment

### H. 74

An act relating to nonconsensual sexual conduct

The Senate proposes to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 2601a is added to read:

#### § 2601a. PROHIBITED CONDUCT

(a) No person shall engage in open and gross lewdness.

(b) A person who violates this section shall:

(1) be imprisoned not more than one year or fined not more than \$300.00, or both, for a first offense; and

(2) be imprisoned not more than two years or fined not more than \$1,000.00, or both, for a second or subsequent offense.

Sec. 2. 13 V.S.A. § 2632 is amended to read:

#### § 2632. ~~PROHIBITED ACTS~~ PROSTITUTION

\* \* \*

Sec. 3. 13 V.S.A. § 1030 is amended to read:

#### § 1030. VIOLATION OF AN ABUSE PREVENTION ORDER, AN ORDER AGAINST STALKING OR SEXUAL ASSAULT, OR A PROTECTIVE ORDER CONCERNING CONTACT WITH A CHILD

(a) A person who intentionally commits an act prohibited by a court or who fails to perform an act ordered by a court, in violation of an abuse prevention order issued under 15 V.S.A. chapter 21 ~~of Title 15~~ or 33 V.S.A. chapter 69 ~~of Title 33~~, a protective order that concerns contact with a child and is issued under 33 V.S.A. chapter 51 ~~of Title 33~~, or an order against stalking or sexual assault issued under 12 V.S.A. chapter 178 ~~of Title 12~~, after the person has been served notice of the contents of the order as provided in those chapters; or in violation of a foreign abuse prevention order or an order against stalking or sexual assault issued by a court in any other state, federally recognized Indian tribe, territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia; shall be imprisoned not more than one year or fined not more than \$5,000.00, or both.

(b) A person who is convicted of a second or subsequent offense under this section or is convicted of an offense under this section and has previously been convicted of domestic assault under section 1042 of this title, first degree aggravated domestic assault under section 1043 of this title, or second degree

aggravated domestic assault under section 1044 of this title shall be imprisoned not more than three years or fined not more than \$25,000.00, or both.

(c) Upon conviction under this section for a violation of an order issued under 15 V.S.A. chapter 21 of Title 15, the court shall, unless the circumstances indicate that it is not appropriate or not available, order the defendant to participate in domestic abuse counseling or a domestic abuse prevention program approved by the ~~department of corrections~~ Department of Corrections. The defendant may at any time request the court to approve an alternative program. The defendant shall pay all or part of the costs of the counseling or program unless the court finds that the defendant is unable to do so.

(d) Upon conviction for a violation of an order issued under 12 V.S.A. chapter 178 of Title 12, the court may order the defendant to participate in mental health counseling or sex offender treatment approved by the ~~department of corrections~~ Department of Corrections. The defendant shall pay all or part of the costs of the counseling unless the court finds that the defendant is unable to do so.

(e) Nothing in this section shall be construed to diminish the inherent authority of the courts to enforce their lawful orders through contempt proceedings.

(f) Prosecution for violation of an abuse prevention order or an order against stalking or sexual assault shall not bar prosecution for any other crime, including any crime that may have been committed at the time of the violation of the order.

Sec. 4. 13 V.S.A. § 3281 is added to read:

§ 3281. SEXUAL ASSAULT SURVIVORS' RIGHTS

(a) Short title. This section may be cited as the "Bill of Rights for Sexual Assault Survivors."

(b) Definition. As used in this section, "sexual assault survivor" means a person who is a victim of an alleged sexual offense.

(c) Survivors' rights. When a sexual assault survivor makes a verbal or written report to a law enforcement officer, emergency department, sexual assault nurse examiner, or victim's advocate of an alleged sexual offense, the recipient of the report shall provide written notification to the survivor that he or she has the following rights:

(1) The right to receive a medical forensic examination and any related toxicology testing at no cost to the survivor in accordance with 32 V.S.A. § 1407, irrespective of whether the survivor reports to or cooperates with law enforcement. If the survivor opts to have a medical forensic examination, he

or she shall have the following additional rights:

(A) the right to have the medical forensic examination kit or its probative contents delivered to a forensics laboratory within 72 hours of collection;

(B) the right to have the sexual assault evidence collection kit or its probative contents preserved without charge for the duration of the maximum applicable statute of limitations;

(C) the right to be informed in writing of all policies governing the collection, storage, preservation, and disposal of a sexual assault evidence collection kit;

(D) the right to be informed of a DNA profile match on a kit reported to law enforcement or on a confidential kit, on a toxicology report, or on a medical record documenting a medical forensic examination, if the disclosure would not impede or compromise an ongoing investigation; and

(E) upon written request from the survivor, the right to:

(i) receive written notification from the appropriate official with custody not later than 60 days before the date of the kit's intended destruction or disposal; and

(ii) be granted further preservation of the kit or its probative contents.

