

# *The Legal Rights of Women in Vermont*

## **Violence Against Women & Children**

### **Chapter 13**

This chapter includes information about:

[Domestic Violence](#)

[Sexual Violence](#)

[Stalking Offenses](#)

[Safety for Victims of Domestic and Sexual Violence and Stalking](#)

[Sexting](#)

[Child Abuse](#)

[Sexual Crimes Against Children](#)

[Human Trafficking](#)

[Abuse of Vulnerable Adults](#)

[Kidnapping](#)

[Hate Crimes](#)

[Crime Victims Assistance, Notification and Compensation](#)

[Release of People Accused of a Violent Crime](#)

[Sex Offender Registry](#)

[Violent Career Criminals and Habitual Criminals](#)

[Civil Actions for Crimes Against Women and Children](#)

Women and children are often the victims of particular types of violent crimes such as domestic and sexual violence, human trafficking, child abuse and neglect, elder abuse and neglect, stalking, voyeurism, kidnapping and hate crimes. Vermont law addresses both civil and criminal remedies and recognizes the need for protection for the victims of such crimes. This chapter will describe each of these offenses, current penalties, and the rights of victims.

**As a victim of crime, once the police find probable cause of a crime, you may be eligible for crime victims' assistance programs and monetary compensation.**

Please note that although this chapter is addressed to women, attributes the described legal rights to women and makes the assumption that the majority of victims of domestic and sexual violence are women, these legal rights apply to women and men equally.

## **Domestic Violence**

Every 15 seconds, a woman somewhere in the United States is beaten. Based on numerous studies, researchers believe that as many as 1 in 4 of all women in the U.S.

will be abused by a partner during their lifetime. According to the FBI, domestic violence is the leading cause of injury to women between ages 15 and 44 in the United States -- more than car accidents, muggings, and rapes combined.

Domestic violence is a pattern of abusive behavior used by a person to gain and maintain power or control over a partner. It occurs in many different types of relationships. **Domestic violence is not limited to any particular group or economic class of women. Wealthy women and poor women, single women and married women, white women and women of color, women who work in the home and outside the home, heterosexual and bisexual women, lesbians, teenagers and elderly women can all experience abuse.**

**Domestic violence can be addressed in Vermont under both the criminal justice and civil court systems.** In addition, domestic assaults can be reported to the police and may be prosecuted by the local State's Attorney's office as a crime of domestic assault. Women can seek help through Vermont's Abuse Prevention Act by applying for a civil Relief From Abuse Order.

## **Federal Crimes**

**The Violence Against Women Act** provides two federal crimes that provide further protection for victims of domestic violence.

It is a federal crime if:

- a person causes physical injury to a spouse or partner and that **person crossed a state line** with the intention of injuring, harassing or intimidating the partner or spouse and they commit or attempt to commit a violent crime against the person; or
- **a person causes a spouse or partner to cross a state line** and then commits or attempts a violent crime against the spouse or partner.

It is also a federal crime to cross a state line with the intention of violating a protection order and violating the order by threatening, harassing or injuring a spouse or intimate partner, or causing a partner or spouse to cross a state line and then engaging in conduct that violates a protection order.

Congress also enacted a "gun ban" for people who have been convicted of domestic violence or are subject to an active Relief from Abuse Order. This federal law makes it a crime for a person to purchase or possess a firearm if the person is currently subject to an abuse prevention order or if the person has been convicted of numerous crimes.

These laws can be enforced by the U.S. Attorney's office in each state.

## **Vermont Laws**

Vermont's laws against domestic abuse apply if a person:

- is physically injured (either deliberately or recklessly) by a family or household member; or
- has been the victim of an attempt at physical injury by a family or household member (whether or not the attempt is successful); or
- is placed in fear of being seriously physically hurt by a member of her current or past family or household; or
- is sexually assaulted or stalked; or
- is a child who has been abused.

Protection against domestic violence is available to Vermonters who are or have been in a wide range of relationships. **Household members** include people who, **for any period of time:**

- are living or have lived together;
- are sharing or have shared a living space such as housemates or roommates;
- are engaged in or have engaged in a dating or sexual relationship.

Some judges have also applied the abuse prevention law to cover relatives who do not live together, such as children, siblings, aunts, uncles, cousins, in-laws, etc.

**It is important for every woman to know how the law can help protect her and assist her in taking steps to secure safety for her and her children.** ([See VCW's Resource Directory – Violence section.](#))

## Getting Help

**If you need help or advice in dealing with an abusive situation, you can get help from your local domestic violence program.** A domestic violence program is a group of individuals who are dedicated to helping victims of domestic violence. There are fourteen domestic violence programs around the state. **Local domestic violence groups can help even if your abuser is not breaking any laws.**

These programs provide free, confidential help 24 hours a day, seven days a week. ([See VCW's Resource Directory – Violence section.](#)) You can also call the **Statewide Domestic Violence Hotline (1-800-228-7395).**

Domestic violence programs provide a variety of confidential services that may include:

- assistance in creating a safety plan for yourself and your children;
- help in obtaining medical and legal services, help connecting with social programs (child care, food stamps, welfare, etc);
- emergency food and clothing, etc.
- peer counseling and support groups;
- help in obtaining legal assistance, including obtaining a Relief From Abuse Order;

- a confidential temporary place to stay or a hiding place (9 of the programs offer emergency shelter and all of the programs can assist in accessing emergency or transitional housing);

The programs are not usually part of any governmental agency, although they receive some state and federal funds.

If you have been the victim of domestic violence, you have the right to request a Relief from Abuse Order. **Relief from Abuse orders can be an important tool, but they are absolutely not a guarantee of safety.** Relief from Abuse orders are only one aspect of a survivor's safety plan and do have limitations. An advocate can help a survivor decide if getting a Relief from Abuse order is the best decision for her. Survivors can talk with an advocate to make a safety plan.

You do not need to hire an attorney to get a Relief from Abuse order, and you do not have to pay a fee to the court. Of course you can choose to hire a lawyer if you feel you want or need one. Referrals for legal assistance may be available through the domestic violence program. Check with the domestic violence program for details. (See VCW's Resource Directory – [Legal](#) or [Violence](#) sections.)

If either you or the alleged abuser get a lawyer for any hearing and does not give the other person advance notice that he or she is being represented, the other party has the right to have the hearing postponed in order to be able to hire their own lawyer. You must ask the judge for this postponement at the beginning of the hearing if you need it. If a Temporary Order has been issued, the Order will stay in effect until the hearing takes place.

### **Victim and Crisis Worker Privilege**

Vermont gives legal protection to the relationship between victims of abuse or sexual assault and their crisis workers. If you have confidential communications with a crisis worker at a domestic or sexual violence program, you have the privilege to refuse to disclose, and to prevent the crisis worker from disclosing, any oral or written information you may have told or given to your crisis worker in confidence.

A crisis worker also cannot disclose anything you share in confidence without first getting specific, written permission from you to share that information. There may be some exceptions to this privilege if a crisis worker is concerned that a child's safety may be endangered and they are mandated to report child abuse and neglect. If a crisis worker is a mandatory reporter, they should tell you that up front. You may also ask if a crisis worker is a mandatory reporter so you can decide if you want to speak with someone else or speak anonymously without giving your name.

### **Domestic Violence Relief From Abuse Order (Civil)**

**Vermont's Abuse Prevention Act is designed to provide immediate protection from domestic abuse through the civil court system.** This law

allows any individual over the age of 16 to request a Relief from Abuse Order against their abuser to prevent further abuse of themselves or their children if the abuser is or was a family or household member or if the parties were engaged in a dating or sexual relationship. Applying for the order does not cost any money.

You may seek an **Emergency Temporary Relief from Abuse Order** by filing a complaint if you believe you or the children are in immediate danger of being further abused. **An Emergency Relief from Abuse Order is a legal document that you can get from the family court to protect you from your abuser.** The application should be done in the county in which you live or the county to which you have gone to protect yourself, for example, a friend or family member's home or a shelter. If you are enrolled in the Safe At Home address confidentiality program, you may also file the application in Washington County (where the program is housed) if that feels safer for you. You can apply to the Family Division of the Vermont Superior Court and if the Family Judge is not available, the court clerk should find a judge.

In addition, there is no charge for filing for an Emergency Temporary Relief From Abuse Order. This emergency order can be applied for and granted without giving advance notice to the abuser. The family courts and many domestic violence programs have copies of the forms that are used in applying for a Relief from Abuse Order. These forms are also available online on the Vermont Judiciary's website.

During normal business hours the form will have to be filed with the clerk of the Family Division of Superior Court. There is also a process for getting relief after regular court hours or on weekends or holidays. (See section below on Getting Help.)

A Temporary Relief From Abuse Order offers you protection from the time you file the complaint until the Final Hearing. **To apply for a Temporary Relief From Abuse Order**, you must write an "Affidavit" (a statement witnessed by a notary or an officer of the court who can administer oaths) describing the details of what happened and explaining why you are afraid for yourself and/or your children.

The judge may order the abuser to stop abusing, contacting, harassing, threatening or stalking you. The judge may also order the abuser to leave the home and may award temporary custody of the children to you. If you are married then you may request living expenses from the abuser for up to three months. The court can also order protection for your pets.

**Filling out the papers to request a Relief From Abuse Order does not begin divorce proceedings, nor do you have to file for a divorce or legal separation in order to get a Relief From Abuse Order. You also do not have to file a criminal report with the police in order to get one of these orders.**

### **If the Temporary Order Is Denied**

It is possible that the judge could deny the request for the emergency order. This may happen for a variety of reasons such as the judge does not feel there is enough

information about the abuse in the Affidavit, the judge does not think there is an immediate danger of future abuse, or the abuse described in the affidavit does not meet the statutory requirements. You may be given the opportunity to speak to the judge so you can better describe or explain the situation.

If the judge still denies all or part of what you have requested, the judge is required to provide written reasons for the denial. You are then entitled to ask the court for a hearing. If you do not ask for a hearing, your request for a Relief From Abuse Order will remain confidential and the court will not notify the defendant of your request, and the contents of your affidavit will not be shared. If you request a hearing, this hearing must be scheduled within 10 business days of the date of your request. The alleged abuser must be properly notified by the authorities about the hearing within the 10-day period, and will be provided with a copy of the request including the affidavit that you filed.

### **When the Temporary Order Is Granted**

**The Temporary Order is not considered to be in effect until it has been “served” on the person accused of abuse. This means that the Order must be personally delivered by a sheriff, constable, state or local police officer.**

Court clerks will send a copy of the Order to the police agency responsible for serving it. Under the federal Violence Against Women Act, there should be no fee charged for service of this order. Police agencies are required to serve the Order as soon as possible. If you don't hear from the police that the order has been served, you should contact the police agency or the court and ask about the status of the order.

**If you get a Temporary Order, you should give copies to the local and State police and sheriff where you live and where you work. You should also carry a copy with you at all times. It is advisable to retain a copy on your person, in your home, and in your vehicle.**

As long as the Order is in effect, the protections granted to the victim in the Order are kept on file in a statewide police computer file. This gives police officers who are being asked to enforce the Order the ability to verify the protections that the judge has ordered and to ensure that they are still in effect. If the officer is unable to get to the statewide database, they may rely on your copy of the Order.

