

A Guide for Vermont Advocates:

**Civil Legal Issues
for Survivors of Sexual Violence**

**The Vermont Network Against Domestic and Sexual Violence
2010**

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INTRODUCTION

A sexual assault can have a long term impact on a victim's life, disrupting physical health, emotional wellbeing, family life, friendships, education, housing, job, and immigration status. Victims have historically accessed the criminal justice system to address their rights following a sexual assault. While the criminal justice system offers the victim/survivor some protections, it is not designed to address many of their most basic needs. The civil legal system offers many remedies to help a victim/survivor address these needs.

This guide provides an overview of some of the civil legal issues that a sexual assault survivor may face in the days and months following an assault. It is intended to help advocates in The Vermont Network Against Domestic and Sexual Violence programs (herein referred to as network advocates) provide victims with information about survivors' civil legal rights and provide resources that a victim can use to obtain access to those rights and other available remedies. This publication reminds advocates of "tips" and unintended consequences that advocates can help victims think through as they decide what (if any) legal remedies they wish to pursue. This is not meant to be a comprehensive guide, but is a starting point for considering the issues that victims may face and describes resources that may be useful. For a more thorough discussion of any of the issues and remedies addressed in this guide, see "Beyond the Criminal Justice System: Using the Law to Help Restore the Lives of Sexual Assault Victims. A Practical Guide for Attorneys and Advocates," written by the Victim Rights Law Center (2008).

Please note: Throughout this guide, statutory citations are given for many laws. These citations refer to the location of a particular law in the statutory code of Vermont or United States. To find the full text of Vermont laws online, you can go to the Vermont legislature's website:

<http://www.leg.state.vt.us/statutes/statutes2.htm> or to the official version of Vermont's laws hosted by Michie's Legal Resources: <http://www.michie.com/vermont/lpext.dll?f=templates&fn=main-h.htm&cp=vtcode>. For federal laws, you can search the U.S. Code at: <http://www.gpoaccess.gov/uscode/index.html>.

Please note: This guide includes many internet resources. It is important for advocates to be aware that while the internet is a great source of information, an assailant with minimal computer knowledge can easily track computer and internet use. More information on this issue is available at www.mincava.umn.edu/privacy/.

For questions or more information about any of the issues discussed in this guide, contact the **Vermont Network Against Domestic and Sexual Violence at 802-223-1302 or visit the Network's website at www.vtnetwork.org**. The Network is comprised of 15 sexual and domestic violence programs including two stand alone sexual violence programs. These programs are an important source of information, support and assistance and are available to all sexual violence victims/survivors in the state. To locate the Network program nearest to you, please call the Vermont Sexual Violence 24-hour hotline number: **800-489-7273 or go to www.vtnetwork.org**. A complete list of the Network's programs is available in Appendix E.

I. CIVIL VS. CRIMINAL LAW

A criminal proceeding is a case initiated by the state through the state's attorney that focuses on the protection of the public's interests. In a criminal proceeding the state's attorney's office controls the case and the state pays the expenses of trying the case. In a criminal proceeding the state's attorney's goal is to sanction the defendant for harmful actions. The state's attorney must prove beyond a reasonable doubt that the defendant committed the crime. If convicted, the defendant may be imprisoned, required to attend sex offender therapy, placed on a sex offender registry or receive other penalties.

A civil proceeding, also called civil litigation, involves private actions where the victim is the plaintiff (not the state) and the victim initiates the proceedings by filing the complaint and asking the court for what they want. In a civil action, the victim as the plaintiff will generally have control over the case. This includes any decision on whether or not to confront the perpetrator/defendant. The victim must also pay for their legal costs, which can become expensive. In civil court the goal is to remedy the harm the victim suffered or prevent future harm or both. An example of using the civil process to remedy a harm is a victim asking the court to order the defendant to pay her medical expenses that resulted from an injury the defendant caused. A victim that asks the court for a protection order is asking the court to help prevent future harm. The goal of a civil case also includes resolving legal conflicts between two parties. Divorce, child custody, and child support are all examples of civil actions.

For more information on the criminal process, see Appendix A.

II. PRIVACY

Privacy is a critical need for many victims of sexual violence. Victims may have concerns about what information they can share during the legal process that will remain private and what information will or can become public. Information a victim gives to a network advocate or to their attorney is confidential and cannot be shared with any other person. There may be some rare exceptions to a network advocate's confidentiality – for example, if an advocate is a mandated reporter of child abuse and the victim is a minor. Network advocates should inform victims of the limits of their confidentiality before providing legal or other advocacy. For more information about mandated reporting and confidentiality for advocates, please see Appendix F.

If survivors are involved in criminal proceedings, the information they provide to the Victim Advocate in the state's attorney's office or to law enforcement investigators **is not confidential**. The law enforcement investigators and the victim advocate at the state's attorney's office will disclose information the victim shares to the state's attorney working on the case. The state's attorney has a legal obligation to share any information with the defense attorney that the state's attorney believes would show the defendant to be not guilty of the crime currently before the court.

Pursuing a civil legal action often requires the victim to disclose information they may wish to keep private. For example, if a victim wants to be protected from an assailant at school she may need to disclose information about her assault to school officials. It is important to help a victim understand what information needs to be disclosed and the potential consequences of that disclosure based on the legal remedies she is seeking.

III. PROTECTION ORDERS

Protection orders are civil orders that offer survivors some protections against someone who assaulted, abused, threatened or harassed them and may do so again. Victims can apply for a protection order regardless of whether or not a criminal case is being pursued. “Stay away” or “no contact” orders, as they are often referred to in the criminal courts, can also be part of other criminal proceedings that may be taking place. They rarely remain in place if the criminal case is dismissed or does not go forward.

Please note: If a victim has reported or is considering reporting the assault to the police, it is important for the victim to be aware that information disclosed while applying for a civil protection order could be used against them in a criminal process. For example, an affidavit written when applying for a civil protection order could later be used by the defense attorney to attack the credibility of the victim if details are inconsistent between cases. Network advocates can help victims determine what information is required for the completion of a request for a civil protection order. If a criminal investigation or prosecution is already underway, the victim may wish to inform the state’s attorney before filing any civil court action.

Listed below are different types of civil protection orders that a victim may be able to obtain. Each type of order has different eligibility requirements. Each type of order offers different remedies and protections and involves different processes. Victims will also need to access different courts or venues depending on the type of order they decide to seek. **See Appendix C part E for more court resources.**

A. Relief from Abuse (RFA) Orders

If the victim was sexually assaulted, stalked or abused by a family or household member or someone with whom they have or had a dating relationship, they may be able to obtain an RFA under 15 V.S.A. §§1101-1115. An application for an Order of Relief From Abuse (RFA order) can be made by filing an affidavit and the associated paperwork at the Family Division of Superior Court during business hours. When the victim files an application, they will receive a hearing date. The defendant must be given notice of the request and an opportunity to be heard. At the hearing, the victim and the defendant will be allowed to present evidence. Based on a preponderance of the evidence standard (meaning more evidence weighed in favor of the decision or more than 50% of the evidence), the judge will determine whether to issue the victim and/or the victim’s child(ren) an order protecting them from the assailant. The judge can order the assailant to: (1) refrain from abusing the victim and/or the victim’s child or interfering with their personal liberty; (2) immediately leave the home and give the victim sole possession of it; (3) pay the victim’s living expenses or child support up to 3 months if the assailant has a duty to support the victim and the child(ren), (4) order the assailant to stay a certain distance away from the victim. The judge may also temporarily award parental rights and responsibilities or deny parent-child contact to protect the victim or her child(ren), or make orders concerning the care and custody of pets (15 V.S.A. §1103(c)). A victim using this process will not have their order take effect unless and until the judge issues an order in her favor on the hearing date scheduled by the court.

If the victim and/or the victim’s child(ren) are in **immediate danger**, the victim may request a **Temporary RFA Order** at the Family Division of the Superior Court. After normal business hours, the police or an advocate can contact a court officer to assist the victim at the police department in the filing of a request for a Temporary RFA Order. A temporary order may be granted *ex parte* (without notice to

the defendant). If a judge finds that the victim and/or the victim's child(ren) are in immediate danger of further abuse, the judge can issue an order requiring the assailant to refrain from abusing the victim or interfering with her personal liberty as well as other limitations. The defendant will then be served with the temporary order that will include the final hearing date and time when the defendant can appear to contest the order. The hearing must be held no more than 10 days from the date the temporary RFA order is issued. However, there are instances where a court will grant a continuance to one of the parties, in which case the hearing will be slightly more than 10 days from the granting of the temporary order. At this final hearing, the victim and the assailant will be able to testify and based on the evidence presented the judge will decide whether to issue a final order (15 V.S.A. §1104).

If the victim obtains a Final RFA order, it will be valid for a fixed period. Before the order expires, the victim can ask the court to extend the order if the victim feels that it is necessary. If they do not request an extension, the order will expire at the end of the fixed time period. The court will not notify the victim of the expiration. Victims should contact the court well before the expiration date to request an extension because if the order expires before the extension, the victim will have no order. They do not have to prove additional abuse during the time the order has been in place to qualify for an extension, but they will have to appear in court for a hearing on the request for an extension.

