

COMPARISON OF H.818 TO NCVIC MODEL STATUTE, ADOPTED IN
WHOLE OR IN PART BY 7 STATES (DE., ILL., ME., MISS. NJ, NC, UT.) .

1 Sec. 1. FINDINGS

2 The General Assembly finds the following:

3 (1) Stalking is a serious problem in Vermont and nationwide.

4 (2) Stalking involves severe intrusions on the victim's personal privacy
5 and autonomy.

6 (3) Stalking causes a long-lasting impact on the victim's quality of life
7 and creates risks to the security and safety of the victim and others even in the
8 absence of express threats of physical harm.

9 (4) Stalking conduct often becomes increasingly violent over time.

10 (5) There is a strong connection between stalking and domestic violence
11 and sexual assault.

12 **MODEL STATUTE SECTION ONE: LEGISLATIVE INTENT**

13 **The Legislature finds that stalking is a serious problem in this state and**
14 **nationwide. Stalking involves severe intrusions on the victim's personal**
15 **privacy and autonomy. It is a crime that causes a long-lasting impact on**
16 **the victim's quality of life, and creates risks to the security and safety of**
17 **the victim and others, even in the absence of express threats of physical**
18 **harm. Stalking conduct often becomes increasingly violent over time. The**
19 **Legislature recognizes the dangerous nature of stalking as well as the**
20 **strong connections between stalking and domestic violence and between**
21 **stalking and sexual assault. Therefore, the Legislature enacts this law to**
22 **encourage effective intervention by the criminal justice system before**
23 **stalking escalates into behavior that has serious or lethal consequences.**
24 **The Legislature intends to enact a stalking statute that permits the**
25 **criminal justice system to hold stalkers accountable for a wide range of**
26 **acts, communications, and conduct. The Legislature recognizes that**
27 **stalking includes, but is not limited to, a pattern of following, observing, or**
28 **monitoring the victim, or committing violent or intimidating acts against**
29 **the victim, regardless of the means.**
30

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1 Sec. 2. 12 V.S.A. § 5131 is amended to read:

2 § 5131. DEFINITIONS

3 As used in this chapter:

4 (1) ~~“Course of conduct” means a pattern of conduct composed of two or~~
5 ~~more acts over a period of time, however short, evidencing a continuity of~~
6 ~~purpose. Constitutionally protected activity is not included within the meaning~~
7 ~~of “course of conduct.”~~ two or more acts over a period of time, however short,
8 in which a person follows, monitors, observes, surveils, threatens, or
9 communicates to or about, another person, or interferes with another person’s
10 property. This definition shall apply to acts conducted by the person directly,
11 indirectly, or through third parties and by any action, method, device, or
12 means.

13 **MODEL STATUTE SECTION THREE: DEFINITIONS**

14 **As used in this Model Statute:**

15 **(a) “Course of conduct” means two or more acts, including, but not**
16 **limited to, acts in which the stalker directly, indirectly, or through third**
17 **parties, by any action, method, device, or means, follows, monitors,**
18 **observes, surveils, threatens, or communicates to or about, a person, or**
19 **interferes with a person’s property.**

20

21 (2) ~~“Following” means maintaining over a period of time a visual or~~
22 ~~physical proximity to another person in such manner as would cause a~~
23 ~~reasonable person to have fear of unlawful sexual conduct, unlawful restraint,~~
24 ~~bodily injury, or death~~ “Emotional distress” means significant mental suffering

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1 or distress that may, but does not necessarily, require medical or other
2 professional treatment or counseling.

3 **MODEL STATUTE SECTION THREE: DEFINITIONS**

4 **(b) “Emotional distress” means significant mental suffering or distress**
5 **that may, but does not necessarily, require medical or other professional**
6 **treatment or counseling.**

7
8 (3) ~~“Lying in wait” means hiding or being concealed for the purpose of~~
9 ~~attacking or harming another person.~~

10 (4) “Nonphysical contact” includes telephone calls, mail, e-mail, social
11 media commentary or comment, or other electronic communication, fax, and
12 written notes.

13 (4) “Reasonable person” means a reasonable person in the victim’s
14 circumstances.