(2) The right to consult with a sexual assault advocate.

(3) The right to information concerning the availability of protective orders and policies related to the enforcement of protective orders.

(4) The right to information about the availability of, and eligibility for, victim compensation and restitution.

(5) The right to information about confidentiality.

(d) Notification protocols. The Vermont Network Against Domestic and Sexual Violence and the Sexual Assault Nurse Examiner Program, in consultation with other parties referred to in this section, shall develop protocols and written materials to assist all responsible entities in providing notification to victims.

Sec. 5. 13 V.S.A. § 4501 is amended to read:

#### § 4501. LIMITATION OF PROSECUTIONS FOR CERTAIN CRIMES

(a) Prosecutions for aggravated sexual assault, aggravated sexual assault of a child, human trafficking, aggravated human trafficking, murder, arson causing death, and kidnapping may be commenced at any time after the commission of the offense.

(b) Prosecutions for manslaughter, ~~sexual assault~~, lewd and lascivious conduct, ~~sexual exploitation of children under chapter 64 of this title~~, sexual abuse of a vulnerable adult, grand larceny, robbery, burglary, embezzlement, forgery, bribery offenses, false claims, fraud under 33 V.S.A. § 141(d), and felony tax offenses shall be commenced within six years after the commission of the offense, and not after.

(c) Prosecutions for any of the following offenses ~~alleged to have been committed against a child under 18 years of age~~ shall be commenced within 40 years after the commission of the offense, and not after:

(1) sexual assault;

(2) lewd and lascivious conduct alleged to have been committed against a child under 18 years of age;

(3) sexual exploitation of a minor as defined in subsection 3258(c) of this title;

(4) lewd or lascivious conduct with a child; ~~and~~

(5) sexual exploitation of children under chapter 64 of this title; and

(6) manslaughter alleged to have been committed against a child under 18 years of age.

(d) Prosecutions for arson shall be commenced within 11 years after the commission of the offense, and not after.

(e) Prosecutions for other felonies and for misdemeanors shall be commenced within three years after the commission of the offense, and not after.

Sec. 6. 14 V.S.A. § 315 is amended to read:

#### § 315. PARENT AND CHILD RELATIONSHIP

(a) For the purpose of intestate succession, an individual is the child of his or her parents, regardless of their marital status, but a parent shall not inherit from a child unless the parent has openly acknowledged the child and not refused to support the child.

(b) The parent and child relationship may be established in parentage proceedings under ~~subchapter 3A of 15 V.S.A. chapter 5 of Title 15, subchapter 3A.~~

(c) A parent shall not inherit from a child conceived of sexual assault who is the subject of a parental rights and responsibilities order issued pursuant to 15 V.S.A. § 665(f).

Sec. 7. 15 V.S.A. § 665 is amended to read:

#### § 665. RIGHTS AND RESPONSIBILITIES ORDER; BEST INTERESTS

## OF THE CHILD

\* \* \*

(f) The State has a compelling interest in not forcing a victim of sexual assault or sexual exploitation to continue an ongoing relationship with the perpetrator of the abuse. Such continued interaction can have traumatic psychological effects on the victim, making recovery more difficult, and negatively affect the victim's ability to parent and to provide for the best interests of the child. Additionally, the State recognizes that a perpetrator may use the threat of pursuing parental rights and responsibilities to coerce a victim into not reporting or not assisting in the prosecution of the perpetrator for the sexual assault or sexual exploitation, or to harass, intimidate, or manipulate the victim.

(1) The Court may enter an order awarding sole parental rights and responsibilities to a parent and denying all parent-child contact with the other parent if the Court finds by clear and convincing evidence that the nonmoving parent was convicted of sexually assaulting the moving parent and the child was conceived as a result of the sexual assault. As used in this subdivision, sexual assault shall include sexual assault as provided in 13 V.S.A. § 3252(a), (b), (d), and (e), aggravated sexual assault as provided in 13 V.S.A. § 3253, ~~and~~ aggravated sexual assault of a child as provided in 13 V.S.A. § 3253a, lewd and lascivious conduct with a child as provided in 13 V.S.A. § 2602, and similar offenses in other jurisdictions.