If a victim does not want to report the assault to the police, they need to be aware that in rare cases police agencies have reviewed these orders and made their own decision to launch an investigation based on the information in the victim's request for an RFA. Network advocates should learn more about their local practices and inform victims of police practices in their area. The Network does not consider this to be best practice. Please contact the Network for assistance in advocating with police agencies that are screening RFA affidavits.

Once issued, violation of an RFA order is a crime and law enforcement officers are authorized to arrest an assailant if the conditions of the order are violated. Violators may be punished with up to a 1 year imprisonment and/or a \$5,000 fine. For second or subsequent offenses, or if the defendant has been previously convicted of domestic assault, the penalty is up to three years in prison and/or a \$25,000 fine (13 V.S.A. §1030).

B. Orders Against Stalking or Sexual Assault

As of October 1, 2006, Vermont introduced a new type of protection order for children and adults who are victims/survivors of sexual assault or stalking. If a victim or the victim's child has been stalked or sexually assaulted by a person who is **not** a family or household member (such as a stranger, co-worker, acquaintance, neighbor, employer, or teacher), they may be able to obtain an Order Against Stalking or Sexual Assault under chapter 178 of Title 12 (12 V.S.A. §5133). If the person who assaulted or abused the victim is a family or household member, or someone with whom the victim has or had a dating relationship, s/he may be able to obtain a Relief from Abuse Order (see previous section). The Orders Against Stalking or Sexual Assault require an assailant to stay away and not contact a victim/survivor, and the judge issuing the order may include additional conditions if necessary.

The victim can apply for an order themselves and/or on behalf of their child. The application for an Order Against Stalking or Sexual Assault can be made by filing an affidavit and the applicable paperwork at the Civil Division of Superior Court during business hours. When the victim's request for

an order is filed, they will receive a hearing date. The assailant must be given notice of the request and an opportunity to be heard. At the hearing, the victim and the assailant will be allowed to present evidence and based on a preponderance of the evidence standard (more than half of the evidence weighs in favor of the decision) the judge will determine whether to issue the victim and/or the victim's child(ren) an order protecting them from the perpetrator/defendant.

If the victim and/or the victim's child are in **immediate danger**, the victim can request a **temporary Order Against Stalking or Sexual Assault** at the Civil Division of Superior Court **during business hours**. A temporary order may be granted *ex parte* (without notifying the assailant). The court clerk will contact a judge who will review the application and determine whether or not to provide a temporary order. The judge can issue a temporary order that requires the assailant to not stalk or sexually assault the victim and/or the victim's child(ren), and to refrain from interfering with the victim's personal liberty. If the judge grants the temporary order, the defendant will then be notified ("served") the order along with the hearing date and time when the assailant can appear to contest the order. At this final hearing the victim and the defendant/perpetrator will be able to present evidence and the judge will decide whether to issue a final order. **Unlike RFA Orders, a temporary Order Against Stalking or Sexual Assault cannot be requested outside of regular business hours. If a victim has concerns about his/her safety that cannot wait until business hours, they should contact police (911).**

Orders Against Stalking or Sexual Assault are issued for a fixed period of time. Before the order expires, victims may ask the court to extend the order if they feel it is necessary. Victims should request this extension well before their order expires so that they are not left without any order. They do not have to prove that additional sexual assault or stalking incidents occurred during the time the order has been in place to qualify for an extension, but they will have to appear in court for a hearing on the request for an extension. The court may modify the order at any time in response to a motion by either party based on a "substantial change in circumstance."

Once issued, violation of an Order Against Stalking or Sexual Assault is a crime, and law enforcement officers are authorized to arrest an assailant if they violate the conditions of the order. Punishment for violating an Order Against Stalking or Sexual Assault can be a \$5000 fine and/or up to 1 year's imprisonment. For a second or subsequent violation, the penalty increases to a \$25,000 fine and/or up to 3 years' imprisonment (13 V.S.A. §1030).

C. Relief from Abuse for Vulnerable Adults

If a victim is a vulnerable adult¹ and has suffered abuse (including sexual abuse), neglect, or exploitation by a household member, caregiver or anyone else, they may apply for an order requesting relief from abuse (33 V.S.A §6933). The vulnerable adult may file a petition requesting that the defendant refrain from abusing, neglecting or exploiting the vulnerable adult and/or that they immediately vacate the household. The victim may file in the Criminal or Civil Divisions of Superior Court and have the matter

¹ A vulnerable adult is any person 18 years old or older who is (1) is a resident of a nursing home or other care facility; (2) is a resident of a psychiatric hospital or psychiatric unit of a hospital; (3) has been receiving personal care services for more than one month from a home health agency or from a person or organization that provides or arranges personal care; or (4) is impaired due to brain damage, infirmities of aging or a physical, mental or developmental disability such that some aspect of the individual's ability to care for themselves or protect themselves is impaired (33 V.S.A. §6902).

heard as scheduled or they may also apply for a temporary order which will take effect as soon as the defendant is served.

The petition may be filed by the victim themselves or an interested person, meaning a representative of the vulnerable adult, the commissioner of the department of disabilities, aging, and independent living, or the commissioner's designee (33 V.S.A §6931). If the petition is filed by an interested person, notice will be provided to the vulnerable adult and the court shall determine whether the vulnerable adult is able to express their wishes related to the petition and if so, whether they wish to pursue the petition. If the court finds they are able to express their wish and do not wish to proceed, the court will dismiss the petition (33 V.S.A .§6934).

The plaintiff shall have the burden of proving abuse, neglect or exploitation by a preponderance of the evidence (more likely than not), and relief shall be granted for a fixed period of time, for which the victim may request an extension. The court may also modify the order at a subsequent time on motion of either party based on a substantial change in circumstances. If the order is violated by the defendant, law enforcement is authorized to enforce the orders and violations may be prosecuted as a crime.

D. Hate-Motivated Crime Injunctive Relief Order

If victims do not fit the criteria for a Relief from Abuse Order under 15 V.S.A. §1101 or 12 V.S.A. §5133, they may qualify for an Order for Injunctive Relief under 13 V.S.A. §§1454-1466. A victim can apply for this order through the Civil Division of Superior Court of the county in which they live or the county in which the incident occurred. A hate-motivated crime includes any crime or attempted crime motivated by a number of characteristics of the victim, including sex, sexual identity and gender identity. The basic qualifications for an Order of Injunctive Relief are personal injury and/or threats of personal injury.

Unlike an RFA order, there is no provision for *ex parte* (without notifying the assailant) temporary relief under the hate-motivated crime provision. The court can issue an Order of Injunctive Relief for an extended period up to 2 years, and the victim can request the court to extend the order.

Violation of an Order of Injunctive Relief is a crime, enforceable by police and punishable by up to 1 year's imprisonment and/or a \$5,000 fine.

E. No Trespass Orders

Any person can obtain a No Trespass Order from their local law enforcement agency. Most local law enforcement agencies have the forms available. This order prevents another person from coming onto private property. If the person who the victim is seeking a trespass order against is the co-owner of the property, it is unlikely that the law enforcement agency will issue or enforce a No Trespass Order. If there is another court order in place, such as one awarding exclusive use and possession of the property, the law enforcement agency may enforce the No Trespass Order.

Violation of a No Trespass Order is a crime, but the penalties are less severe than for the orders discussed previously. A person charged with violating a No Trespass Order will be notified the next business day. They may not have to appear in court for four to six weeks.

F. Orders through University, School or College

If the victim is a student or employee of an educational institution, they may be able to ask the school to issue a no trespass order prohibiting an assailant from coming onto the grounds of the institution. If the assailant is a fellow student or an employee, the issues become more complicated and the victim may need to follow the institution's grievance procedure. It is critical that victims understand the process for the particular institution with which they are involved. See the discussion on Education in Section VII for more information.

G. Orders through Housing Authorities

If victims are residents in housing managed or owned by a housing authority, they may be able to get a No Trespass Order through the housing authority. As in the case of a university, school or college, it may be more difficult to get an order when the assailant is also a resident of the housing complex. The housing authority will most likely have to go through an eviction process to remove that person. See the discussion on Housing in Section IV for more information.

H. Civil Protection Orders

Another option that may be available to victims is a Restraining Order (also called an injunction) through the Civil Division of Superior Court. The disadvantage of these orders is that: (1) violations are not a crime; (2) to enforce the order, the victim must file a Motion for Enforcement and/or Contempt with the court that issued the order; (3) sanctions are limited; and (4) the victim must pay a filing fee. If the victim does not qualify for any other protection order, this could be an alternative.

IV. FAMILY COURT ISSUES

Sexual assault often impacts a victim's family, particularly if the assailant is a family member, and may raise issues that must be addressed through the legal system. This section is not a comprehensive guide but an outline of some of the basic issues a victim may need to think about. [**Relief from Abuse Orders**, or RFAs, are handled in the Family Division of Superior Court and are discussed in section III (A)].

Network advocates can assist survivors in applying for an RFA order, and can offer support to victims in family court proceedings. Information about the Family Division of the Vermont Superior Court is available at <http://www.vermontjudiciary.org/GTC/Family/Pamphlets.aspx>.