15 **MODEL STATUTE SECTION THREE: DEFINITIONS(c)**

16 **“Reasonable person” means a reasonable person in the victim’s**
17 **circumstances.**

18
19 **MODEL STATUTE COMMENTARY**

20 The updated “Model Stalking Code for the States” recommends that
21 “reasonable person” be defined as a “reasonable person in the victim’s
22 circumstances.” The 1993 model anti-stalking code also recommended a
23 “reasonable person” standard of fear but did not provide a definition for
24 the term. Several states’ definitions of a “reasonable person” are similar
25 to the recommended definition of a “reasonable person in the victim’s
26 circumstances.” For example, Oregon provides that the crime of stalking
27 is committed if “it is objectively reasonable for a person in the victim’s
28 situation to have been alarmed or coerced by the contact.” South
29 Carolina’s stalking statute proscribes criminal behavior that would cause
30 “a reasonable person in the targeted person’s position to be in fear.”
31 The Supreme Court of New Jersey noted that “the reasonable standard
32 efers to persons in the victim’s position and with the victim’s knowledge of

1 **the defendant. ‘Courts must...consider [the victim’s] individual**
2 **circumstances and background in determining whether a reasonable**
3 **person in that situation would have believed the defendant’s threat.’”**
4 ***H.E.S. v. J.C.S., 815 A.2d 405, 417 (N.J. 2003)***

5 (5) “Sexually assaulted the plaintiff” means that the defendant engaged
6 in conduct that meets elements of lewd and lascivious conduct as defined in
7 13 V.S.A. § 2601, lewd and lascivious conduct with a child as defined in
8 13 V.S.A. § 2602, sexual assault as defined in 13 V.S.A. § 3252, aggravated
9 sexual assault as defined in 13 V.S.A. § 3253, use of a child in a sexual
10 performance as defined in 13 V.S.A. § 2822, or consenting to a sexual
11 performance as defined in 13 V.S.A. § 2823 and that the plaintiff was the
12 victim of the offense.

13 (6) “Stalk” means to engage in a course of conduct ~~which consists of~~
14 ~~following or lying in wait for a person, or threatening behavior~~ directed at a
15 specific person ~~or a member of the person’s family, and:~~

16 ~~(A) serves no legitimate purpose; and~~

17 ~~(B) that would cause a reasonable person to fear for his or her safety~~
18 or the safety of another or would cause a reasonable person substantial
19 emotional distress.

20 **MODEL STATUTE SECTION TWO: OFFENSE**

21 **Any person who purposefully engages in a course of conduct directed at a**
22 **specific person and knows or should know that the course of conduct**
23 **would cause a reasonable person to:**

24 **(a) fear for his or her safety or the safety of a third person; or**

25 **(b) suffer other emotional distress**

26 **is guilty of stalking.**

1 **MODEL STATUTE COMMENTARY**

2 **“General intent” means that the stalker must intend the actions in which**
3 **he or she is engaging (e.g., following, watching, or calling), but must not**
4 **necessarily intend the consequences of those actions. “Specific intent”**
5 **means that the stalker must intend to cause a specific reaction in the**
6 **victim, such as fear for his or her own safety or the safety of others. The**
7 **1993 model anti-stalking code also recommended the adoption of a general**
8 **intent requirement. When it was drafted in 1993 only thirteen states had a**
9 **general intent requirement in their stalking laws, and the others all had**
10 **stalking laws with specific intent requirements. Currently, over half of**
11 **states have some version of a general intent requirement in their stalking**
12 **laws. Some of states require only that the defendant intentionally**
13 **committed prohibited acts (for example, Arizona, Delaware, Idaho,**
14 **Maine, North Dakota, Oklahoma). Others require instead that, in**
15 **committing the acts, he or she knew or reasonably should have known,**
16 **that their actions would cause fear in a reasonable person (for example,**
17 **Iowa, Maryland, Minnesota, New York, Utah, Virginia, Washington).**
18

19 (7) “Stay away” means to refrain from knowingly:

20 (A) initiating or maintaining a physical presence near the plaintiff;

21 (B) engaging in nonphysical contact with the plaintiff directly or

22 indirectly; or

23 (C) engaging in nonphysical contact with the plaintiff through third

24 parties who may or may not know of the order.

25 (8) ~~“Threatening behavior”~~ “Threatens” means acts ~~which to act in a~~

26 manner that would cause a reasonable person to fear unlawful sexual conduct,

27 unlawful restraint, bodily injury, or death, including verbal threats; written,

28 telephonic, or other electronically communicated threats; vandalism; or

29 physical contact without consent. Intent is not required, including an overt

30 statement of intent to physical harm or emotional distress to the person.