The **Temporary Order** remains in effect until the date of the **Final Hearing**. This Final Hearing has to be scheduled within 10 business days of the Order being issued. It is also possible that the Final Hearing could be held earlier than the date scheduled if the abuser has compelling reasons to ask for changes in the Order about child custody or possession of the home.

**If the abuser violates any of the provisions in the Order after it has been served, he or she has committed a criminal act. Prompt reporting of the violation to the police is necessary in order for the order to be enforced.**

If you are in fear that the abuser will not honor the terms of the order, it is important to consider taking any other necessary steps to protect yourself.

**A domestic violence advocate can assist you in preparing a safety plan that could include the following:**

- changing the locks on your doors (and keeping them locked when you are at home);
- discussing your legal options, including reporting to the police; and
- assist you in finding temporary shelter for you and your family.

**Defendant’s Right to an Early Hearing**

It is possible for the person accused of abuse (the “defendant”) to ask the court to move up the hearing date in order to decide if the temporary order should be modified as to possession of the house and child custody. If there is a request for an “early hearing,” you are entitled to get a copy of whatever papers the defendant has filed with the court, which must include the reasons the defendant is asking for an early hearing. The court will give two days notice to you unless it decides less time is necessary. This gives you some time to hire your own lawyer, if you want to do so. Although the only issues that can be decided at this “early hearing” are child custody and possession of the home, if you and the defendant agree, this early hearing can become the Final Hearing in order to also deal with the issue of the alleged abuse.

**Final Relief from Abuse Order**

A Final Relief From Abuse Order offers longer and more comprehensive protection than the other orders. Before the hearing, you should look at the kinds of protection a judge can order to see which you or your children need. **If you want a kind of protection that is not listed below, you can ask the judge for it at the hearing.** The judge can order other additional protections you and your children need to be safe.

The **Final Relief from Abuse Order** can order the abuser to:

- stop abusing you and/or your children;
- stop threatening to abuse you and/or your children;
- not interfere with your and/or your children’s personal liberty;
  
- not stalk you or your children;
- not contact you and/or your children in person, by phone, by mail, or by third party;
- not come within a specific number of feet of you and/or your children, your home, or other places where you or your children are likely to spend time;
- immediately leave the house or apartment where you live and give sole possession of the house to you;
- give temporary custody of the children to you if applicable;
- be allowed to visit with the children under any conditions needed to protect the children and/or you from abuse; (If the abuser has been convicted of a sexual offense

against his/her child, the court can consider that as grounds for denying or limiting visitation.)

- pay your living expenses for up to 3 months if the abuser is married to you;
- pay child support for up to 3 months if he or she has a legal duty to support the children. (Biological fathers, whether married to the mother or not, have a duty to support their children, as do adoptive parents and many stepparents. Since this is a legal decision, it is up to the judge to decide whether to order the abuser to pay child support.)
- give you possession, care and control of any animals that you or your children own.

If you are not told before the final hearing that the defendant is going to be represented by a lawyer but the defendant appears with an attorney at the hearing, you can ask the court to extend the terms of your temporary order and schedule another final hearing date in order to give you reasonable time to hire a lawyer of your own.

Both you and the defendant (if that person attends) will have a chance to tell your side of the story. The person requesting the order will be expected to present their case first, and has the burden of proving that the alleged abuse occurred. The defendant will then be given the opportunity to deny the allegations. After listening to both of you and to any other witnesses, the judge will decide whether to grant a Final Relief from Abuse Order.

The judge can enter an order even if the defendant does not appear at the hearing as long as he or she has been served with the Temporary Order, including notice of the final hearing date. In this case, the Final Order must be served before it can go into effect.

The judge can decide to keep the original protections from the Temporary Order in effect, change them, add to or deny some or all of them. The judge may not enter “mutual orders” (that is, against both parties) unless you have both filed petitions and affidavits before the final hearing. This Final Order will be in effect for a fixed period of time that the judge decides is necessary.

Just like the Temporary Order, as long as the Final Order is in effect, the protections granted to you are kept in a statewide police computer file so police can verify the protections the judge has ordered and ensure that they are still in effect.

The Final Order generally expires after a year. **A month or two before the Final Order expires, if you feel that you still need the protections, you can go back to court and request an extension of the Order.** You do not have to be abused again while under the protection of the original Order to ask for and receive an extension, but the court can choose to deny the extension. The application to extend the Final Order should be made before the expiration date.

## **Changing the Order**

At any time during which the Final Order is in effect, either person can go back to court and request a change in the Order if there are major changes in the situation or if you both agree about making changes. Only a judge can change or dismiss an order. Even if



you both agree about making changes or dismissing an order, you must file a request with the court.

## **Violations of the Order**

**If you believe that the abuser has violated one or more conditions in either the Temporary or Final Relief from Abuse Order, you should call the police.** You should tell the police you have a Relief from Abuse Order and then describe what is happening or has happened. **Victims of domestic abuse have the right to have the police enforce the Order.** Some examples of the types of conditions that an abuser might violate include threatening, frightening or hurting you again, failing to leave the house or refusing to give you custody of the children.

If the police have reason to believe that the Order has been violated, they can arrest the abuser and charge him or her with a crime.

**Violations of a Temporary or Final Relief from Abuse Order that has been issued in Vermont or in any other state are a crime in Vermont.** Be aware that even though the police may arrest the abuser for committing a violation of the Order, this is no guarantee that the abuser will be kept in jail. Unless the court finds that there are reasons to deny the abuser the ability to be released on bail or other conditions, there is no guarantee that the abuser will be kept in jail pending a trial or hearing. (See sections on **Bail and Conditions of Release** within this chapter.) You should take every step to keep yourself and your children safe, even after the abuser has been arrested for violating an Order.

**Penalty for first time violation** of the Order: the abuser can be sentenced for up to one year in prison and/or fined not more than \$5,000 and/or be ordered to attend a “batterer intervention program”. If the abuser can afford it, he or she must pay all or part of the costs of the counseling.

**Penalty for second or subsequent violation** of any person’s Order: the abuser can be sentenced to up to three years in prison and/or fined not more than \$25,000 and/or be ordered to attend domestic abuse counseling. This penalty also applies if someone violates a protection order for the first time, but they have been previously convicted of domestic assault.

**Even if an abuser is criminally charged for violation of a Temporary Relief from Abuse Order, you should still go forward to get a Final Relief from Abuse Order. The criminal prosecution is in addition to, and should not be considered a substitute for getting a Final Relief from Abuse Order. Relief From Abuse Orders offer different protections than criminal conditions of relief, and are enforceable by police.**

## **Criminal Contempt**

It is possible that the State’s Attorney’s office might charge a person who has violated a Relief from Abuse Order with **criminal contempt**. Criminal contempt is when

someone disobeys a judge's order where the violation is a criminal matter, as is the case with Relief from Abuse and Stalking and Sexual Assault Orders. This method is not often used, since the penalties are higher if the person is charged with violating a Relief from Abuse Order under **Vermont's Abuse Prevention Act**. The penalty for criminal contempt is up to six months in prison and/or a fine up to \$1,000.

### **Abuse Orders from Other States**

If you have received an Order designed to protect you and your children from abuse that was issued in any state in the United States, any federally recognized Native American tribe, territory or possession of the United States, the Commonwealth of Puerto Rico or the District of Columbia, you have the right to be protected by that Order in every state in the United States, **as long as the order was served on the defendant**.

Vermont law calls these orders "**foreign abuse prevention orders**" and recognizes the protections granted. Vermont police are required to enforce them as if they were a Vermont Relief from Abuse Order. A Vermont police officer can enforce a foreign abuse order if they can see a copy of the Order and if the Order is still in effect. Police may rely on your written and sworn statement that the out-of-state abuse order is still in effect.

If you have a relief from abuse order from another state and you come to Vermont, you may get your foreign abuse order put on file in Vermont courts and in the statewide police computer file. This can be accomplished by giving the clerk of any Vermont Superior Court a certified copy of the Order. You will have to swear under oath in an affidavit (a statement witnessed by a notary or an officer of the court who can administer oaths) that, to the best of your knowledge, the Order is currently in effect as written. The out-of-state order can still be enforced if it is not on file, but the police must see a copy of it.

By filing the out-of-state abuse order with the court, the police can better protect you since the police can then use the statewide computer file to verify the effective Order in case you call on them to enforce it. One negative aspect of having your Order in the statewide computer file is **if your abuser is a police officer or a court official in another state, that person might be able to trace your whereabouts**.

**Any violation of an out-of-state abuse order should be treated the same as a violation of a Vermont Relief from Abuse Order.**

### **Criminal Domestic Assault**

In addition to your ability to address domestic abuse through the Relief from Abuse process in the Family Division of the Superior Court, **the State's Attorney can charge an alleged abuser with criminal domestic assault, first degree aggravated domestic assault or second degree aggravated domestic assault**.

At the time the police respond to a call regarding domestic violence, the police may begin their investigation to determine whether to charge the alleged abuser with the

crime of “domestic assault”. The police may arrest the alleged abuser even if they did not witness the assault. These criminal acts are investigated by the police and prosecuted by the local State’s Attorney’s office.

**Domestic assault is committed when any person:**

- attempts to cause or willfully or recklessly causes bodily injury to a family or household member; or
- willfully causes a family or household member to fear imminent serious bodily injury.

Domestic assault penalty: up to eighteen months in prison and/or a fine of not more than \$5,000.

**Second-degree aggravated domestic assault is committed when a person:**

- commits a second or subsequent offense of domestic assault which causes bodily injury, thereby escalating the crime to “second degree”, or
- **commits the crime of domestic assault, and such conduct violates specific conditions of a criminal court order in effect at the time of the offense (e.g. conditions of release or conditions of probation), or**
- commits the crime of domestic assault and such conduct violates a Relief from Abuse Order, an Order Against Stalking or Sexual Assault, or an Order Against Abuse of a Vulnerable Adult, or
- commits the crime of domestic assault and has been convicted within the past 10 years of violating a protection order.

Second-degree aggravated domestic assault penalty: up to five years in prison and/or a fine of up to \$10,000.

**First-degree aggravated domestic assault is committed if the person:**

- attempts to cause or willfully or recklessly causes serious bodily injury to a family or household member; or
- uses, attempts to use or is armed with a deadly weapon and threatens to use the deadly weapon on a family or household member; or
- commits the crime of domestic assault and has been convicted of aggravated domestic assault in the past.

First-degree aggravated domestic assault penalty: up to 15 years in prison and/or a fine of not more than \$25,000.

It is important to know that it is still a crime if the person who committed domestic assault was drunk or high. Being drunk or high is not a defense to the charge of domestic assault.

A person charged with second or first-degree aggravated assault can be held without bail if the court determines that there are reasons to do so. (See section on **Bail** in this chapter.)

At the first court appearance, which is called the **arraignment**, the court can release the defendant and order them to abide by **conditions of release**. These conditions may include:

- no contact with you and/or the children;
- no harassment of you and/or the children;
- no use of alcohol or drugs;
- no possession of firearms;
- staying a certain number of feet away from you, your home, residence or workplace;
- a curfew.

If the defendant violates any of the conditions imposed by the court, he or she may be charged with the additional crime of **violating the conditions of release**. It is also possible to have his or her bail revoked, although this is much harder to have a judge agree to do.