A. Divorce/Civil Union Dissolution

When victims are married or in a civil union with the assailant, they may want to end the relationship legally through a divorce, dissolution, or legal separation. Victims can hire an attorney to represent them in this process or they can represent themselves. If a victim represents him/herself, the court will require that they take a *pro se* (or person who represents themselves in legal proceedings) education class. If the victim and assailant have children together, the victim and assailant will be required to take a course on

the effects of divorce/dissolution on children. The victim and the assailant do not have to take the course together.

B. Parentage Actions

If there is uncertainty, a parentage action can be used to obtain an order requiring testing to determine the biological father of a child. If a child is born during a marriage or civil union, the child is presumed to be the child of both parents. When the parents are not married or civilly united, the father or non-biological parent may contest parentage. This can also occur when the parents are legally united, though it is much rarer. The Family Division of Superior Court hears parentage disputes. Disputes are filed by: (1) a child's mother; (2) the Office of Child Support, if the mother receives public assistance; or (3) the person claiming to be the biological father. If there is a dispute about parentage, the court will order genetic testing.

C. Parental Rights and Responsibilities and Parent-Child Contact

These actions are commonly known as custody and visitation proceedings. When a marriage or civil union is terminated by divorce, dissolution or legal separation the child custody and arrangement must be modified. If the parties are unable to reach an agreement on their own for custody and visitation, the court will hear evidence and issue an order based on the best interest of the child. 15 VSA §665. The "best interest of the child" standard used in custody and visitation cases means that the goal of the judge is to do what is best for the child involved. However, there are also presumptions about what is best for a child. For example, there is a presumption that involvement with both parents is in the best interest of the child.

There are two types of parental rights and responsibilities. **Legal** rights and responsibilities include "decision-making" related to issues such as a child's schooling and medical attention. **Physical** rights and responsibilities include having control over where a child physically lives and the daily care and control of the child. 15 VSA §664. Parents can share one or both of these rights and responsibilities or one parent may have sole legal and physical rights and responsibilities. Generally, if the court awards physical rights and responsibilities to one parent, the court awards parent-child contact (visitation) to the other parent. In Vermont, if parents cannot agree to share legal rights and responsibilities, the court must award legal rights and responsibilities to one parent. The same is not true for physical rights and responsibilities. Where parents cannot agree to share physical rights and responsibilities, the court may order a sharing of these rights and responsibilities.

Court orders regarding parental rights and responsibilities and parent-child contact may be modified by the court, upon motion of either parent, if the parent can demonstrate a "real, significant, and unanticipated change of circumstances" where it is in the child's best interest. Sundstrom v. Sundstrom 177 Vt. 577 (2004).

D. Child Support

As in most states, Vermont's policy is to establish child support orders where a marriage or civil union ends in divorce, dissolution, legal separation, or where one parent no longer lives in the household. Child support follows guideline calculations, based primarily on the incomes of both parents. If one

parent receives public assistance, the Office of Child Support becomes a party to the action and recovers a portion of the support payment.

If the other parent has been abusive and the victim is concerned that collection of child support will provoke further abuse, the victim can file a waiver under the “family violence option”. The effect of the family violence option waiver is that the state will not file for child support from the abusive parent due to the safety concerns of the victim.

More information about the Vermont Office of Child Support is available at www.ocs.state.vt.us or through your local office of the Vermont Agency of Human Services (AHS) <http://humanservices.vermont.gov/services> (See section VIII for more information on the services provided by AHS).

V. HOUSING

For sexual violence victims, safe and affordable housing is often further out of reach, due to the effects of trauma, economic insecurity, and lack of resources in the aftermath of sexual violence. The majority of sexual assaults take place in or near victims’ homes or the homes of victims’ friends, relative or neighbors. (Mindlin & Vickers, 2007)

As a result of a sexual assault, victims or assailants may need to move elsewhere or may find themselves facing eviction. Housing issues are usually complex, and are often further complicated by anti-discrimination laws that may protect the assailant and the survivor from abrupt eviction. Although not meant to be comprehensive, this guide provides a basic outline of housing types and basic rights related to housing. The Economic Assistance section (page 17) can provide some assistance to survivors encountering economic hardship because of the housing needs they are now facing. Again, Network advocates are able to provide information, support and assistance to victims with housing issues.

A. Types of Housing

There are two types of housing – public and subsidized housing or private housing.

1. Public and Subsidized Housing

Public and subsidized housing includes housing projects, family developments administered by public housing authorities, federal and state assisted and/or funded housing developments, and elderly/disabled housing developments. Section 8 vouchers are useful for both public and subsidized housing. Vouchers can be for a person/family whose income falls within specific guidelines to locate a house or apartment of her/his choosing. Other vouchers are “project-based” and as such are attached to the housing UNIT and not to the family. Housing authorities administer public housing. Each housing authority has its own set of rules and procedures for grievances, transfers, and other actions.

If victims are in public or subsidized housing, it is critical that they not be evicted for non-payment of rent. The general rule is that a victim evicted for nonpayment of rent will **never** be

eligible to return to public or subsidized housing again. Keep in mind that the victim may be charged rent even if they have vacated an apartment but have left belongings behind.

2. Private Housing

Privately owned housing is considered private housing. An individual, a for-profit or a non-profit corporation can own it. Victims can use Section 8 vouchers for private housing (rental or purchase) if the property owner is willing to accept them and if they meet the housing authority's terms of inspection.

B. Discrimination Laws and Basic Housing Rights

Federal and state anti-discrimination laws offer protections to people who are seeking or trying to secure their housing. Under these laws, sex discrimination may include sexual harassment or sexual assault by a landlord or refusing to rent to a domestic and/or sexual violence survivor. In addition, the Federal Violence Against Women Act of 2005 (Public Law 109-162) explicitly prohibits public housing authorities and all landlords, owners, and managers participating in the Section 8 voucher and project-based programs from discriminating against victims of domestic violence.

The Vermont Public Accommodations Act, 9 V.S.A., Chapter 139, §§4500-4507, and the Americans with Disabilities Act of 1990, 42 United States Code (U.S.C.) §12101 *et seq.*, offer additional protections based on a person's physical and/or psychological condition.

1. Vermont Law

The Vermont Fair Housing and Public Accommodations Act, 9 V.S.A., Chapter 139, §§4503-4507, provides protections against unfair housing practices based on a person's race, sex, sexual orientation, age, marital status, religious creed, color, national origin, handicap, because a person intends to occupy a dwelling with one or more children, because a person is a recipient of public assistance, or because of a person's gender identity. It excludes, however, owner-occupied dwellings with 3 or fewer units as well as dwellings that are owned, operated, supervised or controlled by or in conjunction with a religious organization, association, or society that limits the sale, rental or occupancy to persons of the same religion (with certain restrictions).

A person may file a charge of discrimination with the Vermont Human Rights Commission (more information about the Vermont Human Rights Commission is available at www.hrc.state.vt.us.) or may file a claim for relief in the Civil Division of Superior Court. It is not a requirement that a charge be filed with the Human Rights Commission prior to filing a lawsuit, though it may be helpful to consult with the Commission prior to filing.

2. Federal Law - Several federal laws offer protections against unfair housing practices.

(a) The Federal Fair Housing Act, 42 U.S.C. §§3601-3619, also known as Title VIII of the Civil Rights Act of 1968, makes it unlawful to refuse to sell or rent to a person based on race, color, religion, sex, familial status, or national origin. Single family homes sold or rented by the owner, and owner-occupied dwellings of 4 or fewer units are not subject to this law. If a victim feels that

s/he has been denied housing due to discrimination, they can file a complaint with the Department of Housing and Urban Development (HUD) within a year of the incident. They can also file a complaint in federal or state court within two years of the incident. More information about HUD is available at: www.hud.gov.

(b) The Civil Rights Act of 1966 covers all housing but only applies to racial and in some cases ethnic and religious minorities who are American citizens. If victims feel they are or were denied housing due to discrimination and they fall within the protected categories under this law, they have up to three years after the discrimination to file a complaint in federal court.

(c) The Americans with Disabilities Act of 1990, 42 U.S.C. §§12101 *et seq.* offers protection for persons with disabilities from discrimination in housing.

VI. EMPLOYMENT

After a sexual assault, a victim may need protection at work from the assailant. Regardless of whether or not the assailant is associated with the victim's place of employment, the impact of the sexual assault may make it difficult or impossible for the victim to concentrate or maintain a work routine. Survivors also may be missing work due to appointments with health care or other providers, the need to make new living arrangements, involvement in civil or criminal legal proceedings or other changes in the victim's life.

A. Unemployment Compensation

Survivors of sexual assault, domestic violence and stalking in Vermont may also be able to use the state's Domestic and Sexual Violence Survivors' Transitional Employment Program, administered by the Department of Labor. This program provides temporary, partial wage-replacement to survivors of domestic violence, sexual assault and stalking who need to leave work because of violence and who are ineligible for traditional unemployment compensation benefits. Survivors of domestic violence, sexual assault or stalking who have left work voluntarily because of the violence they are experiencing may apply to the Department of Labor (DOL) for benefits through the Transitional Employment Program. More information is available through the DOL's website:

<http://labor.vermont.gov/Workers/Unemployed/DomesticSexualViolenceSurvivorsTransitionB/tabid/1558/Default.aspx> or by calling the Unemployment Claims Center Manager at 802-828-9150.