~~(A) An order issued in accordance with this subdivision (f)(1) shall be permanent and shall not be subject to modification.~~

~~(B) Upon issuance of a rights and responsibilities order pursuant to this subdivision (f)(1), the Court shall not issue a parent-child contact order and shall terminate any existing parent-child contact order concerning the child and the nonmoving parent.~~

(2) The Court may enter an order awarding sole parental rights and responsibilities to one parent and denying all parent-child contact between the other parent and a child if the Court finds by clear and convincing evidence that the child was conceived as a result of the nonmoving parent sexually assaulting or sexually exploiting the moving parent and the Court finds by a preponderance of the evidence that such an order is in the best interest of the child. A conviction is not required under this subdivision, and the Court may consider other evidence of sexual assault or sexual exploitation in making its determination.

~~(A)~~ For purposes of this subdivision (f)(2):

~~(i)~~(A) sexual assault shall include sexual assault as provided in 13 V.S.A. § 3252, aggravated sexual assault as provided in 13 V.S.A. § 3253,

aggravated sexual assault of a child as provided in 13 V.S.A. § 3253a, lewd and lascivious conduct with a child as provided in 13 V.S.A. § 2602, and similar offenses in other jurisdictions; and

~~(ii)(B)~~ sexual exploitation shall include sexual exploitation of an inmate as provided in 13 V.S.A. § 3257, sexual exploitation of a minor as provided in 13 V.S.A. § 3258, sexual abuse of a vulnerable adult as provided in 13 V.S.A. § 1379, and similar offenses in other jurisdictions.

~~(B) Except as provided in subdivision (f)(2)(C), the Court shall not issue a parent-child contact order in a case in which a parental rights and responsibilities order has been issued pursuant to this subdivision (f)(2) and any existing parent-child contact order concerning the child and the nonmoving parent shall be terminated.~~

~~(C) A party may file a motion for modification of the order only upon a showing of extraordinary, real, substantial, and unanticipated change of circumstances.~~

(3) Issuance of an order pursuant to this subsection shall not affect the right of the custodial parent to seek child support from the noncustodial parent.

(4) Upon issuance of a rights and responsibilities order pursuant to this subsection, the court shall not issue a parent-child contact order and shall terminate any existing parent-child contact order concerning the child and the nonmoving parent. An order issued in accordance with this subdivision shall be permanent and shall not be subject to modification.

Sec. 8. 15 V.S.A. § 1103 is amended to read:

§ 1103. REQUESTS FOR RELIEF

\* \* \*

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

(A) there is a danger of further abuse; or

(B) the defendant is currently incarcerated and has been convicted of one of the following: murder, attempted murder, kidnapping, domestic assault, aggravated domestic assault, sexual assault, aggravated sexual assault, stalking, aggravated stalking, lewd or lascivious conduct with a child, use of a child in a sexual performance, or consenting to a sexual performance.

(2) The court order may include the following:

(A) an order that the defendant refrain from abusing the plaintiff, or 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

plaintiff's children in person, by phone, or by mail, or both, in any way, whether directly, indirectly or through a third party, with the purpose of making contact with the plaintiff, including in writing or by telephone, e-mail, or other electronic communication, 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 the plaintiff's children are likely to spend time;

\* \* \*

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

§ 1104. EMERGENCY RELIEF

(a) In accordance with the Vermont Rules of Civil Procedure, temporary orders under this chapter may be issued ex parte, without notice to the defendant, upon motion and findings by the ~~Court~~ court that the defendant has abused the plaintiff or ~~his or her~~ the plaintiff's children, or both. The plaintiff shall submit an affidavit in support of the order. A minor 16 years of age or older, or a minor of any age who is in a dating relationship as defined in subdivision 1101(2) of this chapter, may seek relief on his or her own behalf. Relief under this section shall be limited as follows:

(1) 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 or 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 by a minor child residing in the household;

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

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

(D) to refrain from contacting the plaintiff or the plaintiff's children, or both, in any way, whether directly, indirectly or through a third party, with the purpose of making contact with the plaintiff, including in writing or by telephone, e-mail, or other electronic communication.

\* \* \*

Sec. 10. EFFECTIVE DATES

(a) This section and Secs. 1 (prohibited conduct), 6 (parent and child), 7 (rights and responsibilities order; best interests of the child), 8 (request for relief), and 9 (emergency relief) shall take effect on passage.

(b) All other sections shall take effect on July 1, 2017.

And that after passage the title of the bill be amended to read:

An act relating to domestic and sexual violence.