The case may be settled by a plea agreement or may go to trial. You, as the victim, will usually need to testify at the trial. If it goes to trial, a judge or jury will decide if the defendant is guilty **beyond a reasonable doubt**.

If the defendant is convicted, the sentence can include time in jail, a suspended or deferred sentence on probation, a fine or a combination of these sentences. Conditions of probation can include protections for you and counseling for the abuser (e.g. substance abuse, mental health or domestic abuse education). If the defendant violates the conditions of probation, that person may be ordered to serve the rest of the sentence in jail.

Habitual repeaters of domestic assault can have increasing penalties. A person who is convicted of domestic assault for a second time can be charged with second degree aggravated domestic assault. If that person commits domestic assault after being convicted of second-degree aggravated domestic assault he or she can be charged with first-degree aggravated domestic assault.

## **Sexual Violence**

**Sexual violence is any unwanted sexual attention, contact, or activity.**

Anyone can be a victim of sexual violence: women and men, gay or straight, children, teenagers, people with disabilities and the elderly. While those who commit sexual violence may occasionally be strangers to the victims, more often the offender is someone the victim knows such as an acquaintance, friend, partner, husband or other family member.

## **Sexual Assault**

In Vermont the age of consent is 16, unless the two parties are between the ages of 15 and 19. This means that people under 15 can't consent to sexual activity under the law, and people between age 15 and 16 can only consent to sexual activity with someone who is under 19.

Sexual assault, more commonly known as rape, is committed when a person engages in a sexual act with another person and the sexual act is compelled either:

- without the consent of the other person; or
- by threatening or coercing the other person; or
- by making the other person fearful she or someone else is about to suffer bodily injury.

If you are the victim of sexual assault, **you do not have to prove you physically resisted to show that you did not consent.** Sexual assault is also committed if the sexual act occurs after the attacker gives you drugs without your knowledge or against your will, and these drugs or intoxicants substantially impair your ability to know or control your conduct.

There is no statute of limitations for the crime of sexual assault in Vermont; charges can be brought at any time after the assault.

Sexual assault penalty: up to life in prison, a minimum sentence of three years, and a fine of up to \$25,000. The offender must register and notify the Sex Offender Registry for a lifetime.

## **Aggravated Sexual Assault**

Sexual assault is considered to be “aggravated sexual assault” if the sexual assault is committed under any one of the following circumstances:

- at the time of the sexual assault, the attacker causes serious bodily injury to you or to another;
- the attacker is joined or assisted by one or more persons in physically restraining, assaulting or sexually assaulting you;
- the attacker commits the sexual act under circumstances which constitute the crime of kidnapping;
- the attacker has previously been convicted in Vermont of sexual assault (except “statutory rape”) or aggravated sexual assault, or has been convicted in any jurisdiction in the United States or its territories of an offense which would constitute the same sort of sexual assault or aggravated sexual assault;
- at the time of the sexual assault, the attacker is armed with a deadly weapon and uses or threatens to use the deadly weapon on you or on another;

- at the time of the sexual assault, the attacker threatens to cause imminent serious bodily injury to you or to another and you reasonably believe that the attacker has the present ability to carry out the threat;
- at the time of the sexual assault, the attacker applies deadly force to you; (deadly force means physical force which a person uses with the intent of causing, or which the person knows or should have known would create a substantial risk of causing, death or serious bodily injury);
- you are subjected by the attacker to repeated nonconsensual sexual acts as part of the same occurrence or you are subjected to repeated nonconsensual sexual acts as part of the attacker's common scheme and plan;
- the victim is under the age of 13 and the attacker is at least 18 years old.

Aggravated Sexual Assault penalty: up to life imprisonment, a minimum sentence of ten years, and a fine of up to \$50,000.

The ten-year term of imprisonment may not be suspended, deferred, or served as a supervised sentence. However, the court may impose a lesser term of incarceration, down to no less than five years, if the court makes written findings that a lesser sentence will serve the interests of justice and public safety. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year or ten-year term of imprisonment.

### **Sexual Exploitation of an Inmate**

It is a crime for any person who provides services on behalf of the Department of Corrections (DOC) or pursuant to a court order or in accordance with a condition of probation, parole, supervised community sentence or furlough to engage in a sexual act with a person that they know is:

- confined to a correctional facility; or
- being supervised in a community setting as defined above and is assigned to their caseload.

Sexual Exploitation of an Inmate penalty: up to five years in prison, and/or a fine of up to \$10,000.

### **Lewd or Lascivious Conduct**

The crime of "lewd or lascivious conduct" refers to unwanted acts that are committed with the intent to arouse, appeal to or gratify the lust, passions or sexual desires of the alleged offender or of the victim. This could include such things as exposing genitals, nonconsensual sexual touching, etc.

Open and Gross Lewdness penalty: up to one year in prison, and or a fine of up to \$300. For second and subsequent offenses: up to two years in prison and or a fine of up to \$1000.

Lewd or Lascivious Conduct penalty: up to 5 years in prison and/or a fine of up to \$300. For a first offense, the offender must register and notify the Sex Offender Registry for 10 years, or a lifetime for a noncompliant high-risk offender. For a second offense, the offender must register for a lifetime.

## **Voyeurism**

Vermont's list of lewd and indecent offenses includes voyeurism. **Voyeurism refers to viewing, photographing or recording another person's intimate areas without that person's knowledge or consent.** To be considered a victim of voyeurism, you must be in a place where you have a reasonable expectation of privacy.

A **reasonable expectation of privacy** has recently been redefined. Even if you knowingly undress in front of someone else but didn't know that your activity was being recorded, you can be a victim of voyeurism. If someone records you engaging in a sexual act even though no intimate areas are being shown and you were unaware that it was being recorded, that person can be charged with voyeurism.

Voyeurism penalty for first offense: up to two years in prison and/or a fine of up to \$1,000.

Voyeurism penalty for second or subsequent offense: up to three years in prison and/or a fine of \$5,000.

Displaying or disclosing to a third party any images obtained through voyeurism is also a crime and carries a sentence of up to five years and/or a fine of up to \$5,000.

## **Getting Help**

There are a number of domestic violence programs and rape crisis centers around Vermont that can help women who have been sexually assaulted. These services are free, confidential and available 24 hours a day. Call the statewide sexual violence hotline at 1-800-489-7273.

**You do not have to press charges against the person who assaulted you at the time you seek help from a crisis worker.** Your crisis worker cannot disclose anything you say to her in confidence without your permission, except in certain circumstances where the advocate believes a minor may be at risk of sexual or physical abuse and they are a mandated reporter. If an advocate is a mandated reporter, they should tell you this at the start of the conversation, and you have the right to ask to speak to someone else, or to speak anonymously without giving your name. (See VCW's Resource Directory – [Violence](#) section.)

## Stalking Offenses

### Stalking

**A person can be charged with stalking** if he or she purposefully engages in the following behaviors directed at a specific person:

- Follows;
- Monitors;
- Surveils;
- Threats;
- Makes threats about another person; or
- Interferes with another person's personal property;
- And knows or should know that the behaviors, taken together, would cause a reasonable person to:
  - fear for his or her safety or the safety of a family member; or
  - suffer substantial emotional distress as evidenced by:
    - a fear of unlawful sexual conduct, unlawful restraint, bodily injury, or death; or
    - significant modifications in the person's actions or routines, including: moving from an established residence; changes to established daily routes to and from work that cause a serious disruption in the person's life; changes to the person's employment or work schedule; or the loss of a job or time from work.

**The stalking behavior must occur two or more times before it can be charged.** No overt physical threat is required to charge an individual with stalking, and electronic communications and surveillance is considered.

Stalking penalty: up to two years in prison and/or a fine of up to \$5,000.

### Aggravated Stalking

A person can be charged with the even more serious crime of **aggravated stalking** if the person intentionally stalks another person and:

- this violates a current court order prohibiting the person from stalking; or
- this person has been convicted of stalking or aggravated stalking sometime in the past; or
- this person has been convicted in the past of some other violent crime against the person currently being stalked; or
- the person being stalked is under 16 years old; or
- the person has a deadly weapon in their possession while stalking.

Aggravated Stalking penalty: up to five years in prison and/or a fine of up to \$25,000.



If you think someone is stalking you, in addition to calling the police, you can apply at the court for an Order Against Stalking or Sexual Assault. The court can order the stalker to stay away from you and your children or face penalties, jail time, or both. You must file an affidavit (a statement witnessed by a notary or an officer of the court who can administer oaths) with the court, similar to a Relief from Abuse Order. (See section on Relief from Abuse Order, Civil within this chapter.)

## **Safety for Victims of Domestic and Sexual Violence and Stalking**

### **Orders Against Stalking Or Sexual Assault**

The Vermont legislature created “stay away” orders for victims of stalking and sexual assault (also called SSA orders) when the perpetrator is not a family or household member. A SSA order is a protection order that demands the defendant stay away from you.

#### **What does stalked or sexually assaulted mean?**

The law defines sexually assaulting in a slightly different way than the criminal statutes, although the general meaning is the same.

**To stalk** means to engage purposefully in a course of conduct directed at a specific person that the person engaging in the conduct knows or should know would cause a reasonable person to fear for his or her safety or the safety of another or would cause a reasonable person substantial emotional distress.

**Threatening behavior** is defined as “acts which would cause a reasonable person to fear unlawful sexual conduct, unlawful restraint, bodily injury, or death, including verbal threats, written, telephonic, or other electronically communicated threats, vandalism, or physical contact without consent.”

**Sexually assaulted the plaintiff** means that the defendant engaged in conduct that meets elements of lewd and lascivious conduct with a child, sexual assault, or aggravated sexual assault, use of a child in a sexual performance, or consenting to a sexual performance and that the plaintiff was the victim of the offense.

#### **How does an SSA order work?**

The process for obtaining an **Order Against Stalking or Sexual Assault (SSA)** is similar to that for obtaining a Relief From Abuse order, except that SSA orders are obtained through Civil Division of the Superior Court and are only available during business hours. The court can issue temporary and final orders that demand that the defendant stay away from the plaintiff and her or his children. Orders against stalking or sexual assault are enforceable by law enforcement officers, and violation of an order is a criminal act, punishable by law.

## Who qualifies for an Order Against Stalking or Sexual Assault?

In order to qualify for an Order Against Stalking or Sexual Assault, a plaintiff (the person applying for the order) must prove the following:

- That the defendant (the person against whom the plaintiff is seeking the order) is not a “family or household member” as defined in 15 V.S.A. § 1101(2). If the defendant is a family or household member, then the plaintiff needs to apply for a Relief From Abuse order through Family Division of the Superior Court.
- That the plaintiff and the defendant are not in a sexual or dating relationship.
- The plaintiff must prove to the court by a preponderance of the evidence (which basically translates to “more likely than not”) that the defendant stalked or sexually assaulted them (see definitions below).

## How does the plaintiff prove she or he was stalked or sexually assaulted?

The plaintiff, age 16 or older, fills out an affidavit describing the behavior of the defendant to obtain a temporary order, and describes the behavior and events to the judge at a court hearing to obtain a final order. The description must meet all the elements of the definitions above. Additionally, the plaintiff must prove to the judge that it was the defendant who perpetrated the behavior.