B. Employment Discrimination

If a victim's employment is covered by a contract, they usually need to follow the grievance procedures in that contract before initiating any other action. This is especially important if it is a union contract. If employment is not covered by a contract, they are most likely an "employee-at-will". This means that employment can be terminated at any time for any reason.

As with housing, both state and federal laws offer fair employment protections.

Determining which law or laws to file a claim under, whether or not the victim needs to begin with an internal grievance procedure or the Equal Employment Opportunity Commission, and other such choices can be critical to preserving the victim's rights in an employment discrimination case. It is important that they consult with an attorney prior to taking any legal action. Network advocates can provide information to help victims locate additional information. Resources related to employment are located in Appendix C.

1. Vermont Law

The Vermont Fair Employment Practices Act, 21 V.S.A. §495, provides protections against unfair employment practices based on a person's race, color, religion, national origin, sex, sexual orientation, ancestry, place of birth, age, physical or mental condition, or gender identity.

While the law provides that either the attorney general or a state's attorney may enforce the provisions of the Act, in practice the Vermont Office of the Attorney General, Civil Rights Division is responsible for handling all complaints filed regarding unfair employment practices under the Vermont statute.

In addition to the Office of the Attorney General, a person may file a claim in superior court seeking relief.

More information about the Vermont Office of the Attorney General, Civil Rights Division is available at: www.atg.state.vt.us.

2. Federal Law

There are a number of federal laws that apply to discriminatory practices in employment and one or more may apply depending on the specific facts of the victim's case and personal circumstances.

(a) Discrimination based on race, color, and national origin is prohibited by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e *et seq.*

(b) Discrimination on the basis of age is prohibited by the Age Discrimination in Employment Act, 29 U.S.C. §§621 *et seq.*

(c) Discrimination on the basis of disability is prohibited by Americans with Disabilities Act, 42 U.S.C. §§12111 *et seq.*

(d) Discrimination on the basis of sex is prohibited by the Equal Pay Act, 29 U.S.C. § 206(d).

The Equal Employment Opportunity Commission is the federal agency that enforces the federal laws. More information about the Equal Employment Opportunity Commission is found at www.eeoc.gov.

V. EDUCATION

If the person who stalked or sexually assaulted the victim is a student, teacher or staff of a school, university, or college that the victim attends, the victim may need to request a change in schedule, a leave of absence, a transfer, or some other accommodation. Even if the assailant is not affiliated with the survivor's school, university or college, the impact of the sexual assault may make it difficult or impossible for the survivor to continue with a regular schedule of classes. Most educational institutions have a policy that allows a student to take a leave of absence under circumstances involving sexual (or other) assault. It is important to consult with the appropriate school official as soon as possible in order to make arrangements to adjust the survivor's schedule, take a leave of absence, or withdraw.

Most educational institutions have their own grievance policies and procedures that may need to be followed prior to or in conjunction with any other legal action the victim may wish to bring. Public Institutions are required by the Family Education Rights and Privacy Act to have due process in all discipline or conduct proceedings. However, campus disciplinary processes vary from institution to institution and are very different than a criminal process. The victim may have fewer protections than are accorded in a criminal case and there may be a higher burden of proof. **It is critical that the survivor understand the process for the particular institution with which they are involved.** For more information about their institution's process they can contact the Dean of Students or a student judicial designate. Advocates should have an understanding and inform victims of campus disciplinary processes, including procedures, possible outcomes, and what can be reasonably expected. This information should be available in a student handbook or campus policy and procedure manual, but network advocates may also want to have a discussion with individuals within the school who are responsible for handling complaints.

If the victim is participating in a criminal proceeding through the state and also in the school's disciplinary process, the victim should be aware that information provided to the school may be discoverable during the criminal proceeding. Further, the results of any criminal proceedings may be irrelevant to the school's response.

As with housing and employment, there are state and federal laws that prohibit discrimination in education.

Determining under which law or laws to file a claim, whether or not it is necessary to begin with an internal grievance procedure, and other such choices can be critical to preserving the survivor's rights in an education discrimination case. It is important that s/he consult with an attorney prior to taking legal action. Additional resources related to education are listed in Appendix C.

1. Vermont Law

The Vermont Public Accommodations Act, 9 V.S.A. §§4500-4502, §§4506-4507, prohibits discrimination in any place of public accommodation (including schools) based on a person's race, creed, color, national origin, marital status, sex, sexual orientation, disability, or gender identity.

A person may file a charge of discrimination with the Vermont Human Rights Commission (more information about the Vermont Human Rights Commission is available at www.hrc.state.vt.us.) or may file a claim for relief in the Civil Division of Superior Court.

Filing a charge with the Human Rights Commission is not a requirement prior to filing a lawsuit in court, though it may be helpful to consult with the Commission prior to filing.

2. Federal Law

There are a number of federal laws that apply to discriminatory practices in education and one or more may apply depending on the specific facts of the victim's case and personal circumstances.

(a) Discrimination based on race, color, and national origin is prohibited by Title VI the Civil Rights Act of 1964, 42 U.S.C. §§2000d *et seq.*

(b) Discrimination on the basis of disability is prohibited by Section 504 of the Rehabilitation Act of 1973 29 U.S.C. §794 and by Title II of the Americans with Disabilities Act of 1990, 2 U.S.C. Part B.

(c) Discrimination on the basis of age is prohibited by the Age Discrimination Act of 1975. 42 U.S.C. §§6101 *et seq.*

(d) Discrimination on the basis of sex is prohibited by Title IX of the Education Amendments of 1972. 20 U.S.C. §§1681 *et seq.* Sexual harassment is a prohibited form of sexual discrimination. Sexual assault may be considered a form of sexual harassment.

The following federal laws afford certain rights to victims of sexual violence that occurs on a school campus:

(a) The Jeanne Cleary Disclosure of Campus Security and Campus Crime Statistics Act (20 U.S.C. § 1092 (f) (2002)).

(b) Family Education Rights and Privacy Act (20 U.S.C. § 1232g (2002)).

The U.S. Department of Education, Office for Civil Rights is the federal agency that enforces the federal laws that prohibit discrimination in programs or activities that receive federal financial assistance from the Department of Education. More information about the U.S. Department of Education, Office for Civil Rights is available at: www.ed.gov/about/offices/list/ocr/index.html.

VIII. ECONOMIC ASSISTANCE

A sexual assault victim may be eligible for one or more assistance programs available through the State of Vermont, the federal government, or other agencies, depending on the victim's financial circumstances. The availability of services and funding, the criteria for eligibility, and the names and organization of services and programs change regularly, but the starting point for all state and federal services is the Vermont Agency of Human Services (AHS). The AHS website, <http://humanservices.vermont.gov> provides information about the services the agency offers. The AHS

website also offers a tool called the Screen Door, which is designed to help Vermonters find out what services might be available to them. This can be found at <http://screendoor.vermont.gov/>.

Many of the separate divisions under AHS have been consolidated into The Department for Children and Families (DCF) <http://www.dcf.vermont.gov> . Financial assistance programs include such programs as the Vermont Health Access Program (VHAP), Healthy Vermonters, Dr. Dynosaur, Medicaid, Child Support, Food Stamps, Women Infants and Children (WIC), Emergency Assistance, Reach Up, Fuel Assistance and others.

The Division for Children and Families (DCF) also has a Domestic Violence Unit with a web site providing information and links to additional resources. http://dcf.vermont.gov/fsd/domestic_violence. Another good resource is Vermont 2-1-1, <http://www.vermont211.org/>. Vermont 211 provides access to a wide range of community information and resources such as adult education, employment programs, homeless prevention, housing programs, mental health care and counseling, senior information and assistance, support groups, legal help, transportation, utility assistance and veterans services. If victims do not have internet access, they can reach Vermont 211 by dialing 211 on any telephone. Network advocates can provide information, support and assistance to help survivors access economic resources.

IX. ISSUES FOR VICTIMS/SURVIVORS WHO ARE NOT U.S. CITIZENS

If a survivor is undocumented, they are still a victim of crime and can call the police and the perpetrator maybe charged with the crime that occurred just as in any other case. They also have a right to access the legal system and may obtain any of the above protection orders in Vermont.

However, a victim may be rightfully concerned that reporting to police or using the civil legal system may alert the authorities to their presence in the United States. There are places where this concern is very real. It is important for advocates to know what the reporting practices are in their area. It is also true that in some cases, cooperating with law enforcement related to sexual assault, domestic violence or other crimes may make the victim eligible to gain status in the United States through a U-visa. Victims should consult a local advocate and attorneys who practice immigration law and who are familiar with the rights of victims of violence. Referral information for Legal Momentum and the South Royalton Legal Clinic of Vermont Law School are in Appendix C under Immigration Resources.

