

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred House Bill No. 74
3 entitled “An act relating to nonconsensual sexual conduct” respectfully reports
4 that it has considered the same and recommends that the Senate propose to the
5 House that the bill be amended by striking out all after the enacting clause and
6 inserting in lieu thereof the following:

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

8 § 2601a. LEWD CONDUCT

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

10 (b) A person who violates this section shall:

11 (1) be imprisoned for not more than one year or fined not more than
12 \$300.00, or both, for a first offense; and

13 (2) be imprisoned not more than two years or fined not more than
14 \$1,000.00, or both, for a second or subsequent offense.

15 **Sec. 2. 13 V.S.A. § 1030 is amended to read:**

16 § 1030. VIOLATION OF AN ABUSE PREVENTION ORDER, AN ORDER
17 AGAINST STALKING OR SEXUAL ASSAULT, OR A
18 PROTECTIVE ORDER CONCERNING CONTACT WITH A
19 CHILD

20 (a) A person who **knowingly** commits an act prohibited by a court or who
21 fails to perform an act ordered by a court in violation of an abuse prevention

1 order issued under 15 V.S.A. chapter 21 ~~of Title 15~~ or 33 V.S.A. chapter 69 ~~of~~
2 ~~Title 33~~, a protective order that concerns contact with a child and is issued
3 under 33 V.S.A. chapter 51 ~~of Title 33~~, or an order against stalking or sexual
4 assault issued under 12 V.S.A. chapter 178 ~~of Title 12~~, after the person has
5 been served notice of the contents of the order as provided in those chapters; or
6 a foreign abuse prevention order or an order against stalking or sexual assault
7 issued by a court in any other state, federally recognized Indian tribe, territory
8 or possession of the United States, the Commonwealth of Puerto Rico, or the
9 District of Columbia; shall be imprisoned not more than one year or fined not
10 more than \$5,000.00, or both.

11 (b) A person who is convicted of a second or subsequent offense under this
12 section or is convicted of an offense under this section and has previously been
13 convicted of domestic assault under section 1042 of this title, first degree
14 aggravated domestic assault under section 1043 of this title, or second degree
15 aggravated domestic assault under section 1044 of this title shall be imprisoned
16 not more than three years or fined not more than \$25,000.00, or both.

17 (c) Upon conviction under this section for a violation of an order issued
18 under 15 V.S.A. chapter 21 ~~of Title 15~~, the court shall, unless the
19 circumstances indicate that it is not appropriate or not available, order the
20 defendant to participate in domestic abuse counseling or a domestic abuse
21 program approved by the ~~department of corrections~~ Department of

1 Corrections. The defendant may at any time request the court to approve an
2 alternative program. The defendant shall pay all or part of the costs of the
3 counseling or program unless the court finds that the defendant is unable to do
4 so.

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

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

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

18 Sec. 3. 13 V.S.A. § 3281 is added to read:

19 § 3281. SEXUAL ASSAULT SURVIVORS' RIGHTS

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

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

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

8 (1) The right to receive a medical forensic examination and any related
9 toxicology testing at no cost to the survivor in accordance with 32 V.S.A.
10 § 1407, irrespective of whether the survivor reports to or cooperates with law
11 enforcement. If the survivor opts to have a medical forensic examination, he
12 or she shall have the following additional rights:

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

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

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

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

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

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

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

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

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

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

16 (5) The right to information about confidentiality.

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

1 Sec. 4. 13 V.S.A. § 4501 is amended to read:

2 § 4501. LIMITATION OF PROSECUTIONS FOR CERTAIN CRIMES

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

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

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

16 (1) ~~sexual assault~~ sexual exploitation of children under chapter 64 of this
17 title;

18 (2) lewd and lascivious conduct;

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

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

1 (5) manslaughter.

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

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

7 Sec. 5. 15 V.S.A. § 1103 is amended to read:

8 § 1103. REQUESTS FOR RELIEF

9 * * *

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

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

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

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

20 (A) an order that the defendant refrain from abusing the plaintiff, or
21 his or her children, or both, and from interfering with their personal liberty,

1 including restrictions on the defendant’s ability to contact the plaintiff or the
2 children in ~~person, by phone, or by mail~~ any way, directly, indirectly, or
3 through a third party, including in writing or by telephone, e-mail, or other
4 electronic communication, and restrictions prohibiting the defendant from
5 coming within a fixed distance of the plaintiff, the children, the plaintiff’s
6 residence, or other designated locations where the plaintiff or children are
7 likely to spend time;

8 * * *

9 Sec. 6. 15 V.S.A. § 1104 is amended to read:

10 § 1104. EMERGENCY RELIEF

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

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

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

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

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

10 (D) to refrain from contacting the plaintiff or his or her children, or
11 both, in any way, directly, indirectly, or through a third party, including in
12 writing or by telephone, e-mail, or other electronic communication.

13 * * *

14 Sec. 7. EFFECTIVE DATES

15 This act shall take effect on July 1, 2017, except this section and Secs. 1
16 (Lewd Conduct), 5 (Request for Relief), and 6 (Emergency Relief) shall take
17 effect on passage.

18 and that after passage the title of the bill be amended to read: “An act relating
19 to domestic and sexual violence”

20
21

1 (Committee vote: _____)

2

3

Senator _____

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FOR THE COMMITTEE