If the defendant has been convicted in criminal court of stalking, sexual assault, aggravated sexual assault, or lewd and lascivious conduct with a child, and the plaintiff (or her or his child) is the victim, then the criminal conviction should suffice as proof.

## Request for an Order

The plaintiff needs to file an affidavit with the court and receive a date on which a hearing will be held. The defendant must be given notice of the request for an order and an opportunity to be heard. If there is an immediate danger, then the plaintiff can apply for a temporary order (see below).

At the hearing, the plaintiff will have to prove to the judge by a preponderance of the evidence (more likely than not) that she or he was stalked or sexually assaulted by the defendant. The defendant will have the opportunity to respond. However, the rape shield provisions from the sexual assault statute will apply, so the defendant will not be permitted to bring up information about the plaintiff’s sexual history unless it is directly relevant.

For orders against sexual assault, there are two different thresholds that the plaintiff must meet, depending on whether or not the defendant has been criminally convicted:

- The court must find by a preponderance of evidence that the defendant **has stalked or has been convicted of sexually assaulting the plaintiff, or**
- The court must find by a preponderance of evidence that the defendant **has sexually assaulted the plaintiff.**

This means that if the defendant has been convicted in criminal court of sexual assault, lewd and lascivious conduct with a child, or aggravated sexual assault, then the plaintiff only has to prove that it happened (which can be done by bringing in some information such as the docket number or other court document). **However, if the defendant wasn't convicted for any reason – even if the crime was never reported – then the plaintiff has to prove that a sexual assault happened and that the defendant did it.**

If the plaintiff has met the burden of proof and the court finds that the defendant stalked or sexually assaulted the plaintiff, then the court shall order that the defendant stay away from the plaintiff, the plaintiff's children, or both, and the court can make any other orders that it deems necessary to protect the plaintiff and her or his children.

### **Emergency Orders**

The plaintiff needs to file an affidavit (a statement witnessed by a notary or an officer of the court who can administer oaths) at the Civil Division of the Superior Court during business hours. A court clerk will contact a judge who will review the circumstances and determine whether or not to grant the plaintiff a temporary Order Against Stalking or Sexual Assault.

A temporary order may be granted ex parte – that is, without notice to the defendant and a full hearing. All temporary orders will contain a date and time at which the defendant can appear to contest the order. At this final hearing, the plaintiff will have to prove to the judge by a preponderance of the evidence that she or he was stalked or sexually assaulted by the defendant. The defendant also has the right to state his or her case at this time.

The court may order the defendant to stay away from the plaintiff or the plaintiff's children, or both, and may make any other such order it deems necessary to protect the plaintiff or the plaintiff's children, or both.

### **What do these orders do?**

**Orders Against Stalking or Sexual Assault require the defendant to stay away from the plaintiff, and not contact her or him in any way.** They may also contain other provisions that the judge thinks are necessary.

Just like Relief from Abuse orders, violation of an order against stalking and sexual assault is a crime. Law enforcement officers are authorized to enforce the conditions of these orders, and can arrest the defendant if they believe that he or she has violated the order. **Violation of an Order Against Stalking or Sexual Assault** is punishable by up to one year in prison and/or a fine of \$5000. For a second or subsequent offense, the penalty is up to three years and/or a fine of \$25,000.

As with Relief from Abuse orders, **these orders can be an important tool, but they are absolutely not a guarantee of safety.** Survivors can talk with an advocate to make a safety plan. Stalking Orders are only one aspect of a survivor's safety plan and do have limitations. Survivors should carefully evaluate whether such an order will provide them further protection, or whether it will anger the defendant to the point where they become even more dangerous. An advocate can help a survivor decide if getting a Stalking Order is the best decision for her.

### **What does “stay away” mean?**

Stay away means to refrain from knowingly:

- initiating or maintaining a physical presence near the plaintiff;
- engaging in nonphysical contact with the plaintiff directly or indirectly;
- engaging in nonphysical contact with the plaintiff through third parties who may or may not know of the order.

### **Extensions and Modifications**

All Orders Against Stalking and Sexual Assault are issued for a fixed period of time. Before the order is set to expire, the plaintiff may ask the court to extend the order if she or he feels it's necessary. The plaintiff does not have to prove that the defendant stalked or sexually assaulted her or him during the time that she or he had the order in order to qualify for an extension.

While an order is in effect, if the plaintiff or the defendant experiences a “substantial change in circumstance,” either one may ask the court to change the terms of the order.

### **Address and Public Record Confidentiality — “Safe at Home”**

If you have been a victim of actual or threatened domestic or sexual violence-related behavior or stalking-related behavior and you fear for your safety or that of your children, you are eligible for the Safe at Home program. Apply through the Secretary of State's office. **You do not have to report the violent behavior or threats of violent behavior to the police or a domestic or sexual violence program in order to qualify for the program.**

### **The Safe at Home program can protect you in two ways:**

**Substitute Address Service**—you will be given a Montpelier, Vermont post office box address and all first class mail and legal processes will be forwarded to your real address at no cost to you.

**Protected Records Service**—You can use this address when you vote (blind ballot absentee voter); when you obtain a driver's license, get married and register births without fear that those records will put you at risk of being located.

The certification lasts for four years and may be renewed.

Domestic and sexual violence program staff and other trained victims' services specialists can not only help you apply for the program, but can help you with other aspects of a safety plan. ([See VCW's Resource Directory – Violence section.](#))

### **Domestic and Sexual Violence Transitional Employment Benefits**

You may be eligible for up to 26 weeks of unemployment payments if you leave your job due to circumstances directly resulting from domestic violence, sexual assault or stalking for one of the following reasons:

- you fear that the violence will continue at, or on the way to or from work;
- you reasonably believe that leaving the job is necessary for your safety;
- you are **physically or emotionally unable to work as a result of experiencing domestic or sexual violence as certified by a medical professional;**
- you intend to move away to protect yourself and/or your family; or
- you are fired from your job because of the violence.

To be eligible you need to try to find reasonable alternatives before quitting, such as asking your employer to transfer you to another (safer) job location.

If you are unable to work because of the effects of the violence, you may provide certification from a medical professional; this certification must be reviewed by the Department of Labor every six weeks. You also need to provide documentation of the domestic or sexual violence including a sworn statement from you, police records, court records such as a relief from abuse order, or other documentation of the violence from an attorney, clergy person, or health care provider.

If you are denied unemployment benefits and you feel that you qualify under this program, contact the Department of Labor. See [VCW's Resource Directory – Violence section](#) for contact information for this specific program.

### **Sexting**

No minor (person under 18) shall knowingly and voluntarily (and without threat or coercion) use a computer or electronic communication device (computer, cell phone, etc.) to send an indecent picture of him/herself to another person. No person (any age) can possess an indecent visual depiction of a minor unless they take reasonable steps, whether successful or not, to destroy or eliminate the image.

**As it applies to minors:**

**Minors who share (forward, post online, or show) indecent images of another minor** may be charged with a variety of different crimes including but not

limited to: possession of child pornography; lewd and lascivious behavior; voyeurism; prohibited acts and/or disturbing the peace.

If it is the **first offense for a minor sending or receiving indecent visual depictions of themselves or another minor**, it will be considered a delinquent act and the offender will be sent into the family court process where they will may be referred to diversion programs and avoid trial. The offender will not have to sign up for the sex offender registry and the record of the offender will be expunged when they turn 18 years old.

NOTE: if the image was not consensually and voluntarily taken and sent by the person the image is of, then other laws may be applicable that would change the outcome of the above law for the sender who was forced, coerced or threatened into the activity.

Example: A minor who was forced to send a nude image of herself to her also minor boyfriend may not be charged since it was not consensual.

If it is the **second offense for a minor sending or receiving indecent depictions of themselves or another minor**, the offender can be adjudicated delinquent in family courts again or prosecuted in district courts under a variety of different crimes including but not limited to: possession of child pornography; lewd and lascivious behavior; voyeurism; prohibited acts and/or disturbing the peace.

If adjudicated delinquent, the offender's name will not go onto the sex offender registry and the charges will be expunged when the offender turns 18. However, if prosecuted in district court under criminal statutes, the offender's name may be added to the sex offender registry and the charges will not be expunged from their criminal record.

### **As it applies to persons 18 or over:**

A person 18 or over may not show a minor any sexually explicit materials, including images of themselves. **A person 18 years or older who is found in possession of an indecent image of a minor**, that the minor sent voluntarily, who did not take reasonable steps, whether successful or not, to destroy or eliminate the image, may be charged under sexting law but also possibly charged with: possession of child pornography; lewd and lascivious behavior; voyeurism; prohibited acts and/or disturbing the peace.

A person 18 or over who shares (forwards, posts online or shows) an indecent image of a minor may be charged with a variety of different crimes including but not limited to: possession of child pornography; lewd and lascivious behavior; voyeurism; prohibited acts and/or disturbing the peace.

## **Child Abuse**

The term "child abuse" encompasses many different types of offenses against children. It can include sexual abuse, physical battering, emotional abuse, and neglect. It can be committed by people within the child's home and by people outside the home.

Depending upon the nature and type of child abuse, it may involve investigations and action by the Vermont Department of Children and Families (DCF), the police, the local State's Attorney's office, the Attorney General's office, and the courts.

It is also possible to seek protection orders to help protect your child from further abuse. **If your child has been sexually abused or stalked by someone who is not a family or household member, like a neighbor or acquaintance, you can seek an Order Against Stalking and Sexual Assault.** If the abuse has been committed by a current or past family or household member, you can seek a Relief from Abuse Order as described in the section above about Domestic Violence.

**Contact your local domestic or sexual violence program for support and information.**

### **Reporting Child Abuse**

Vermont law places a legal obligation on certain people to report any reasonable suspicion that a child has been abused or neglected to the Vermont Department for Children and Families (DCF) within 24 hours. These people are known as mandated reporters.

**The people who are required to report actual or suspected child abuse or neglect include any person who is a:**

- doctor, resident or intern, surgeon, EMT, osteopath, chiropractor, physician's assistant, hospital administrator, nurse, medical examiner, dentist, health care provider;
- school superintendent, teacher, librarian, day care worker, principal, guidance counselor, or any person who is regularly employed by a school district or contracted and paid by the district to provide student services for 5 or more hours a week;
- mental health professional, social worker, psychologist;
- employee, grantee or contractor for the Agency of Human Services who have contact with clients;
- probation officer, police officer;
- member of the clergy (with a few exceptions including acts of contrition);
- camp owner, administrator or counselor.

In addition, any other person who has reasonable grounds to believe that a child has been abused or neglected may also file an oral or written report to the Vermont Department for Children and Families (DCF).

**Vermont has the Child Protection Registry**, a database of all substantiated reports of child abuse and neglect. A substantiated report is a report based on accurate and reliable information that would lead a reasonable person to believe the child has been abused or neglected. Each registry record includes the name of the substantiated abuser, the date and nature of the finding, at least one personal identifier other than the

name, and for individuals placed on the registry after July 1, 2009, a designated child protection level.