It may also be important to document the sexual assault the victim experienced through paperwork such as a police report, newspaper account, or his or her own notes. In many cases, the victim will need this documentation to apply for a U-visa or to self-petition for official residency through the Violence Against Women Act.

X. PROPERTY

Issues related to property (ownership of furniture, vehicles, real estate) are addressed through one or more of the court proceedings in the Family Division of Superior Court discussed in Section IV, if the victim is married or in a civil union with the assailant.

If the victim does not have a legal relationship with the assailant through marriage or a civil union, any property disputes will be handled by the Civil Division of the Superior Court. A branch of the Civil Division known as Small Claims handles claims with a value of no more than \$5000. The “regular” Civil Division handles all claims with a value over \$5000. Small Claims is designed for people representing themselves and its procedures are streamlined, its fees are lower, and cases progress more quickly than claims handled by the “regular” Civil Division. Attorneys in the Civil Division of Superior Court generally represent parties in court cases. If the victim has significant assets about which they are concerned, they should consult with an attorney.

Information regarding Small Claims and Civil Division filings, forms, and processes is available at:

Civil Division of Superior Court <http://www.vermontjudiciary.org/GTC/civil/default.aspx>

Small Claims <http://www.vermontjudiciary.org/GTC/Civil/smallclaims.aspx>

XI. CIVIL CLAIMS FOR DAMAGES

A decision to file a civil lawsuit for damages based upon sexual assault requires careful consideration. For some victims, a civil suit can be an empowering experience and an important step in the healing process. A civil suit, however, is expensive, time consuming and not always successful. It can drain a victim’s emotional resources and affect their recovery because it can expose the victim’s private life to the perpetrator and, in some cases, to the media. In addition, while the victim does not have to waive confidentiality, it may be impossible to proceed with a civil lawsuit unless they do waive the confidentiality of certain private records. This is in contrast to criminal proceedings brought by the state, where certain confidentiality protections for sexual violence victims/survivors are much stronger. This is because “rape shield law” prohibits courts from hearing evidence in criminal or protection order hearings related to a victim’s sexual history unless it is directly relevant to the case.

In a civil lawsuit for damages, the goal is to remedy the harm the victim suffered by having the assailant pay the victim money. The victim will need to prove: (1) that harm was caused by the assailant; and (2) the monetary amount of damages suffered as a result of that harm. The victim will need to demonstrate the physical, mental or other harm that was suffered in order to recover money from the defendant.

A civil lawsuit cannot undo the harm caused by the assailant but an award of money and the opportunity for a form of legal validation make these lawsuits attractive to some victims. It is important for a victim to know that a civil lawsuit is expensive, time consuming and may open the emotional wounds the victim worked hard to heal. Victims are encouraged to carefully weigh the pros and cons of filing a civil lawsuit by consulting an attorney.

APPENDIX A - STAGES OF THE CRIMINAL PROCESS

A. Event Occurs

In the immediate aftermath of a sexual assault or whenever the victim feels ready, s/he has the choice to seek medical care and to report the assault to the police.

B. Protection Orders

As discussed in Section I, the survivor may wish to apply for an Order Against Stalking or Sexual Assault or a Relief From Abuse Order to get some protection from the assailant. *See* pages 5-7 for further information about these orders.

C. Investigation by Authorities

If the victim decides to report the assault to law enforcement a formal investigation will be started. In the course of their investigation, if law enforcement officials determine there is sufficient evidence (“probable cause”) that a crime was committed, they can obtain a warrant for the assailant’s arrest. At the same time, law enforcement will forward the case to the local prosecutor who is the state’s attorney. Based on the information provided by law enforcement, the state’s attorney may prepare specific charges against the assailant and file the charges with the court.

D. Arrest or Citation

A police officer may arrest the perpetrator at the scene. If they are not called to the scene or the perpetrator has fled the scene when they arrive, the officer may obtain a warrant for their arrest. If the officer does not believe that the situation is dangerous, the officer can issue a citation to appear in court at a later time.

E. Arraignment

After being arrested, the perpetrator must appear in court to be informed of the charges and make an initial plea of “guilty” or “not guilty”. At arraignment, the judge will set the assailant’s conditions of release. This may include a cash bail, limits on contacting the victim and/or any other victims along with any other restrictions the judge feels are necessary to protect public safety and ensure the assailant’s return to court. If the assailant is charged with a crime that could result in a life sentence, the assailant was on probation for a previous crime or if the defendant is a flight risk, the judge may order that the assailant be held without bail.

A note about conditions of release: Conditions of release only apply to criminal charges. If the victim also has an Order Against Stalking or Sexual Assault, a Relief from Abuse Order, or some other type of protection order against the assailant, there may be similar restrictions. If the court does not issue a final protection order or if the protection order expires and is not extended, this has no relationship with and does not impact conditions of release in a pending criminal case against the assailant. The conditions of release will end if the charges are dismissed or if the defendant is convicted or acquitted of the crime.

F. Victim/Survivor Notification

After the arraignment the victim has the right to obtain a copy of the conditions of release and to know whether or not the defendant will continue to be held in law enforcement custody. The state's attorney's victim advocate can help a victim get this information, as can a network advocate. Title 13 V.S.A. §5301 *et seq.* is the statute relating to the rights of victims of crimes. Section 5305 addresses the right to information regarding a defendant's release from custody, not only after arrest and/or arraignment but following any other periods of police or corrections custody.

G. Pre-Trial Proceedings

One or more of the following events may occur before the case goes to trial. The victim has the right to be present at any of these and in some cases s/he may be required to attend if s/he is subpoenaed:

1. Bail review

The assailant has the right to request the conditions of release including the amount of bail. If the assailant is being held without bail, a hearing will be held on that issue. The survivor may be asked to testify at such a hearing or the prosecutor may use the sworn statement provided at the time the victim reported the crime to law enforcement.

2. Status conference

Status conferences are meetings that the judge calls in order to hear from the prosecutor and defense attorney about how the case is proceeding. Status conferences are scheduled at regular intervals, generally monthly, and they are open to the public unless the matter is a juvenile proceeding or a motion has been granted for a closed hearing based on an exceptional circumstance. On occasion, a status conference will result in an agreement on the case, so victims should always be informed of status conferences by the state's attorney's office and advocates should attempt to attend if the victim wishes.

3. Hearings Related to Legal and Evidentiary Issues

Depending upon the specific facts and legal issues raised by a case, the prosecutor and/or defense attorney may raise issues with the court regarding the charges filed and the evidence that can be used at trial. They may submit legal briefs on the issues, and the judge will schedule a time to hear oral argument by both sides. Sometimes the judge will rule on the issue(s) raised at the hearing itself, but the judge may take more time to consider the parties' arguments and issue a ruling after the hearing date.

4. Depositions

In felony cases the defendant, through their attorney, has the right to question witnesses under oath prior to the trial. If the victim is called to testify at a deposition, there are rights that protect the victim. The defense attorney cannot ask certain questions related to the victim's history of sexual activity and the defendant cannot be present. The prosecutor and the state's attorney's victim

advocate will meet with the victim before the deposition to explain what will happen and help the victim prepare. The victim has the right to have the state's attorney's victim advocate and/or a network advocate present during the deposition. If the survivor has an attorney, that attorney will be present to represent the victim during the deposition.

5. Pretrial conference

This is usually the final status conference before the case goes to trial. At this conference, the judge may require the prosecutor and defense attorney to address a number of issues including jury selection, instructions to be given to the jury, the presentation of evidence and witnesses and other matters related to how the trial will proceed.

H. Plea Agreement

The victim has a right to discuss what resolution s/he thinks is appropriate with the prosecutor though the prosecutor does not have to follow that recommendation. At any point throughout the case, until the jury has issued a verdict, the defendant may plead to an offense in order to resolve the case and avoid going to trial or receiving the verdict of the jury.

I. Jury Selection

If the defendant does not plead to an offense, the case will go either to trial or be dismissed by the state (or on rare occasions by the judge). In a criminal trial, the first step will be selecting members of the community who will form the jury that hears the evidence and arguments presented by the prosecutor and defense attorney. The victim usually will not be present in court for jury selection.

J. Trial

The trial must be held within two weeks of jury selection and frequently is held sooner than that depending on the anticipated length of the trial. If the survivor will be testifying during the trial, they will not be able to attend the trial until after their testimony. The prosecutor and victim advocate will help the survivor prepare for trial. Unlike the deposition, the defendant will be present in the courtroom when the victim testifies, but s/he has the right to have support people in the courtroom when s/he testifies. Just as in the deposition, the defense attorney cannot ask the victim certain questions.

K. Sentencing

If the defendant is convicted of a crime by pleading to an offense or by a jury's verdict following trial, there will be a sentencing hearing. Generally, the sentencing hearing is not held at the same time as the plea agreement but in some cases the court may proceed right to sentencing. Depending on the nature of the conviction, the court may request a pre-sentence investigation (PSI). The PSI is a correction officer's evaluation of the appropriate sentence for the defendant based on a review of the case, interviews with the defendant, other witnesses in the case and victims.

