

1  
2  
3  
4  
5  
6  
7  
8  
9  
  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

H.43

Introduced by Representatives Ode of Burlington and LaLonde of South  
Burlington

Referred to Committee on

Date:

Subject: Domestic relations; abuse prevention; foreign abuse prevention order

Statement of purpose of bill as introduced: This bill proposes to include  
military protection orders within the definition of foreign protection orders that  
are recognized and enforced in Vermont.

An act relating to recognition and enforcement of a military protection order

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 15 V.S.A. § 1101 is amended to read:

§ 1101. DEFINITIONS

~~The following words as used in this chapter shall have the following~~  
~~meanings~~ As used in this chapter:

(1) “Abuse” means the occurrence of one or more of the following acts

between family or household members:

(A) ~~Attempting~~ attempting to cause or causing physical harm-;

(B) ~~Placing~~ placing another in fear of imminent serious physical

harm-;

1           (C) ~~Abuse~~ abuse to children as defined in 33 V.S.A. chapter 49,  
2 subchapter 2;

3           (D) ~~Stalking~~ stalking as defined in 12 V.S.A. § 5131(6); or

4           (E) ~~Sexual~~ sexual assault as defined in 12 V.S.A. § 5131(5).

5           (2) “Household members” means persons who, for any period of time,  
6 are living or have lived together, are sharing or have shared occupancy of a  
7 dwelling, are engaged in or have engaged in a sexual relationship, or are  
8 minors or adults who are dating or who have dated. “Dating” means a social  
9 relationship of a romantic nature. Factors that the court may consider when  
10 determining whether a dating relationship exists or existed include:

11           (A) the nature of the relationship;

12           (B) the length of time the relationship has existed;

13           (C) the frequency of interaction between the parties; and

14           (D) the length of time since the relationship was terminated, if  
15 applicable.

16           (3) A “foreign abuse prevention order” means any protection order  
17 issued by the court of any other state or a military protection order that  
18 contains provisions similar to relief provisions authorized under this chapter,  
19 the Vermont Rules for Family Proceedings, 33 V.S.A. chapter 69, or 12 V.S.A.  
20 chapter 178.

1           (4) “Other state” and “issuing state” ~~shall~~ mean any state other than  
2 Vermont and any federally recognized Indian tribe, territory or possession of  
3 the United States, the Commonwealth of Puerto Rico, or the District of  
4 Columbia.

5           (5)(A) A “protection order” means any injunction or other order issued  
6 for the purpose of preventing violent or threatening acts or harassment against,  
7 or contact or communication with or physical proximity to, another person,  
8 including temporary and final orders issued by civil and criminal courts other  
9 than support or child custody orders; whether obtained by filing an  
10 independent action or as a pendente lite order in another proceeding ~~so long as,~~  
11 provided that any civil order was issued in response to a complaint, petition, or  
12 motion filed by or on behalf of a person seeking protection.

13           (B) A “military protection order” is a protection order issued by a  
14 commanding officer in the armed forces of the United States or the Vermont  
15 National Guard against a person under such officer’s command.

16           (6) [Repealed.]

17           Sec. 2. 15 V.S.A. § 1108 is amended to read:

18           § 1108. ENFORCEMENT

19           (a) Law enforcement officers are authorized to enforce orders issued under  
20 this chapter. A foreign abuse prevention order shall be accorded full faith and

1 credit throughout this State and shall be enforced as if it were an order of this  
2 State. Enforcement may include, ~~but is not limited to:~~

3 (1) making an arrest in accordance with the provisions of V.R.Cr.P. 3;

4 (2) assisting the recipient of an order granting sole possession of the  
5 residence to obtain sole possession of the residence if the defendant refuses to  
6 leave; or

7 (3) assisting the recipient of an order granting sole custody of children  
8 to obtain sole custody of children if the defendant refuses to release them.

9 (b) A law enforcement officer may rely upon a copy of any order issued  
10 under this chapter or any foreign abuse prevention order that has been provided  
11 to the law enforcement officer by any source. Law enforcement personnel may  
12 rely upon the written and sworn statement of the person protected by the  
13 foreign abuse prevention order that the order remains in effect. An officer's  
14 reasonable reliance as provided in this subsection shall be a complete defense  
15 in any civil action arising in connection with a court's finding under  
16 subsection (c) of this section that the order was not enforceable.

17 (c)(1) A foreign abuse prevention order that is not a military protection  
18 order shall be enforceable in the courts in this State if all the following are  
19 satisfied:

20 ~~(A)~~ The defendant has received notice of the order in compliance  
21 with the requirements of the issuing state.

1           ~~(2)~~(B) The order is in effect in the issuing state.

2           ~~(3)~~(C) The court in the issuing state had jurisdiction over the parties and  
3 the subject matter under the law of the issuing state.

4           ~~(4)~~(D) In the issuing state, the law gives reasonable notice and  
5 opportunity to be heard to the person against whom the order is sought  
6 sufficient to protect that person's right to due process. In the case of ex parte  
7 orders, notice and opportunity to be heard must be provided within a  
8 reasonable time after the order is issued, sufficient to protect the defendant's  
9 due process rights. Failure to provide reasonable notice and opportunity to be  
10 heard shall be an affirmative defense to any charge or process filed seeking  
11 enforcement of the foreign protection order.

12           (2) A military protective order shall be enforceable in the courts in this  
13 State if all of the following are satisfied:

14           (A) The defendant is a current member of the armed forces of the  
15 United States, the Vermont National Guard, or the national guard of another  
16 state or territory.

17           (B) The order was issued by the defendant's commanding officer.

18           (C) The order was issued on a form prescribed by the U.S.  
19 Department of Defense.

20           (D) The defendant had actual notice of the order.

1           (E) The order is still in effect with the armed forces of the United  
2           States, the Vermont National Guard, or the national guard of another state or  
3           territory.

4           (F) The order was issued not more than two years ago.

5           (d) A person entitled to protection under a foreign abuse prevention order  
6           may file the foreign abuse prevention order in any Family Division of the  
7           Superior Court by filing a certified copy of the order with the court. The  
8           person shall swear under oath in an affidavit that to the best of the person's  
9           knowledge the order is presently in effect as written. Upon inquiry by a law  
10          enforcement agency, the clerk of the Family Division of the Superior Court  
11          shall make a copy of the foreign abuse prevention order available.

12          (e) In addition to the provisions of subsection (a) of this section, violation  
13          of an order issued under this chapter may be prosecuted as a criminal contempt  
14          under Rule 42 of Vermont Rules of Criminal Procedure. The prosecution for  
15          criminal contempt may be initiated by the State's Attorney in District or  
16          Superior Court in the unit or county in which the violation occurred. The  
17          maximum penalty that may be imposed under this subsection shall be a fine of  
18          \$1,000.00 or imprisonment for six months, or both. A sentence of  
19          imprisonment upon conviction for criminal contempt may be stayed in the  
20          discretion of the court pending the expiration of the time allowed for filing  
21          notice of appeal or pending appeal if any appeal is taken. After two years have

1 passed from conviction under this subsection, the court may on motion of the  
2 defendant expunge the record of the criminal proceeding and conviction unless  
3 the defendant has been convicted of a felony or misdemeanor involving moral  
4 turpitude or a violation of a domestic abuse order after such initial  
5 adjudication.

6 Sec. 3. EFFECTIVE DATE

7 This act shall take effect on passage.