The Registry is accessed by the Department for Children and Families when:

- a report is received about child abuse or neglect;
- someone applies to become a foster parent, adoptive parent, child care provider or employee of a residential facility for children or youth in Vermont; or
- an authorized person to receive the information requests a search. These include an employer researching an employee who will be providing care, custody, treatment, transportation or supervision of children, youth or vulnerable adults. Others authorized are owners or operators of facilities regulated by the Department for Children and Families, the state's attorney or attorney general, designees within the Vermont Agency of Human Services, adult protective services or children protection agencies in other states, or the person substantiated for child abuse.

[\(See VCW's Resource Directory – Children section.\)](#)

### **Investigation of Reported Child Abuse or Neglect**

Once the DCF receives a report, it will decide whether or not to investigate and whether or not the report has merit. DCF will determine the level of risk of harm to the child.

Many different outcomes could result from a DCF investigation, which sometimes can lead to court hearings and orders by the court. Some possible results include:

- a determination that the report does not have merit;
- provision of family support within the home by DCF or other community organizations;
- removal of an abuser from the home;
- having the mother and child move to a family shelter (in the case of domestic violence);
- having the child live temporarily with a relative/neighbor/friend;
- removing the child from the home (but only if a court orders this to occur);
- terminating parental rights (but only in the most extreme cases and only if a court orders this to occur).

### **Sexual Crimes Against Children**

If the child abuse includes a sexual or other criminal offense, the person alleged to have committed this crime (the “defendant”) may be prosecuted by the local State’s Attorney or the Criminal Division of the Vermont Attorney General’s office. When any case of sexual abuse of a child is reported to DCF, they are required by law to immediately contact law enforcement and conduct a joint investigation.



**The criminal charges and penalties for sexual crimes against children vary depending on:**

- the age of the child and the age of the offender;
- the relationship between the child and the offender;
- the nature of the contact;
- whether there have been previous offenses.

Some of these offenses are included in the criminal code for lewd or lascivious conduct, sexual assault or aggravated assault and some are in separate sections of the code that apply only to children.

**Sexual activity is not a crime if the person is less than 19 and the child is at least 15 and the sexual act is consensual; or if the child is less than 16, the couple are married and the act is consensual.**

While your child may be a witness in the case, remember that **the prosecutor cannot represent you or your child**. You may wish to consult with your own attorney, as well as receive support from a victim's advocate (either an advocate from a member program of the Vermont Network Against Domestic and Sexual Violence or from an advocate who is located in the State's Attorney's office). Also, if you or another family member is the person being charged with the assault, you should be represented by an attorney.

There are a number of state government and not for profit agencies that can provide help for sexually abused children and their families. ([See VCW's Resource Directory – Children section.](#))

### **Luring a Child**

The crime of luring a child is to engage in a sexual act or lewd or lascivious conduct with a child. The penalty for a first offense is a maximum of 5 years in prison. The offender must register and notify the Sex Offender Registry for 10 years, or a lifetime for noncompliant high-risk offender.

### **Lewd or Lascivious Conduct with a Child**

The crime of **lewd or lascivious conduct with a child** occurs when a person commits any lewd or lascivious act on a child under the age of 16 years, with the intent of arousing, appealing to or gratifying the lust, passions or sexual desires of him or herself, or of the child. Examples could include sexual touching, exposing genitals, etc. It is not a crime if the conduct is consensual and the two parties are between 15 and 19 years old.

Lewd or Lascivious Conduct with a Child penalty for first offense: up to 15 years in prison, a two-year minimum sentence, and a fine of up to \$5,000. The offender must

register and notify the Sex Offender Registry for 10 years, or a lifetime for noncompliant high-risk offender.

Lewd or Lascivious Conduct with a Child penalty for second offense: up to life in prison, a five- year minimum sentence, and a fine of up to \$25,000. The offender must register and notify the Sex Offender Registry for a lifetime.

Lewd or Lascivious Conduct with a Child penalty for third offense: up to life in prison, a ten- year minimum sentence, and a fine of up to \$25,000. The offender must register and notify the Sex Offender Registry for a lifetime.

The court may decrease the five and ten-year minimum sentences if it finds that a lesser sentence will serve the interests of justice and public safety.

### **Sexual Exploitation of a Minor**

A person who engages in sexual acts with a minor 48 months younger is guilty of this crime if they are in a position of power or authority over that minor. This includes not only professionals but volunteers who undertake responsibility for the health or welfare of minors, or for guidance, leadership, instruction or organized recreational activities for minors.

Sexual Exploitation of a Minor penalty: up to one year in prison and/or a fine of up to \$2,000.

If it is proved that the person abused his/her power or authority in order to engage in a sexual act, the penalty is higher: up to five years in prison and/or a fine of up to \$10,000.

### **Sexual Assault of a Child**

**No person can engage in sexual acts with a child who is under the age of 16 unless they fit one of the two exceptions:**

- if the people are married to each other and the sexual act is consensual;
- if the child is at least 15 and the other person is less than 19, and the sexual act is consensual.

Engaging in sexual acts with a child who is under the age of 16 penalty: up to 20 years in prison and a fine of up to \$10,000. The offender must register and notify the Sex Offender Registry for a lifetime.

It is also sexual assault to engage in sexual acts with a child who is under the age of 18, if the child is in the person's care by authority of law or is the person's child, grandchild, foster child, adopted child, or stepchild. The penalty for this section is up to life in prison, a three-year minimum sentence, and a fine of up to \$25,000. The offender must register and notify the Sex Offender Registry for a lifetime.

## **Aggravated Sexual Assault of a Child**

**A person is guilty of aggravated sexual assault of a child if they commit sexual assault on a child under the age 16 and they are at least 18 years old and at least one of the following conditions apply:**

- at the time of the assault the person caused serious harm to the victim or another;
- the person is joined by one or more persons in restraining, assaulting, or sexually assaulting the victim;
- the sexual act is done during a kidnapping;
- the person had previously been convicted of sexual assault, aggravated sexual assault or aggravated sexual assault of a child;
- at the time of the sexual assault the person is armed with a deadly weapon or threatens to use a deadly weapon on the victim or another;
- the person threatens to cause serious bodily injury to the victim or another;
- at the time of the sexual assault, the person applies deadly force to the victim; or
- the victim is subject to repeated nonconsensual sexual acts as part of the same occurrence or scheme and plan.

Aggravated Sexual Assault Of A Child penalty: up to life in prison, a 25-year minimum sentence and a fine of up to \$50,000. This includes requiring the offender to register with the Sex Offender Registry for a lifetime.

The sentence may not be suspended, deferred or served in a community setting, and the defendant is not eligible for probation, parole, furlough or any other form of early release until the 25-year minimum is served.

## **When a Criminal Prosecution of Childhood Sexual Assault Can Be Brought**

Childhood sexual assault can be so devastating that it is often many years before a victim is ready to take action, or even to report the assault. Vermont law addresses this situation by granting longer periods within which a criminal prosecution can be brought.

Aggravated sexual assault charges can always be brought; there is no time limitation. For most other sex crimes against children a case can be brought up to 40 years after the offense happened.

Check with either your local State's Attorney or the Attorney General's office to determine whether or not your case can still be prosecuted.

## **Human Trafficking**

**Human trafficking is a form of modern day slavery. It does not happen only to immigrants or people from other countries coming to work in the United States. It does not have to include smuggling or forced movement or the**

**crossing of state lines or national borders. It does not require physical force, abuse or restraint to be considered human trafficking.**

**In 2011, Vermont became the 42<sup>nd</sup> state to pass human trafficking legislation.** The Vermont definition of human trafficking is the same as the federal definition of a “severe form of human trafficking” which provides some immigration protection for those who are not U. S. citizens. **It is also considered a crime of human trafficking to recruit, entice, harbor, transport or provide individuals for the purpose of forced labor or sexual trafficking.**

There are three kinds of human trafficking:

- sex trafficking of a person over the age of 18 that involves fraud, force or coercion;
- sex trafficking of a person under the age of 18 (fraud, force or coercion is not required);
- labor trafficking that involves force, fraud or coercion.

Crime victims assistance, notification and compensation (described later in this section) also apply to victims of human trafficking. In addition victims of human trafficking may also bring a civil action (also described later in this section).

## **Sex Trafficking**

It is a criminal offense for anyone to compel you through force, fraud or coercion to engage in a commercial sex act. A commercial sex act is defined as any sex act or sexually explicit performance

where anything of value is promised to, given to, or received by any person. **It doesn't matter whether you initially consented to perform the sexual act.** Coercion is defined in Vermont law as:

- a threat of serious harm including physical or financial harm against any person (including threats to family members or others);
- any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious bodily or financial harm or physical restraint of any person (including family members or others);
- withholding, destroying or confiscating a passport, immigration document or any other governmental identification;
- providing a drug (including alcohol) to another person with the intent to impair the person's judgment or maintain a state of chemical dependency;
- wrongfully taking, obtaining or withholding any property;
- blackmail;
- asserting control over finances;
- debt bondage;
- withholding or threatening to withhold food or medication.

If you are a victim of sex trafficking, you may not be prosecuted for lewdness, prostitution or obscenity offenses based on conduct committed as a result of trafficking. In addition, you may use an **affirmative defense** for any non-sex-related crime that arises out of being a sex-trafficking victim where force or coercion is used. An affirmative defense is an explanation that excuses or justifies the alleged criminal behavior. This means that if you are charged with a non-sex-related crime, you can defend yourself in court by proving that your alleged criminal behavior was a result of the sex trafficking you experienced.

### **Sex Trafficking of Minors**

Examples of sexual trafficking of minors include modeling, stripping, escort and massage services, prostitution, pornography and survival sex for food, shelter and love. If you are under the age of 18 or your child is under the age of 18 and you are a victim of sexual trafficking, **it is not necessary to prove force, fraud or coercion was involved**. In addition **minors are immune from prosecution for prostitution in criminal court or as a delinquent in juvenile court**. However minors may be subject to a Child in Need of Care or Supervision (CHINS) proceeding in the Family Court division of the Superior Court.

### **Labor Trafficking**

It is a criminal offense to subject a person to labor servitude. Labor servitude means labor or services performed or provided by a person which are induced or maintained through force, fraud or coercion. The definition of coercion is the same as that for sex trafficking above.

Examples of labor trafficking include persons working as domestic servants (maids and nannies), sweatshop and fishery workers, meat packing workers, janitors, restaurant and foodservice workers, migrant farm workers and hotel and tourist industry workers. It does not include labor or services performed by a family member of a person engaged in the business of farming unless force, fraud or coercion can be proved.

### **Criminal Penalties for Human Trafficking**

Not only is it a crime to compel a person to engage in a commercial sex act or subject a person to labor servitude, it is also a crime to “recruit”, entice, harbor, transport, provide or obtain such a person. Force fraud or coercion must be proved if the victim is 18 years or older.

Penalty for human trafficking: up to and including life imprisonment and/or a fine up to \$500,000.

### **Criminal Penalties for Aggravated Human Trafficking**

A person commits the crime of aggravated human trafficking if:

- the victim is a child under the age of 18;
- he/she has been previously convicted of human trafficking;
- the victim suffers severe bodily injury or death;
- circumstances also constitute the crime of sexual assault, aggravated sexual assault, aggravated sexual assault of a child.

Penalty for aggravated human trafficking: a minimum sentence of 20 years and a maximum term of life and/or a fine of up to \$100,000.