L. Victim Statement

Regardless of whether the court requests a PSI, the victim is entitled to make a statement at the sentencing hearing. The victim can speak themselves, read from a prepared statement, have someone else speak on their behalf, or give a written statement to the judge. This is the victim's opportunity to let the judge, the defendant, and anyone else present in the courtroom know their thoughts about the defendant's sentence and anything else the victim wants to say about what the defendant did. This includes the impact the assault has had on the victim's life. After the judge hears from the defense attorney, the prosecutor, the corrections officer if there is a PSI, and the victim, then the judge will determine the defendant's sentence.

M. Custody

After the judge informs the defendant of the sentence, the defendant is taken into the custody of the Department of Corrections (if not already in custody). The victim has the right to know the defendant's status throughout custody and to be informed when the defendant completes the sentence and will be released from custody. The state's attorney's victim advocate and a Victim Services Specialist at the Department of Corrections can assist in determining this information.

N. Sex Offender Registry

If the defendant is convicted of a sexual offense in accordance with 13 V.S.A. §5401, a condition of the sentence will be registration with the Sex Offender Registry maintained by the Vermont Criminal Information Center. Failure to register and to maintain accurate and up-to-date registration information is a crime. The registry information is available online at http://vcic.vermont.gov/sex_offender. If the victim does not have access to the internet, they can contact a victim advocate who can help locate the current information on the defendant.

APPENDIX B - CONSIDERATIONS FOR VICTIMS/SURVIVORS FACING CRIMINAL CHARGES

As a result of the assault or another related incident, the victim may find him/herself charged with a crime. It is important to have good legal representation for the victim's criminal charges as the victim is dealing with the impact of a sexual assault. If the victim can afford to hire a private attorney, a network advocate should help him/her find an attorney that can work well with victims and has the knowledge and expertise to represent the survivor. If the survivor is eligible for a public defender they are still entitled to the same level of expertise and representation as if they had hired the attorney privately. In either case, the victim should maintain regular contact with the attorney including calling and writing with any questions or concerns. If the attorney does not respond to questions within a reasonable time frame or the victim has other reasons to be concerned about the quality of representation, they have the right to hire a different attorney or request that a different attorney be assigned when the victim is represented by a public defender.

Please also see the National Clearinghouse for the Defense of Battered Women: <http://www.ncdbw.org/>.

APPENDIX C - RESOURCES

The information listed below was current at the time this manual was published in 2010. However, because names, numbers and contact information inevitably change, some of this information may be out of date. Contact the Vermont Network Against Domestic and Sexual Violence for up-to-date resource information.

A. General Assistance and Information Resources

Vermont Network Against Domestic and Sexual Violence

PO Box 405

Montpelier, VT 05601

802-223-1302

24 hour Sexual Violence hotline 1-800 489-7272

www.vtnetwork.org This web page has links to and contact information for the domestic and sexual violence organizations across Vermont

Vermont State Government

This is the link to the official web site for the state and all services and information:

<http://vermont.gov/>

This is the link to the official web site for the state legislature, including contact information for all senators and representatives:

<http://www.leg.state.vt.us/default.htm>

Vermont 2-1-1

This number provides access to a wide range of community information and resources such as adult education, employment programs, homelessness prevention, housing programs, mental health care and counseling, senior information and assistance, support groups, legal help, transportation, utility assistance, veterans services and more. It can be accessed over the internet or by telephone by dialing 211. Vermont 2-1-1 is a confidential service, serving people all over Vermont. The call center is currently open Monday - Friday, 8:30am – 4:30pm. Callers may also leave their questions on voice mail after hours, and their calls will be returned on the next business day. www.vermont211.org

Victim Rights Law Center – This organization provides services to residents of Massachusetts and information and technical assistance to other agencies throughout the country who assist victims/survivors of sexual and domestic violence.

617-399-6720

www.victimrights.org

B. Housing Resources

Vermont Human Rights Commission

135 State Street, Drawer 33

Montpelier, VT 05633-6301

(802) 828-2480 (phone and TTY)
(800) 416-2010 (toll free in Vermont only)
www.hrc.state.vt.us

Vermont Legal Aid

Six offices around Vermont
(800) 889-2047
www.vtlegalaid.org

Department of Housing and Urban Development

www.hud.gov

C. Employment Resources

Office of the Attorney General

109 State Street , Drawer 33
Montpelier, VT 05609-1001
(802) 828-3171
www.atg.state.vt.us

Equal Employment Opportunity Commission

Boston Area Office
One Congress St
10th Floor, Room 1001
Boston, MA 02114
(800) 669-4000
(800) 669-6820 (TTY)
www.eeoc.gov

Legal Momentum

395 Hudson Street
New York, NY 10014
(212) 925-6635
<http://www.legalmomentum.org/help-center/>

D. Education Resources

Vermont Human Rights Commission

135 State Street, Drawer 33
Montpelier, VT 05633-6301
(802) 828-2480 (phone and TTY)
(800) 416-2010 (toll free in Vermont only)
www.hrc.state.vt.us

Office for Civil Rights U.S. Department of Education

400 Maryland Avenue, S.W.
Washington, D.C. 20202-1100
1-800-421-3481
TDD: (877) 521-2172
www.ed.gov/about/offices/list/ocr/index.html

E. Vermont Court Resources

In addition to the internet addresses listed below, each district in Vermont has Family and Civil Divisions of the Superior Court, generally located in the county seat. They are generally open during regular business hours, 8 a.m. - 4:30 p.m. and provide information and forms for all of the actions described in this manual. Court clerks cannot provide legal assistance or advice, but they can and should direct you to the correct forms and informational guides to use.

Vermont Judiciary: www.vermontjudiciary.org

Family Division: <http://www.vermontjudiciary.org/GTC/Family/Pamphlets.aspx>

Civil Division: <http://www.vermontjudiciary.org/GTC/civil/default.aspx>

Small Claims: <http://www.vermontjudiciary.org/GTC/Civil/smallclaims.aspx>

Criminal Division: <http://www.vermontjudiciary.org/GTC/criminal/default.aspx>

F. Books and Other Reference Materials

In addition to offering public internet access, many public libraries contain books and other references that may be helpful to victims and survivors of sexual assault. However, as of the date of this guide – January 2011, the following book is one of the only books we know of that specifically addresses divorce and civil union dissolution in Vermont:

Divorce in Vermont: The Ultimate Guide to Divorce in the Green Mountain State, Nicholas Hadden & Cynthia Broadfoot, Acorn House, 2003.

G. Legal Advice/Assistance –

The Vermont Network Against Domestic and Sexual Violence
Supervising Attorney
(802) 233-1302
www.vtnetwork.org

Legal Services Law Line of Vermont
(800) 889-2047
www.lawlinevt.org/

South Royalton Legal Clinic

South Royalton VT
(802) 763-8303 x 2500

Vermont Legal Aid
(800) 747-5022
www.vtlegalaid.org

Vermont Bar Association, Lawyer Referral Service
(802) 223-2020
www.vtbar.org/intus/referral2/index.asp

Have Justice Will Travel
9580 Vermont Route 113
Vershire, Vermont 05079
Toll Free: (877) 496-8100
Phone: (802) 685-7809
Fax: (802) 685-4663
www.havejusticewilltravel.org/

Legal Search Engines on the Internet

1. United States Code (Federal Law)

The official web site for federal law:
<http://uscode.house.gov/search/criteria.shtml>

A more user friendly site:
<http://straylight.law.cornell.edu/uscode/>

2. Vermont Court Rules and Statutes

The official website for up to date Vermont Law:
<http://michie.lexisnexis.com/vermont/lpext.dll?f=templates&fn=main-h.htm>

The Vermont Legislature website – check the status of new legislation and other information regarding the Legislature:
<http://www.leg.state.vt.us/statutes/statutes2.htm>

The Vermont Legislature links page – a useful site for other legal information as well as links to other state government information:
<http://www.leg.state.vt.us/misc/links2.htm>

H. Immigration Attorneys

Legal Momentum

Immigrant Women's Program
1101 19th Street, NW Suite 300
202-326-0040
iwp@legalmomentum.org

Arthur Edersheim, Esq.
South Royalton Legal Clinic
South Royalton VT
802-831-1500

Leslie Holman, Esq.
One Lawson Lane
Burlington, VT 05401
802-860-3333
lholman@holmanimmigration.com

Sandra Stempel, Esq.
Dinse, Knapp, & McAndrew, P.C.
209 Battery St.
PO Box 988
Burlington, VT 05402
802-864-5751
sstempel@dinse.com
www.dinse.com

APPENDIX D - INTERNET SAFETY

If a victim wants to access the internet and does not have a computer they can safely use, please note that most public libraries offer free internet access. **It is important to be aware that while the internet is a great source of information, an assailant with a little computer knowledge could track computer and internet use.** That is why the victim's best protection is to use a computer that the assailant cannot access such as one at a public library, community center, friend's house or at work. More information on this issue is available at: www.mincava.umn.edu/privacy/.