1 “Threaten” shall not be construed to require an intent to threaten, whether
2 established by an overt statement of intent to cause physical harm or by any
3 other means.

4 Sec. 2. 12 V.S.A. § 5133 is amended to read:

5 § 5133. REQUESTS FOR AN ORDER AGAINST STALKING OR
6 SEXUAL ASSAULT

7 (a) A person, other than a family or household member as defined in
8 15 V.S.A. § 1101(2), may seek an order against stalking or sexual assault on
9 behalf of ~~him~~ him- or herself or his or her children by filing a complaint under
10 this chapter. The plaintiff shall submit an affidavit in support of the order.

11 (b) Except as provided in section 5134 of this title, the court shall grant the
12 order only after notice to the defendant and a hearing. The plaintiff shall have
13 the burden of proving by a preponderance of the evidence that the defendant
14 stalked or sexually assaulted the plaintiff.

15 (c) In a hearing under this chapter, neither opinion evidence of nor
16 evidence of the reputation of the plaintiff’s sexual conduct shall be admitted.
17 Evidence of prior sexual conduct of the plaintiff shall not be admitted;
18 provided, however, where it bears on the credibility of the plaintiff or it is
19 material to a fact at issue and its probative value outweighs its private
20 character, the court may admit any of the following:

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1 (1) ~~Evidence~~ evidence of the plaintiff's past sexual conduct with the
2 defendant;

3 (2) ~~Evidence~~ evidence of specific instances of the plaintiff's sexual
4 conduct showing the source of origin of semen, pregnancy, or disease; or

5 (3) ~~Evidence~~ evidence of specific instances of the plaintiff's past false
6 allegations of violations of 13 V.S.A. chapter 59 or 72.

7 (d)(1) If the court finds by a preponderance of evidence that the defendant
8 has stalked or sexually assaulted the plaintiff, or has been convicted of stalking
9 or sexually assaulting the plaintiff, the court shall order the defendant to stay
10 away from the plaintiff or the plaintiff's children, or both, and may make any
11 other ~~such~~ order it deems necessary to protect the plaintiff or the plaintiff's
12 children, or both.

13 ~~(2) If the court finds by a preponderance of evidence that the defendant~~
14 ~~has sexually assaulted the plaintiff and there is a danger of the defendant~~
15 ~~further harming the plaintiff, the court shall order the defendant to stay away~~
16 ~~from the plaintiff or the plaintiff's children, or both, and may make any other~~
17 ~~such order it deems necessary to protect the plaintiff or the plaintiff's children,~~
18 ~~or both. The court may consider the defendant's past conduct as relevant~~
19 ~~evidence of future harm.~~

20 (e) Relief shall be granted for a fixed period, at the expiration of which
21 time the court may extend any order, upon motion of the plaintiff, for such

1 additional time as it deems necessary to protect the plaintiff or the plaintiff's
2 children, or both. It is not necessary for the court to find that the defendant
3 stalked or sexually assaulted the plaintiff during the pendency of the order to
4 extend the terms of the order. The court may modify its order at any
5 subsequent time upon motion by either party and a showing of a substantial
6 change in circumstance.

7 * * *

8 Sec. 3. 13 V.S.A. § 1021 is amended to read:

9 § 1021. DEFINITIONS

10 ~~(a) For the purpose of As used in this chapter:~~

11 * * *

12 ~~(3) “Deadly weapon” means any firearm, or other weapon, device,~~
13 ~~instrument, material, or substance, whether animate or inanimate which in the~~
14 ~~manner it is used or is intended to be used is known to be capable of producing~~
15 ~~death or serious bodily injury.~~

16 ~~(4) “Threatens” or “threatening behavior” means to act in a manner that~~
17 ~~would cause a reasonable person to fear unlawful sexual conduct, unlawful~~
18 ~~restraint, bodily injury, or death, including verbal threats; written, telephonic,~~
19 ~~or other electronically communicated threats; vandalism; or physical contact~~
20 ~~without consent. Intent is not required, including an overt statement of intent~~
21 ~~to physical harm or emotional distress to the person.~~

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1 ~~threats, vandalism, or physical contact without consent~~ “Course of conduct”
2 means two or more acts over a period of time, however short, in which a
3 person follows, monitors, observes, surveils, threatens, or communicates to or
4 about another person or interferes with another person’s property. This
5 definition shall apply to acts conducted by the person directly, indirectly, or
6 through third parties and by any action, method, device, or means.