### **Patronizing or Facilitating Human Trafficking**

It is a crime for an owner or landlord to knowingly allow a place, building or structure to be used for sex or labor trafficking or to agree or permit a person to come into, or remain in, such a place, building or conveyance for the purpose of sex or labor trafficking.

It is also a crime to knowingly solicit a commercial sex act from a victim of human trafficking.

Penalty for either crime: imprisonment up to five years and/or a fine of \$100,000.

### **Services and Assistance for Victims of Human Trafficking**

Once a law enforcement official has determined that there is a probable cause that you or your child is a victim of human trafficking you may be eligible for services such as:

- case management
- emergency temporary housing
- health care
- mental health counseling
- drug addiction screening and treatment
- language interpretation or translation services
- English language instruction
- job training and placement assistance
- post-employment services for job retention
- services to assist the victim of human trafficking and any member of his/her family to establish a permanent residence in Vermont or the United States

### **Other Rights of Victims of Human Trafficking**

Your name, residence and other identifying information will not be made public and your sexual conduct/past cannot be admitted into the court as evidence. Convicted traffickers must pay restitution to you and this is not limited if you return to your home country.

You may also bring a civil action against your offender for damages, injunctive relief, attorney fees and other costs. (See Civil Action section within this chapter.)

Law enforcement officials must tell you about immigration relief if you are not a legal resident of the United States. It is your choice if you wish to apply for these Visas. If you choose to apply for a T-Visa or a U-Visa, they must provide you with the necessary certification forms—USCIS I-914 supplement B and/or USCIS I-918 supplement B. (See the [Immigration chapter of \*The Legal Rights of Women in Vermont\*](#).)

## **Abuse of Vulnerable Adults**

A vulnerable adult is defined as any person 18 years of age or older who is receiving residential services or has been receiving personal care services for more than a month, or is unable to care for themselves or protect themselves because of brain damage, aging, or a physical, mental or developmental disability.

### **Abuse, Neglect, and Exploitation**

#### **Abuse is defined as:**

- any treatment of a vulnerable adult that places his or her life, health or welfare in jeopardy;
- any conduct committed with intent to cause or reckless disregard of unnecessary pain, harm or suffering;
- intentionally subjecting a vulnerable adult to behavior which results in intimidation, fear, humiliation, degradation, agitation, disorientation, or other forms of emotional distress;
- any sexual activity with a vulnerable adult by a caregiver; or
- administration of drug, substance or preparation to a vulnerable adult for a purpose other than a legitimate and lawful medical or the therapeutic treatment.

**This definition does not apply to a consensual relationship between a vulnerable adult and a spouse, or to a consensual relationship between a vulnerable adult and a caregiver who is hired, supervised, and directed by the vulnerable adult.**

#### **Neglect is defined as:**

- failing to provide care or arrange for goods or services necessary to maintain the health or safety of a vulnerable adult;
- not protecting a vulnerable adult from abuse, neglect or exploitation by others;
- failure to carry out a plan of care for a vulnerable adult when such failure results in physical or psychological harm or a substantial risk of death to the vulnerable adult; or
- not reporting significant changes in the health status of a vulnerable adult to a physician, nurse or immediate supervisor, when the caregiver is employed by an organization.

## **Exploitation means:**

- intentionally using, withholding or disposing of funds or property of the vulnerable person without legal authority, for the wrongful profit or advantage of another;
- getting possession, control or an interest in the funds or property of the vulnerable adult through the use of undue influence, harassment, duress or fraud;
- forcing or compelling the vulnerable person, against her/his will, to perform services for the profit or advantage of another;
- sexual activity with the exploiter/abuser to which the person does not agree, is incapable of resisting or agreeing to, or agrees to out of fear of retaliation or hardship.

Vermont law protects adults who are elderly or have disabilities (defined as “vulnerable adults”) from abuse, neglect and exploitation in two ways. One is by requiring certain people to report any evidence of such violations. The other is by allowing vulnerable adults, or an interested person on their behalf, to get a Relief from Abuse Order from the court.

## **Mandatory Reporting**

### **Mandatory reporters include:**

- employees, contractors and grantees of the Vermont Agency of Human Services who are involved in care giving;
- physicians, osteopaths, chiropractors, physician’s assistants;
- nurses, certified nursing assistants, emergency medical services personnel, medical examiners, dentists, psychologists;
- school teachers, librarians, administrators, guidance counselors, aides, bus drivers or other school employees or contractors who work regularly with students;
- mental health professionals, social workers (except those operating under the confidentiality provisions of the Older Americans Act), community mental health center employees or contractors involved in care giving, and employees of adult day care centers;
- law enforcement officers.

Mandatory reporting is also required of a hospital, nursing home, residential care home, home health agency, or any entity providing paid nursing or nursing related services; intermediate care facility for adults with mental retardation; therapeutic community residence, group homes, developmental homes, schools or contractors involved in care giving, and operators or employees of any of these facilities or agencies. Crisis workers are specifically exempt from this mandate.

Vermont law requires mandatory reporting within 48 hours of suspected cases of abuse, neglect and exploitation of a vulnerable adult to the Vermont Department of Aging and Disabilities (DAIL). Any other concerned person may also file a report of suspected abuse, neglect or exploitation of an elderly or disabled adult with DAIL. Mandatory



reporters who reasonably suspects abuse or neglect of a child need to report within 24 hours of the time information regarding the suspected abuse or neglect was first received or observed. Failure to report can result in fines of up to \$5,000. ([See VCW's Resource Directory – Aging and Elder Issues section.](#))

Once the department receives such a report, an investigation must start within 48 hours.

**Rape shield provisions** in the law also apply to elderly and disabled victims of sexual assault or lewd or lascivious conduct. In addition, if the lawyer for the defendant wants to use any evidence of the prior sexual conduct of the victim, they must file a written notice before trying to introduce such evidence. The court then has to make a determination, out of the sight and hearing of the jury or the public, whether or not to allow the evidence.

### **Relief from Abuse Orders for Vulnerable Adults**

A vulnerable adult, or an “interested person” (e.g. a guardian, or someone from the Vermont Department of Aging and Disabilities) can petition the Family Division of the Superior Court for a Relief from Abuse or Exploitation Order in their own county or the county to which they were required to move due to the abuse or exploitation.

The petition can ask for either or both of the following orders:

- that the abuser/exploiter stop abusing or exploiting the victim;
- that the abuser/exploiter immediately move out of the house or apartment.

If the situation is an emergency, the petition can be filed in the Civil, Criminal, or Family Division of the Vermont Superior Court in the person’s past or current county. The courts have to set up a way for a person to file a petition for an emergency order at any time, whether during or after regular business hours, on weekends and on holidays.

The victim, or an interested person on behalf of the victim, can seek an **Emergency Temporary Order** without giving advance notice to the alleged abuser/exploiter if the court finds that:

- the person has abused or exploited the vulnerable adult; and
- serious harm which cannot be repaired to the physical health or financial interests of the person will result.

If an interested person is the one filing for the Temporary Order, the court will notify the elderly or disabled adult to find out whether the person is capable of expressing him or herself and if the person wants to get the Order. If a Temporary Order is issued, the alleged abuser will be notified of when and where the case will be set for a Final Hearing, and the alleged abuser’s right to petition the court for any change in the Order. No filing fee is required in either situation.

If there aren't grounds for issuing an Emergency Temporary Order, the court will set a hearing. The alleged abuser has to be given notice of the petition and when the hearing will take place.

A violation of any Relief from Abuse or Exploitation Order is a criminal act. Police can arrest the abuser for violating the order and they can be prosecuted by the State's Attorney's office. If you believe the Order has been violated you should call the police.

Penalty for violation of Order: up to one year in prison and/or a fine of \$5,000.

**It is important to know that a person whose abuser is a family or household member has the option of getting a Relief from Abuse Order under the same rules and procedure as for domestic abuse.** In addition, the police can prosecute certain offenses as criminal domestic assault. (See above sections on Domestic Violence and Criminal Domestic Assault.)

## **Kidnapping**

Kidnapping occurs when a person knowingly restrains another person with the intent to:

- hold the restrained person for ransom or reward; or
- use the restrained person as a shield or hostage; or
- inflict bodily injury upon the restrained person, or place the restrained person or a third person in fear that any person will be subjected to bodily injury; or
- sexually assault the restrained person or place the restrained person or a third person in fear that any person will be sexually assaulted; or
- facilitate the committing of another crime or flight thereafter.

**The quality and nature of the restraint are factored in, along with the length of the restraint. Kidnapping may be charged even if the restraint lasts only a couple of minutes.**

The crime of kidnapping can also occur if a person knowingly restrains a child under the age of 16, who is not the child's relative, with the intent to keep that child from his or her lawful custodian for a substantial period of time without the permission of the child's guardian.

Kidnapping penalty: up to life imprisonment and/or a fine of up to \$50,000. However, if the defendant voluntarily causes the release of the victim alive, and in a safe place before being arraigned in court, and without having caused serious bodily injury to the victim, the penalty could be reduced to imprisonment for not more than 30 years and/or a fine of not more than \$50,000.

## Hate Crimes

**A hate crime is any crime which is maliciously motivated by the victim's actual or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, age, physical or mental disability or service in the armed forces.** The Hate Crime Act can increase jail sentences and fines to anyone convicted of committing or attempting to commit.

If there is evidence that a person committed a particular crime against a woman because he hated women, or hated lesbians, or hated people of color, it is possible that the person could be charged with a hate crime in addition to being charged with whatever the other crime is, e.g. assault, battery, homicide.

Unlawful mischief (damage or destruction of property), telephone harassment, and disorderly conduct (by public yelling of threats and abuse) are the most common hate crimes in Vermont.

**Vermont law allows a person who has suffered a hate-motivated personal or property injury or who received threats of violence, to get an injunction against the person who committed a hate crime.**

The court can issue an order:

- protecting you and your property;
- requiring your attacker not to commit any crime against you;
- restricting your attacker from contacting you;
- prohibiting your attacker from coming within a certain distance from you, your home or any other particular locations where you spend your time;
- requiring your attacker not to commit a hate-motivated crime against you, other people who are in need of protection and members of any of the protected categories.

Hate Crime penalty for violation of an injunction: up to one year in prison and/or a fine up to \$2,000.

Hate Crime penalty for subsequent violations: up to three years in prison and/or a fine up to \$10,000.

## Crime Victims Assistance, Notification and Compensation

**Under Vermont law, crime victims have the right to receive assistance from the state in dealing with the aftermath of the crime, to be informed and have access to various steps in the criminal justice process, and to receive compensation for the harm.**

If you have been a victim, you are entitled to receive certain information from the police, the victims assistance program, the prosecutor's office (usually the local State's

Attorney) and the court at various stages in the criminal justice process. You have the right to be kept informed during much of the investigation and prosecution of the case. This could include the investigation, arrest, bail hearing, pre-trial depositions and hearings (including bail), plea agreement or trial, release or sentencing, and probation or parole. You also may have the right to be present, to testify and to state your opinion at various hearings.

**If you and/or your child have been the victim of a sexual crime you have the right to register with the Vermont Sex Offender Registry.** The Registry will then notify you in writing if your offender changes his address.

