



## **H. 40– An act relating to the nonconsensual removal of or tampering with a sexually protective device**

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Thank you for the invitation to speak with the committee today about H. 40. This bill serves an important purpose in elevating the discussion about what is colloquially referred to as “stealthing”. Most of the public discourse around stealthing, and stories that we hear from victims of stealthing, involve a partner removing a condom during a sexual act. This behavior is harmful and violates the trust and wellbeing of their partner. It should be viewed as part of a spectrum of sexual harm.

While there is no data being gathered in the state on the extent of this issue, we have heard of instances of stealthing occurring - particularly on our college campuses. From the Network’s perspective, the fact that stealthing occurs in our state and community is an important reminder that there is much work to be done to change our conversations and culture related to healthy consensual relationships. As a society, there is much work that remains to prepare young people for navigating sexual relationships, agreements and boundaries, as well as educating youth about what consent means and the harm that happens when consent is violated.

This is something that, as a society, we really need to get better about, and this is the work that the Vermont Network is committed to doing - in partnership with our community and system partners. Looking at this issue broadly, we believe that the ideal policy solution would be related to prevention and education.

The most impactful way of approaching this issue would be a public awareness and education campaign about consent and the harms of stealthing. With this said, we are happy to address the bill in front of us and provide our thoughts and feedback on the current draft.

### **Other States**

While a number of states have introduced language to address this issue, California is the only state that has passed a law. California’s law provides for a civil remedy and is much narrower than the language in H. 40. Our national partners at the National Alliance to End Sexual Violence (NAESV) is broadly supportive of civil remedies for this issue, but doesn’t support criminalizing this behavior. Wisconsin has pending legislation which is more reflective of the language of this bill. The state of Maine modeled legislation that is being contemplated by the Maine legislature, which includes a civil damages provision and adds stealthing to the civil protection order statutes and their parental rights statutes. The Vermont Network has consulted with our colleagues in Maine and we believe that an approach which adds



stealthingly as grounds for obtaining a civil protection order could potentially offer victims protection when a victim doesn't wish to pursue civil damages - for a wide variety of reasons.

### **Sexually protective device definition**

We believe that the definition of sexually protective device in the proposed draft is far too broad. We would prefer to remove the sexually protective device language and simply use the word "condom". Adding other forms of contraceptives widens the possibility that this law could potentially be used for harm against victims. The inclusion of these other forms of contraceptives also could have the unintended harmful impact of broadening the discovery process to include an individual's personal medical records which could be an invasive litigation process that could also be harmful to victims.

### **Civil vs Criminal Procedure**

There are many reasons why we support the creation of some sort of civil remedy and why we do not support criminalizing this behavior, despite its egregiousness. In a civil process, the victim/plaintiff has the agency to seek relief and decide whether to continue to proceed in the court process. This level of agency and control is not always present in a criminal proceeding. In addition, the civil process uses a preponderance of the evidence as the evidentiary standard. In such intimate scenarios, proving that stealthingly occurs with intent would be incredibly challenging.

### **Civil Process Recommendations**

In order to strengthen the civil damages process in this bill, our language recommendations would be to:

1. Remove the word intentionally from (1) on page 3, line 1. Proving intent in these cases is going to be incredibly challenging.
2. Strike subsections (2) and (3) on page 3. We believe section 1 is the strongest and most directly addresses the intent of this bill. Proving intent for subsections (2) and (3) would be incredibly difficult and there are a variety of hypotheticals where this could be applied in a potentially harmful way.
3. We would suggest revising the language regarding proving harm on page 3 (c). We would suggest redrafting this section to indicate "a plaintiff may bring an action...." or "a person who violates subsection (a) shall be liable for...."

### **Conclusions**

A civil damages law against nonconsensual condom removal or "stealthingly" would provide one pathway to survivors who choose to use it to reclaim some agency and resources. We do not view this as a perfect solution. With some strict parameters and clear language, we believe that this could be useful for some survivors while mitigating the potential risks to others. No one pathway is going to be the answer for all survivors and so, in order to support all survivors, we attempt to create a wide range of options while also ensuring that those options will not cause more harm than the problems they intended to fix.