7 (4) ~~“Lying in wait” means hiding or being concealed for the purpose of~~
8 ~~attacking or harming another person.~~

9 (2) “Emotional distress” means significant mental suffering or distress
10 that may, but does not necessarily, require medical or other professional
11 treatment or counseling.

12 (3) “Reasonable person” means a reasonable person in the victim’s
13 circumstances.

14 (4) “Stalk” means to engage in a course of conduct directed at a specific
15 person that would cause a reasonable person to fear for his or her safety or the
16 safety of another or would cause a reasonable person substantial emotional
17 distress.

18 (5) ~~“Threatens” or “threatening behavior” shall have the same meaning~~
19 ~~as provided in section 1021 of this title~~ means to act in a manner that would
20 cause a reasonable person to fear unlawful sexual conduct, unlawful restraint,
21 bodily injury, or death, including verbal threats; written, telephonic, or other

1 electronically communicated threats; vandalism; or physical contact without
2 consent. “Threaten” shall not be construed to require an intent to threaten,
3 whether established by an overt statement of intent to cause physical harm or
4 by any other means.

5 § 1062. STALKING

6 Any person who intentionally stalks another person shall be imprisoned not
7 more than two years or fined not more than \$5,000.00, or both.

8 § 1063. AGGRAVATED STALKING

9 (a) A person commits the crime of aggravated stalking if the person
10 intentionally stalks another person, and:

11 (1) such conduct violates a court order that prohibits stalking and is in
12 effect at the time of the offense; ~~or~~

13 (2) has been previously convicted of stalking or aggravated stalking; ~~or~~

14 (3) has been previously convicted of an offense an element of which
15 involves an act of violence against the same person; ~~or~~

16 (4) the person being stalked is under ~~the age of~~ 16 years of age; or

17 (5) had a deadly weapon, as defined in section 1021 of this title, in his or
18 her possession while engaged in the act of stalking.

19 (b) A person who commits the crime of aggravated stalking shall be
20 imprisoned not more than five years or be fined not more than \$25,000.00, or
21 both.

1 (c) Conduct constituting the offense of aggravated stalking shall be
2 considered a violent act for the purposes of determining bail.

3 § 1064. DEFENSES

4 In a prosecution under this subchapter, it shall not be a defense that:

5 (1) the defendant was not provided actual notice that the course of
6 conduct was unwanted; or

7 (2) the defendant did not intend to cause the victim fear or emotional
8 distress.

9 **MODEL STATUTE SECTION FOUR: DEFENSES**

10 **In any prosecution under this law, it shall not be a defense that:**

11 **(a) the actor was not given actual notice that the course of conduct was**
12 **unwanted; or**

13 **(b) the actor did not intend to cause the victim fear or other emotional**
14 **distress.**

15

16 **Delaware**

17 (a) A person is guilty of stalking when the person knowingly engages in a course of
18 conduct directed at a specific person and that conduct would cause a reasonable person
19 to:

20 (1) Fear physical injury to himself or herself or that of another person; or

21 (2) Suffer other significant mental anguish or distress that may, but does not necessarily,
22 require medical or other professional treatment or counseling.

23

24 (e) *Definitions.* -- The following terms shall have the following meaning as used in this
25 section:

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1 (1) "Course of conduct" means 3 or more separate incidents, including, but not limited to,
2 acts in which the person directly, indirectly, or through third parties, by any action, method,
3 device, or means, follows, monitors, observes, surveys, threatens, or communicates to or
4 about another, or interferes with, jeopardizes, damages, or disrupts another's daily
5 activities, property, employment, business, career, education, or medical care. A
6 conviction is not required for any predicate act relied upon to establish a course of
7 conduct. A conviction for any predicate act relied upon to establish a course of conduct
8 does not preclude prosecution under this section. Prosecution under this section does not
9 preclude prosecution under any other section of the Code.

10 (2) "A reasonable person" means a reasonable person in the victim's circumstances.

11 * * *

12 (h) In any prosecution under this law, it shall not be a defense that the perpetrator was not
13 given actual notice that the course of conduct was unwanted; or that the perpetrator did
14 not intend to cause the victim fear or other emotional distress.

15 (i) In any prosecution under this section, it is an affirmative defense that the person
16 charged was engaged in lawful picketing.

17 (j) This section shall not apply to conduct which occurs in furtherance of legitimate
18 activities of law-enforcement, private investigators, security officers or private detectives as
19 those activities are defined in Chapter 13 of Title 24.