It is important to understand that, although the State's Attorney's office has the power to prosecute an alleged criminal offender, the State's Attorney does not represent you as the victim of the crime. The case is brought by the State against the alleged offender (the defendant). You may be a witness in the case, may receive some compensation and are entitled to the rights outlined in this section. You may also seek compensation for any damages.

### **After Reporting the Attack or Assault**

The police must give the victim written information including:

- an explanation of the victim's rights;
- the availability of assistance, including medical, housing, counseling and emergency services;
- information about the victims compensation program;
- how to contact the Center for Crime Victims Services;
- how to get protection, including protective orders;
- how to get copies of public records in the case.

If you have been the victim of certain violent crimes, you are also entitled to have the police give you the following additional information (for other crimes, the police also might be willing to voluntarily give you the information):

- information about the identity of the person accused of committing the crime, unless police procedure specifies otherwise;
- whether the alleged offender has been taken into custody by the police;
- the name and file number of the case;
- the name, office street address and telephone number of the officer assigned to investigate the case;
- the prosecutor's name, office street address and telephone number;
- an explanation that you are not under any obligation to respond to questions from anyone (including the alleged offender's lawyers or representatives) unless the questions are asked in a deposition or in a courtroom hearing.

**Be careful with whom you agree to have informal conversations, especially if you are confused about which people are representing the State's Attorney's office and which people are representing the alleged offender.**

You have the right not to talk to anyone (unless you are being deposed or questioned during a courtroom hearing), no matter what criminal act you have suffered. You have no obligation to speak to the offender's lawyer, unless you are in a court hearing.

### **Sexual Assault Survivor's Bill of Rights**

Sexual assault survivors have a number of rights after reporting their assault to a law enforcement officer, emergency department, sexual assault nurse examiner (SANE), or victims advocate, including the right to receive written notification of the following rights:

- to receive a medical forensic examination at no cost to the survivor;
- for the examination kit to be delivered to a forensics lab within 72 hours;
- preservation of the examination kit without charge;
- information regarding policies about the handling of the evidence kit;
- to be informed of any DNA profile matches on the evidence kit, on a toxicology report, or in a medical record documenting a forensic exam, as long as the disclosure wouldn't compromise an ongoing investigation;
- to consult with a sexual assault advocate;
- to information about protective orders;
- to information about victim compensation and restitution; and
- to information about confidentiality;

### **Assistance from the Victim Advocate**

If you are the victim of a violent crime, you will be assigned a **victim advocate** from the **Victims Assistance Program**. The victim advocate is usually based in the local State's Attorney's office and will provide information about the criminal justice system and support through the process. **A State's Attorney's Victim Advocate is not confidential.** They can share information you share with the State's Attorney. ([See VCW's Resource Directory – Violence section.](#))

**The Victims Assistance Program is required to provide the following information and services to you:**

- information about the level of available protection for you;
- help in getting police protection from harm and threats of harm that may result from your cooperation with the criminal justice system;
- help and support in dealing with police agencies and getting property returned to you;
- short-term counseling and support, as well as appropriate referrals for other services;

- help in getting financial help and other benefits while going through the criminal justice process;
- information about getting payment for being a witness;
- help in getting restitution (i.e. money or services) and insurance for the harm you suffered;
- notification when a court proceeding involving your case is or is not going to take place (unless the alleged offender is under 18 years old, in which case there may be special rules that apply);
- getting rides to various court proceedings;
- being present at depositions if you ask for personal support;
- information about your right to request notification from the appropriate agencies if the alleged offender has been released pending trial, released from prison for any reason or has escaped;
- notification of the conclusion of your case, e.g. plea agreements, trial verdicts; and
- information about appearing at the offender's sentencing.

### **Notification of Hearings and Sentencing**

If you have been the victim of a violent crime you are usually entitled to be notified of the following (although victims of other crimes might want to ask for notification, as well):

- the hearing when the alleged offender is scheduled to be charged in court (the arraignment);
- the conditions of release and issues concerning bail;
- the scheduling or cancellation of any other hearing or court proceeding regarding the case;
- any substantial delay in the prosecution of the case;
- The State's Attorney is also supposed to tell the court if the victim opposes or has any position regarding any motion that might delay the trial;
- the final disposition of the case, including plea agreements, trial verdicts, etc; and the sentencing hearing.

**You have the right to be present and to testify at the sentencing hearing, submit a written statement, or tell the State's Attorney your views about the crime, the offender, the need for restitution and sentencing.** The court is required to take those views into consideration when deciding what sentence to impose and what restitution to order.

The State's Attorney is required to explain how much time the convicted person could spend in prison, what is meant by minimum and maximum sentences, how sentences might be shortened and how parole operates.

You may request information about any appeal or other motions an offender files after being convicted, the scheduling of any post-trial hearings and any post-trial decisions that are made by the court.

## **Rights at Depositions**

**Depositions** are scheduled events where you, as a victim, and other witnesses may be questioned by the lawyers for the accused and by the State's Attorney. A person charged with a felony has the right to require depositions of the witnesses.

Vermont law attempts to prevent depositions of victims under the age of 16, especially in cases of sexual crimes against the child. However, the deposition can still be taken if the evidence is not available by any other means. If the judge decides the deposition is necessary, he or she will issue a protective order to protect the child from emotional harm, unnecessary annoyance, embarrassment, oppression, invasion of privacy, undue burden of expense, or waste of time. The judge can also limit the deposition in many ways if the party files for a protective order.

A person who is over the age of 16 and is a victim of a sex crime (lewd and lascivious conduct, lewd and lascivious conduct with a minor, sexual assault, or aggravated sexual assault) is considered a sensitive witness. When the witness is sensitive, the parties must try to come to an agreement on time, place, manner, and scope of the deposition. If an agreement cannot be reached, the judge will decide the manner of the deposition.

**If there is any court hearing about your deposition and you are the victim, you have the right to be represented by a lawyer at such a hearing since you are an actual party to the hearing, and not just a potential witness.**

Although the whole experience might be intimidating, you do have certain rights. These include:

- the right to bring your own attorney and/or victim advocate to the deposition;
- the right to request that the alleged offender not be in the room;
- if the court decides that the alleged offender must be present, you may have the right to certain protections, such as having a screen set up between you and that person;
- the right not to be harassed or intimidated by the lawyers (this is often open to interpretation and may need to be clarified by a judge).

## **Rape Shield**

Vermont's Rape Shield law generally provides that a person's opinion of or the reputation of a victim's sexual conduct cannot be made part of a trial for sexual assault or lewd or lascivious conduct, or part of a hearing for a protection order. It also holds that evidence of the prior sexual conduct of the victim cannot be admitted into evidence at the trial.

**However, if you are the victim, questions about your past sexual conduct can be asked** if a court determines:

- that they bear on the credibility of the witness;

- they are very important to one of the facts at the trial; and
- the value of the information is more important than the private nature of the information.

Under these circumstances, evidence can be admitted about:

- your past sexual conduct with the person accused of the sexual assault;
- specific instances of your sexual conduct showing where semen, pregnancy or disease may have come from;
- specific instances where you made false allegations about sexual assault in the past.

### **Victim's Rights to Certain Confidentiality and Work Protection**

Vermont law also provides some confidentiality rights and requirements of job protection. These include the following:

- victims of domestic violence, sexual assault, and stalking can request their address and workplace location be kept confidential. This is done through the office of the Secretary of State;
- a witness who testifies during a case cannot be required to reveal the home or workplace addresses of the victim;
- the employers of people who have been victims of crimes, as well as their families and representatives, cannot fire or discipline them for missing work if a subpoena has required them to be at a court-related hearing or deposition.

(See Safety for Victims of Domestic and Sexual Violence and Stalking sections within this chapter.)

### **Notification of Probation, Parole Hearings and Release from Prison of an Offender**

As a victim, you have the right to request notification by the Vermont Department of Corrections:

- about the offender's general compliance with his or her conditions of probation (but not confidential information the offender has revealed in treatment);
- of a parole board hearing, 30 days before it is scheduled to take place;
- of your right to testify or give a written statement to the parole board, and your right to request that the offender not be present when you testify before the parole board;
- of the parole board's decision and any conditions of release it may have imposed;
- when the offender has been released from prison or has escaped.

### **Victim Offender Dialogue (VOD)**

The Victim Offender Dialogue (VOD) Program is a service provided by the Victim Services Programs to victims of severe and violent crimes, who are interested in meeting



with the offender in their case. Domestic violence victims are not eligible for the program. **This is victim-initiated.** The offender's participation is also voluntary. VOD requires intensive assessment and preparation for both victim and offender.

## **Victims Compensation Program**

**If you have suffered physical or emotional harm, pregnancy or death as the result of the commission of a crime, you or your dependents may be entitled to receive compensation from the Victims Compensation Board. ([See VCW's Resource Directory – Violence section.](#))**

A victim is eligible for Victim Compensation if:

- the crime was committed in Vermont, or against a Vermont resident;
- the crime was reported to law enforcement, who concluded a crime was committed;
- the victim suffered physical or emotional harm because of the crime;
- the crime was committed after July 1, 1987;
- the victim did not commit a crime that contributed to their injuries; and
- completion of the Victim Compensation Program application.

After application, review and approval, the board can award cash payments of up to \$10,000 to compensate for any “unreimbursed pecuniary loss” that was a direct result of the injury or death of the victim. Your application is not available for public inspection and copying.

This means any monetary amount that:

- isn't covered by insurance (medical, hospital, disability) or worker's compensation; and
- has not been ordered by the court to be paid by the person who committed the crime; or
- the person was ordered by the court to pay and has not paid.

This can include a range of items, including health care costs, mental health counseling, lost wages, new locks on doors and windows, and more.

## **Release of People Accused of a Violent Crime**

It is important to know that after a person has been arrested or officially charged with a crime, that person will usually be released on bail and/or placed under certain restrictions which are imposed by the court. These are called “conditions of release.” Only under extreme circumstances, as described in the following section on “Bail”, can a person be kept in jail without bail.

## Conditions of Release

Courts impose **conditions of release** on alleged offenders in order to insure that they will appear in court for future hearings and/or to protect the public. The conditions of release must be reasonably related to the offense. These can include restrictions on where the person can travel, who the person can and cannot be in contact with, and where the person can live, etc. In cases involving violence or harassment, the conditions of release may include an order not to contact, harass (or cause to be harassed) the victim or potential witness. If an alleged offender violates a condition of release, he or she can be charged with an additional crime and it also might lead to a revocation of bail.

## Bail

A major area of concern for victims of sexual assault and other violent crimes is **what happens after a person is caught and charged with the crime. The prosecutor (usually the local State's Attorney) is required to tell the court what the victim or victim's family's position is on the question of bail.** A judge can order a person to **be held without bail prior to trial** if the person is accused of any offense which is punishable by a life sentence (such as aggravated sexual assault and kidnapping) and when the evidence of guilt is great.

A person can also be held without bail while waiting for the trial, if the person is accused of a felony involving an act of violence against another person (e.g. sexual assault, aggravated domestic assault, aggravated stalking), and if the court also finds the following, after a hearing:

- that the evidence of guilt is great, and
- that there is clear and convincing evidence that releasing the person would pose a substantial threat of physical violence to any person, and
- that no conditions of release will reasonably prevent the physical violence.