APPENDIX E- NETWORK PROGRAMS

Addison County & the town of Rochester WomenSafe

P.O. Box 67, Middlebury, VT 05753
Hotline: 802/ 388.4205 or toll-free 1.800.388.4205
Office: 802/388.9180 *Fax:* 802/388.3438
TTY: 802/388.4305
Email: info@womensafe.net
Web: www.womensafe.net

Bennington County

PAVE*

P.O. Box 227, Bennington, VT 05201
Hotline: 802/442.2111 *Office:* 802/442.2370
Fax: 802/442.6162
Email: pave@pavebennington.com

**Caledonia, Orleans & Essex Counties
The Advocacy Program at Umbrella***

1222 Main Street #301, St. Johnsbury, VT 05819
Hotline: 802/748.8645 *Office:* 802/748.8645
Fax: 802/748.1405
93 East Main Street, Suite #1, Newport, VT 05855
Office & Hotline: 802/ 334.0148 *Fax:* 802/334.0148
Email: michelle@umbrellanek.org or zoe@umbrellanek.org
Web: www.umbrellanek.org

**Caledonia County (Hardwick area) & town of Woodbury
AWARE**

P.O. Box 307; Hardwick, VT 05843
Hotline & Office: 802/472.6463 *Fax:* 802/472.3504
Email: aware@vtlink.net

**Chittenden County
Women's Rape Crisis Center**

P.O. Box 92, Burlington, VT 05402
Hotline: 802/863.1236 *Office:* 802/864.0555
Fax: 802/863.8449
TTY: 802/ 846.2544
Email: stoprape@sover.net
Web: www.stoprapevermont.org

Women Helping Battered Women*

P.O. Box 1535, Burlington, VT 05402
Hotline: 802/658.1996 (also the TTY#)
Office: 802/658.3131 *Fax:* 802/658.3832
Email: whbw@whbw.org *Web:* www.whbw.org

**Franklin & Grand Isle Counties
Voices Against Violence***

P.O. Box 72, St. Albans, VT 05478
Hotline: 802/524.6575 *Office:* 802/524.8538
Fax: 802/524.8539
Email: voices@cvoeo.org
***Program with shelter**

**Lamoille County
Clarina Howard Nichols Center***

P.O. Box 517, Morrisville, VT 05661
Hotline: 802/888.5256 *Office:* 802/888.2584
Fax: 802/888.2570 *Email:* chnc@clarina.org
Web: www.clarina.org

**Orange & northeastern Windsor Counties
Safeline**

P.O. Box 368, Chelsea, VT 05038
Hotline: 1.800.639.7233 *Office:* 802/685.7900
Fax: 802/685.7902
Email: safelineinfo@safelinevt.org
Web: www.safelinevt.org

Rutland County

Rutland County Women's Network and Shelter*

P.O. Box 313, Rutland, VT 05701
Hotline: 802/775.3232 *Office:* 802/775.6788
Fax: 802/747.0470
Email: rcwnsmiche@yahoo.com
Web: www.angelfire.com/vt/rcwn

Washington County

Circle*

P.O. Box 652, Barre, VT 05641
Hotline: 1.877.543.9498 *Office:* 802/ 476.6010
Fax: 802/479.9310 Shelter *Fax:* 802/476.4746
Email: bwss@sover.net

Sexual Assault Crisis Team*

4 Cottage Street, Barre, VT 05641
Hotline: 802/479.5577 *Office:* 802/476.1388
Fax: 802/476.1381 *Email:* sactwc@aol.com

Windham County (including the village of Bellows Falls)

Women's Crisis Center*

P.O. Box 933, Brattleboro, VT 05302
Hotline: 802/254.6954 or 1.800.773.0689
Office: 802/257.7364
Fax: 802/257.1683 *Email:* wmnsc@myfairpoint.net

Windsor County (northeast)

WISE*

38 Bank Street, Lebanon, NH 03766
Hotline: 603/448.5525 or toll-free 1.866.348.WISE
Office: 603/448.5922 *Fax:* 603/448.2799
Email: peggy.oneil@wiseoftheuppervalley.org
Web: www.wiseoftheuppervalley.org

Windsor County (southern parts) & town of Rockingham

New Beginnings

23 Pleasant St., Springfield, VT 05156
Hotline: 802/885.2050 or 802/674.6700
Office: 802/885.2368 *Fax:* 802/885.2363
Email: newbeg@vermontel.net

APPENDIX F- MANDATORY REPORTING GUIDE

An Advocate's Guide to Mandatory Reporting

This guide is intended to provide clarity for advocates regarding the interaction between Vermont laws mandating some professionals to report abuse to children or “vulnerable adults” and the laws that prohibit advocates from disclosing information about the survivors with whom they work. In 2010 the office of the Attorney General and the Department for Children and Families (DCF) provided the Network with clarification of their interpretation of the child abuse and neglect reporting law. However, neither statute nor case law specifically address some of the situations in which advocates may find themselves. It is critical that each program work with a local attorney to fully understand legal responsibilities in specific circumstances.

Advocates who are mandated reporters are not exempted from reporting because they have crisis worker privilege. However, Vermont law does specifically exempt mandated reporters who are crisis workers from the mandate to report abuse, neglect or exploitation of vulnerable adults Adult Protective Services (APS).

Summary of Responsibilities of Mandatory reporters:

1. **Suspected child abuse or neglect should be reported.**
 2. **Consensual** sexual activity between teens aged 15-18 does not need to be reported;
 3. **“Consensual”** sexual activity should be reported if one person is 14 or younger and the other is 15 or older.
 4. **“Consensual”** sexual activity between two people who are both 14 or younger needs to be reported if there is a difference in age, size or developmental level, or if you believe it needs to be reported for some other reason (ie: youth of the children, nature of the acts, perception that one or both children have been harmed, etc);
 5. **Abuse/neglect/exploitation of vulnerable adults** should not be reported by any certified crisis worker without a release.
-

Who is mandated to report child abuse?

Section (a) of 33 V.S.A. § 4913 Reporting child abuse and neglect states the following:

(a) Any physician, surgeon, osteopath, chiropractor, or physician's assistant licensed, certified, or registered under the provisions of Title 26, any resident physician, intern, or any hospital administrator in any hospital in this state, whether or not so registered, and any registered nurse, licensed practical nurse, medical examiner, emergency medical personnel as defined in subdivision 2651(6) of Title 24, dentist, psychologist, pharmacist, any other health care provider, child care worker, school superintendent, school teacher, school librarian, school principal, school guidance counselor, and any other individual who is regularly employed by a school district, or who is contracted and paid by a school district to provide student services for five or more hours per week during the school year, mental health professional, social worker, probation officer, any employee, contractor, and grantee of the agency of human services who have contact with clients, police officer, camp owner, camp administrator, camp counselor, or member of the clergy who has reasonable cause to believe that any child has been abused or neglected shall report or cause a report to be made in accordance with the provisions of section 4914 of this title within 24 hours. As used in this subsection, "camp" includes any residential or nonresidential recreational program.

What does it mean to belong to a profession or have a certain role?

DCF interprets the mandated reporting language in terms of **profession** and **job role**.

If a person falls into the category of mandated reporter by “profession,” such as a teacher, social worker or emergency medical worker, then DCF considers that person to be a mandated reporter 24/7, regardless of what their current job setting is². In contrast, a person who is employed at a school, such as a cook, is mandated to report only because of their current job role, but if they leave the school job and become a cook for a restaurant, that person is no longer considered “mandated.” For the same reason, those that once were camp counselors but are no longer camp counselors are not now mandated reporters.

What if an advocate is no longer acting in the role that would cause them to be on the list of mandatory reporters?

For example, what about an advocate who has her MSW or BSW, but does not currently work in that capacity? Or an advocate who was once a teacher, but no longer teaches and whose teaching license has expired?

If an advocate has an MSW or a BSW, even if they are not currently or have never worked in that capacity, DCF considers them to be a social worker, and therefore mandated to report child abuse.

Also, if an advocate was trained as a teacher and/or once taught, they are still considered a teacher under DCF’s interpretation, and therefore mandated to report child abuse, regardless of whether or not they are currently teaching or still certified to teach in Vermont

Also, if an advocate is licensed with the state as a foster parent, they are mandated to report.

Does the child abuse reporting statute override crisis worker privilege?

Yes, according to the Attorney General’s office, if someone is on the list of mandated reporters, they are mandated to report child abuse. This is based on subsection (g):

(g) Except as provided in subsection (h) of this section*, a person may not refuse to make a report required by this section on the grounds that making the report would violate a privilege or disclose a confidential communication.

*Subsection (h) applies to clergy who are mandatory reporters except in the following instance:

(h) A member of the clergy shall not be required to make a report under this section if the report would be based upon information received in a communication which is:

- (1) made to a member of the clergy acting in his or her capacity as a spiritual advisor;
- (2) intended by the parties to be confidential at the time the communication is made;

² It should be noted that DCF interprets this to mean that if a person whose profession is listed in the statute, such as a teacher, witnesses child abuse while shopping at the grocery store, she/he would be mandated to report.

(3) intended by the communicant to be an act of contrition or a matter of conscience;
and

(4) required to be confidential by religious law, doctrine, or tenet.