20
21 **Illinois**

22 (a) A person commits stalking when he or she knowingly engages in a course of conduct
23 directed at a specific person, and he or she knows or should know that this course of
24 conduct would cause a reasonable person to:

25 (1) fear for his or her safety or the safety of a third person; or

26 (2) suffer other emotional distress.

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1 (a-3) A person commits stalking when he or she, knowingly and without lawful justification,
2 on at least 2 separate occasions follows another person or places the person under
3 surveillance or any combination thereof and:

4 (1) at any time transmits a threat of immediate or future bodily harm, sexual assault,
5 confinement or restraint and the threat is directed towards that person or a family member
6 of that person; or

7 (2) places that person in reasonable apprehension of immediate or future bodily harm,
8 sexual assault, confinement or restraint to or of that person or a family member of that
9 person.

10

11 c) Definitions. For purposes of this Section:

12 (1) "Course of conduct" means 2 or more acts, including but not limited to acts in which a
13 defendant directly, indirectly, or through third parties, by any action, method, device, or
14 means follows, monitors, observes, surveils, threatens, or communicates to or about, a
15 person, engages in other non-consensual contact, or interferes with or damages a
16 person's property or pet. A course of conduct may include contact via electronic
17 communications.

18 (2) "Electronic communication" means any transfer of signs, signals, writings, sounds,
19 data, or intelligence of any nature transmitted in whole or in part by a wire, radio,
20 electromagnetic, photoelectric, or photo-optical system. "Electronic communication"
21 includes transmissions by a computer through the Internet to another computer.

22 (3) "Emotional distress" means significant mental suffering, anxiety or alarm.

23 * * *

24 (8) "Reasonable person" means a person in the victim's situation.

25 (d) Exemptions.

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1 (1) This Section does not apply to any individual or organization (i) monitoring or attentive
2 to compliance with public or worker safety laws, wage and hour requirements, or other
3 statutory requirements, or (ii) picketing occurring at the workplace that is otherwise lawful
4 and arises out of a bona fide labor dispute, including any controversy concerning wages,
5 salaries, hours, working conditions or benefits, including health and welfare, sick leave,
6 insurance, and pension or retirement provisions, the making or maintaining of collective
7 bargaining agreements, and the terms to be included in those agreements.

8 (2) This Section does not apply to an exercise of the right to free speech or assembly that
9 is otherwise lawful.

10 * * *

11 **Maine**

12 1. A person is guilty of stalking if:

13 A. The actor intentionally or knowingly engages in a course of conduct directed at or
14 concerning a specific person that would cause a reasonable person:

15 (1) To suffer serious inconvenience or emotional distress;

16 (2) To fear bodily injury or to fear bodily injury to a close relation;

17 (3) To fear death or to fear the death of a close relation;

18 (4) To fear damage or destruction to or tampering with property; or

19 (5) To fear injury to or the death of an animal owned by or in the possession and control of
20 that specific person.

21 2. As used in this section, unless the context otherwise indicates, the following terms have
22 the following meanings.

23 A. "Course of conduct" means 2 or more acts, including but not limited to acts in which the
24 actor, by any action, method, device or means, directly or indirectly follows, monitors,
25 tracks, observes, surveils, threatens, harasses or communicates to or about a person or
26 interferes with a person's property. "Course of conduct" also includes, but is not limited to,

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1 threats implied by conduct and gaining unauthorized access to personal, medical, financial
2 or other identifying or confidential information.

3

4 B. "Close relation" means a current or former spouse or domestic partner, parent, child,
5 sibling, stepchild, stepparent, grandparent, any person who regularly resides in the
6 household or who within the prior 6 months regularly resided in the household or any
7 person with a significant personal or professional relationship.

8

9 D. "Emotional distress" means mental or emotional suffering of the person being stalked
10 as evidenced by anxiety, fear, torment or apprehension that may or may not result in a
11 physical manifestation of emotional distress or a mental health diagnosis.

12

13 E. "Serious inconvenience" means that a person significantly modifies that person's
14 actions or routines in an attempt to avoid the actor or because of the actor's course of
15 conduct. "Serious inconvenience" includes, but is not limited to, changing a phone number,
16 changing an electronic mail address, moving from an established residence, changing
17 daily routines, changing routes to and from work, changing employment or work schedule
18 or losing time from work or a job.

19

20

21

22