An offender can also be ordered to be held without bail while waiting to be sentenced or during the time the sentence is being appealed, regardless of the type of offense. An offender who is on probation and violates his or her conditions of probation, may also be held without bail if the original crime was violent.

If a judge orders a person held without bail prior to trial, the person can have another hearing on bail decided by a single justice of the Vermont Supreme Court. A decision to deny bail is reviewable by a panel of three justices of the Vermont Supreme Court.

Even if an alleged offender has been released on bail, **bail can be revoked** if a Vermont judge or judicial officer finds that the alleged offender has:

- intimidated or harassed a victim, potential witness, juror or judicial officer in violation of a condition of release; or

- repeatedly violated conditions of release; or
- violated one or more conditions of release that constitute a threat to the integrity of the judicial system; or
- failed to appear at a specified time and place ordered by a judge or court clerk, without a very good excuse; or
- in violation of a condition of release, been charged with a felony or a crime against a person for an offense similar to the underlying charge and probable cause is found.

**Bail may not be revoked if the alleged offender only “contacts” the victim. There must be proof that she was harassed or intimidated or that she was afraid to testify as a result of the contact.**

## **Sex Offender Registry**

Vermont law requires the Department of Public Safety to maintain a Sex Offender Registry. This registry keeps certain information about sex offenders so that they can be identified and located at any time.

### **Who Must Register**

The crimes for which offenders must register include:

- sexual assault;
- aggravated sexual assault;
- lewd and lascivious conduct;
- sexual abuse of a vulnerable adult;
- second or subsequent convictions for voyeurism;
- kidnapping with intent to commit sexual assault;
- human trafficking;
- aggravated human trafficking;
- many federal sex crimes;
- attempts of any of these crimes.

In addition, the Sex Offender Registry law applies to persons convicted of any of the following offenses against a **victim who is a minor**:

- any offense listed above;
- kidnapping;
- lewd and lascivious conduct with a child
- slave traffic;
- sexual exploitation of children;
- procurement or solicitation for prostitution;
- aggravated sexual assault of a child;
- sex trafficking of children or sex trafficking by force, fraud, or coercion;

- sexual exploitation of a minor;
- attempts of any of these crimes;
- persons convicted of certain federal sex crimes are also required to register.

**Conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old.**

A sex offender who has been convicted in a state outside Vermont must provide information to the Sex Offender Registry within 10 days of moving into Vermont.

Sex offenders are required to report any change of address, employment, college enrollment, or name to the Department of Public Safety within three days of the change, and then the Department has to notify the registry within 24 hours. If the offender does not report these changes, a warrant for his or her arrest may be issued. Registrants who knowingly violate the Vermont sex offender registry law for more than 5 consecutive days will face a felony charge.

In addition, the offender must report to the Department of Public Safety on an annual basis within 10 days after their birthday, for up to 10 years or, for certain offenders, for life. These registration requirements are even more stringent for the highest-risk offenders, who must report to the Department of Public Safety in person every 30 days.

### **Access to Information on the Registry**

**If you have a concern about a person who may be registered with the Vermont Sex Offender Registry, you may contact your local law enforcement agency or the Vermont Criminal Information Center.** However, the Registry is generally prohibited from releasing lists of offenders in response to general questions regarding the whereabouts of all sex offenders in a particular community. Many Vermont sex offenders are listed on Vermont's Internet Sex Offender Registry, where more information is available.

Certain employers such as schools or state or federal agencies also have access to this information for background checks. Registered sex offenders have access to their records.

### **Sex Offender Internet Registry**

Vermont also maintains a **Sex Offender Registry web site that may be searched by the public.**

The site may be searched by last name of the registered offender or town/city or county. In addition, an entry includes a list of sexual offense convictions by date, a physical description, a picture, town of residence, nature of conviction, whether the offender is

considered high risk, compliance with treatment requirements if applicable, outstanding warrants for violations and the contact information for the supervising office.

**The crimes for which offenders are listed on the Internet registry include:**

- aggravated sexual assault of a child;
- aggravated sexual assault;
- sexual assault;
- kidnapping with intent to commit sexual assault;
- lewd or lascivious conduct with a child;
- second or subsequent conviction for voyeurism;
- slave traffic;
- sex trafficking of children or sex trafficking by force, fraud, or coercion;
- sexual exploitation of a minor;
- any offense regarding the sexual exploitation of children;
- human (sexual) trafficking;
- aggravated human (sexual) trafficking;
- sexual abuse of a vulnerable adult;
- certain federal sex crimes;
- a second or subsequent conviction for sexual offenses (recidivism).

Also included on the Internet registry are:

- individuals with an outstanding warrant for their arrest for a Registry violation;
- individuals who have been designated as sexual predators;
- individuals who have been designated "high risk offenders" by the Department of Corrections;
- individuals who have not complied with or are ineligible for sex offender treatment as recommended by the Department of Corrections.

**It should be noted that not all sexual offenders are listed on the website and some information may be inaccurate or missing.** If you have a concern about a specific person, you should contact law enforcement authorities or the Vermont Criminal Information Center directly.

**Victim and Community Notification**

**Community notification** by local law enforcement agencies is not required by law. Law enforcement agencies, however, may notify members of the public who are likely to encounter a sex offender who poses a danger to their safety. This means, for example, that a law enforcement agency may notify neighbors or perhaps a neighborhood day care center or local school if a pedophile was to move into the area. It might also notify

the management at an offender's place of work if the offender had a history of violent sexual crimes against adults.

If you have been a **victim of a sexual crime** you have the right to ask the Department of Public Safety to notify you upon the initial registration of the sex offender and any time the sex offender changes his/her address.

## **Violent Career Criminals and Habitual Criminals**

In 1995, Vermont created the category of **violent career criminals** who can receive a more severe prison sentence of up to and including life imprisonment. Violent career criminals are people who have been convicted of a serious violent crime, if it is a felony, for the third time. If a person is sentenced as a violent career criminal, the court cannot place the person on probation or suspend their sentence. If the person is given a minimum sentence, he or she is not eligible for early release or furlough until the entire minimum sentence has been served.

Another category for repeat offenders is the one for **habitual criminals**. If a person has been convicted for three felonies, he or she may also be sentenced up to life imprisonment if convicted of a fourth felony.

## **Civil Actions for Crimes Against Women and Children**

**Women need to be aware that they can hire an attorney to bring a civil lawsuit against their attacker or those responsible for their harm or injury.** These cases usually seek money damages and other forms of relief. They can be pursued before, during or after the criminal case against the person has been brought by a state or federal prosecutor. These cases may be subject to differing statutes of limitation (i.e., the period of time during which the case usually has to be brought), depending on the nature of the case.

If a person is entitled to bring a civil case as a result of childhood sexual abuse, the statute of limitations does not run during any time that the person is incapacitated from pursuing the case as a direct result of the damages caused by the sexual abuse.

As part of the Victim's Bill of Rights, the protections of the Rape Shield law extend to the litigation of civil lawsuits coming out of a case of sexual assault or some other form of wrongful sexual activity. In these cases, a court must hear and decide whether to allow questions about a victim's past sexual conduct out of the sight and hearing of the jury.

## **Relevant Laws**

### **Vermont:**

Abuse Prevention Act, 15 V.S.A. §1101, et seq.

Abuse Prevention for Elderly and Disabled Adults, 33 V.S.A. §6931, et seq.

Abuse Prevention Proceedings, Vermont Rules for Family Proceedings, Rules 4(n) & 9  
Address Confidentiality, 15 V.S.A. §§1150-1160; 18 V.S.A. §§5083, 5132; 1 V.S.A. §317(c) (29)  
Aggravated Sexual Assault, 13 V.S.A. §3253  
Aggravated Sexual Assault of a Child, 13 V.S.A. §3253a  
Aggravated Stalking, 13 V.S.A. §1063  
Bail, 13 V.S.A. §7551, et seq.  
Child Abuse Reporting, 33 V.S.A. §4911, et seq.  
Childhood Sexual Abuse (statute of limitations), 12 V.S.A. §560  
Confidentiality, 13 V.S.A. §5322  
Crime Victims, 13 V.S.A. §5351 et seq.  
Definitions; Public Agency; Public Records and Documents, 1 V.S.A. §317  
Disturbing Peace by Use of Telephone or Other Electronic Communications, 13 V.S.A. §1027  
Disseminating Indecent Material to a Minor Outside the Presence of the Minor, 13 V.S.A. §2802a  
Domestic and Sexual Violence Survivors' Transitional Employment Program, 21 V.S.A. §1252 et seq.  
Domestic Assaults, 13 V.S.A. §1041, et seq.  
Emergency Relief, 15 V.S.A. §1104  
Enforcement of Foreign Abuse Prevention Orders, 15 V.S.A. §1108  
Habitual Criminals, 13 V.S.A. §11  
Hate Crimes Act, 13 V.S.A. §1454, et seq.  
Hate-Motivated Crime Injunctions, 13 V.S.A. §1458, et seq.  
Human Trafficking, 13 V.S.A. §2651, et seq.  
Kidnapping, 13 V.S.A. §2404, et seq.  
Lewd or Lascivious Conduct, 13 V.S.A. §2601  
Lewd or Lascivious Conduct With Child, 13 V.S.A. §2602  
Minor Electronically Disseminating Indecent Material to Another Person, 13 V.S.A. §2802b  
Obscenity, 13 V.S.A. §2801  
Orders Against Stalking or Sexual Assault, 12 V.S.A. §§5131 – 5138  
Parole Board Hearing, 28 V.S.A. §507  
Possession of Child Pornography, 13 V.S.A. §2827  
Rape Shield, 13 V.S.A. §3255  
Reports of Abuse, Neglect and Exploitation of Vulnerable Adults, 33 V.S.A. §6901, et seq.  
Requests for Relief, 15 V.S.A. §1103  
Restitution, 13 V.S.A. §7043  
Sentencing, 13 V.S.A. §7006 (appearance by victim)  
Sex Offender Registration, 13 V.S.A. §5401, et seq.  
Sexual Assault, 13 V.S.A. §3251, et seq.  
Sexual Assault Survivors' Rights, 13 V.S.A. §3281  
Sexual Exploitation of Children, 13 V.S.A. §2821, et seq.  
Sexual Exploitation of an Inmate, 13 V.S.A. §3257  
Sexual Exploitation of a Minor, 13 V.S.A. §3258

Stalking, 13 V.S.A §1062  
Vermont Constitution (Bail), Ch. II, §40  
Vermont Rules of Criminal Procedure, Rule 15  
Victims, 13 V.S.A. §5301 et seq.  
Victim and Crisis Worker Privilege, 12 V.S.A. §1614  
Victims Assistance Program, 13 V.S.A. §5301, et seq.  
Victims' Compensation, 13 V.S.A. §5351, et seq.  
Violations of Protection Orders, 13 V.S.A. §1030  
Violent Career Criminals, 13 V.S.A. §11a  
Voyeurism, 13 V.S.A. §2605

### **Federal:**

Crime Victims' Rights, 18 U.S.C. §3771  
Trafficking Victims Protection Act (PL 106-386)  
Victims' Rights, 42 U.S.C. §10606(b)  
Violence Against Women Act, 18 U.S.C.A. §2261, et seq.

Updated 7/14/17 - HM