The office of the Attorney General interprets this to mean that, if an individual is a mandatory reporter as set forth in 33 V.S.A. 4913(a), this individual is required by law to report suspected child abuse and neglect, without regard to any privilege that may otherwise apply to their circumstances. So, if an individual is a mandatory reporter and is also a “crisis worker,” they would not be able to rely on victim and crisis worker privilege to relieve them of their statutory mandate to report suspected child maltreatment to DCF.

The exception to mandatory reporting as set out in 33 V.S.A. 4913 is the clergy when acting in their capacity as such, as set out above. Please note that subsection 33 V.S.A. 4913(i) also clarifies that when Section (h) does not apply, a member of the clergy is “required to report on the basis of that information even though he or she may have also received a report of the abuse or neglect about the same person or incident in the manner described in subsection (h) of this section.”

Abuse and Neglect of Vulnerable Adults

Vermont law specifically exempts mandated reporters who are crises workers from the mandate to report abuse, neglect or exploitation of vulnerable adults, as legally defined, to Adult Protective Services (APS). See 33 VSA §6903. Crisis workers, therefore, should not report abuse, neglect or exploitation of vulnerable adults they may encounter in the course of their work without a release.

What should I report if I am a mandatory reporter?

The law requires reporting where one has reasonable cause to believe that any child has been abused or neglected. Further, Vermont’s mandatory reporting laws apply to minors under the age of 18. Sexual assault falls within the scope of child abuse. This means that any mandated reporter who has information about the sexual assault or abuse of a person under the age of 18 must file a report with DCF.

Please note that according to Vermont law, any sexual activity with a person under the age of 16 qualifies as sexual assault, unless the activity is consensual and the two people are married to each other or are both aged 15-18. Basically, Vermont statute states that persons under the age of 15 cannot legally consent to sexual activity; and that 15-year-olds are only capable of consenting to sexual activity with someone under the age of 19. This means that DCF must be notified of any sexual act that involves minors unless it’s consensual and they’re both 15-18 years old. This is obviously not an entirely practical mandate, so DCF policy states that consensual sexual activity between teens of the same age, size and developmental level does not need to be reported.

Who is responsible for reporting?

If an individual is a mandated reporter, it is their individual responsibility to report. It is not the responsibility of the program, the director of the program, or that person's supervisor. Therefore, the mandated reporter themselves must make the report to DCF within 24 hours. The failure to do so may result in criminal sanctions. The statute also states that individuals who are mandated by their profession are protected from retaliation from their employer as a result of reporting.

Thank you for the work that you do. Network Programs work every day to protect children and non-offending parents from abuse, and advocates are often in the best position to support a family through the process of reporting.

Appendix A
Confidentiality Statutes
12 V.S.A. § 1614. Victim and crisis worker privilege

(a)(1) "Crisis worker" means an employee or volunteer who:

(A) provides direct services to victims of abuse or sexual assault for a domestic violence program or sexual assault crisis program incorporated or organized for the purpose of providing assistance, counseling or support services;

(B) has undergone 20 hours of training;

(C) works under the direction of a supervisor of the program, supervises employees or volunteers, or administers the program; and

(D) is certified by the director of the program.

(2) A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of services to the victim or those reasonably necessary for the transmission of the communication.

(b) A victim receiving direct services from a crisis worker has the privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made by the victim to the crisis worker, including any record made in the course of providing support, counseling or assistance to the victim. The crisis worker shall be presumed to have authority to claim the privilege but only on behalf of the victim

The U.S. Violence Against Women and Department of Justice Reauthorization Act of 2005, Section 3 provides:

NONDISCLOSURE OF CONFIDENTIAL OR PRIVATE INFORMATION.—

“(A) IN GENERAL.—In order to ensure the safety of adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking, and their families, grantees and subgrantees under this title shall protect the confidentiality and privacy of persons receiving services.

“(B) NONDISCLOSURE.—Subject to subparagraphs (C) and (D), grantees and subgrantees shall not —

“(i) disclose any personally identifying information or individual information collected in connection with

services requested, utilized, or denied through grantees’ and subgrantees’ programs; or

“(ii) reveal individual client information without the informed, written, reasonably time-limited consent of the

person (or in the case of an unemancipated minor, the minor and the parent or guardian or in the case of

persons with disabilities, the guardian) about whom information is sought, whether for this program or any other Federal, State, tribal, or territorial grant program, except that consent for release may not be given by the abuser of the minor, person with disabilities, or the abuser of the other parent of the minor.

“(C) RELEASE.—If release of information described in subparagraph (B) is compelled by statutory or court mandate—

“(i) grantees and subgrantees shall make reasonable attempts to provide notice to victims affected by the disclosure of information; &

“(ii) grantees and subgrantees shall take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

“(D) INFORMATION SHARING.—Grantees and subgrantees may share—

“(i) nonpersonally identifying data in the aggregate regarding services to their clients and nonpersonally identifying demographic information in order to comply with Federal, State, tribal, or territorial reporting, evaluation, or data collection requirements;

“(ii) court-generated information and law-enforcement generated information contained in secure, governmental registries for protection order enforcement purposes; and “(iii) law enforcement- and prosecution-generated information necessary for law enforcement and prosecution purposes.

Appendix B

33 VSA §4912 Definitions used in the Mandatory Reporting Law

As used in this subchapter:

- (1) “Child” means an individual under the age of majority.
- (2) An “abused or neglected child” means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. An “abused or neglected child” also means a child who is sexually abused or at substantial risk of sexual abuse by any person.
- (3) “Harm” can occur by:
 - (A) Physical injury or emotional maltreatment;
 - (B) Failure to supply the child with adequate food, clothing, shelter, or health care. For the purposes of this subchapter, “adequate health care” includes any medical or nonmedical remedial health care permitted or authorized under state law. Notwithstanding that a child might be found to be without proper parental care under chapter 55 of Title 33, a parent or other person responsible for a child's care legitimately practicing his or her religious beliefs who thereby does not provide specified medical treatment for a child shall not be considered neglectful for that reason alone; or
 - (C) Abandonment of the child.
- (4) “Risk of harm” means a significant danger that a child will suffer serious harm other than by accidental means, which harm would be likely to cause physical injury, neglect, emotional maltreatment or sexual abuse.
- (5) “A person responsible for a child's welfare” includes the child's parent; guardian; foster parent; any other adult residing in the child's home who serves in a parental role; an employee of a public or private residential home, institution or agency; or other person responsible for the child's welfare while in a residential, educational, or child care setting, including any staff person.
- (6) “Physical injury” means death, or permanent or temporary disfigurement or impairment of any bodily organ or function by other than accidental means.
- (7) “Emotional maltreatment” means a pattern of malicious behavior which results in impaired psychological growth and development.
- (8) “Sexual abuse” consists of any act or acts by any person involving sexual molestation or

exploitation of a child including but not limited to incest, prostitution, rape, sodomy, or any lewd and lascivious conduct involving a child. Sexual abuse also includes the aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts a sexual conduct, sexual excitement or sadomasochistic abuse involving a child.

(9) “Multidisciplinary team” means a group of professionals, paraprofessionals and other appropriate individuals, empanelled by the commissioner under this chapter, for the purpose of assisting in the identification and review of cases of child abuse and neglect, coordinating treatment services for abused and neglected children and their families and promoting child abuse prevention.

(10) “Substantiated report” means that the commissioner or the commissioner's designee has determined after investigation that a report is based upon accurate and reliable information that would lead a reasonable person to believe that the child has been abused or neglected.

(11) [Repealed.]

(12) “Member of the clergy” means a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, nun, brother, ordained or licensed minister, leader of any church or religious body, or accredited Christian Science practitioner.

(13) “Redacted investigation file” means the intake report, the investigation activities summary, and case determination report that are amended in accordance with confidentiality requirements set forth in subsection 4913(d) of this title.

(14) “Child protection registry” means a record of all investigations that have resulted in a substantiated report on or after January 1, 1992.

(15) “Registry record” means an entry in the child protection registry that consists of the name of an individual substantiated for child abuse or neglect, the date of the finding, the nature of the finding, and at least one other personal identifier, other than a name, listed in order to avoid the possibility of misidentification.

(16) “Investigation” means a response to a report of child abuse or neglect that begins with the systematic gathering of information to determine whether the abuse or neglect has occurred and, if so, the appropriate response. An investigation shall result in a formal determination as to whether the reported abuse or neglect has occurred.

(17) “Assessment” means a response to a report of child abuse or neglect that focuses on the identification of the strengths and support needs of the child and the family, and any services

they may require to improve or restore their well-being and to reduce the risk of future harm. The child and family assessment does not result in a formal determination as to whether the reported abuse or neglect has occurred.

33VSA §4913 -Reporting suspected child abuse and neglect; remedial action

(a) Any physician, surgeon, osteopath, chiropractor, or physician's assistant licensed, certified, or registered under the provisions of Title 26, any resident physician, intern, or any hospital administrator in any hospital in this state, whether or not so registered, and any registered nurse, licensed practical nurse, medical examiner, emergency medical personnel as defined in subdivision 2651(6) of Title 24, dentist, psychologist, pharmacist, any other health care provider, child care worker, school superintendent, school teacher, school librarian, school principal, school guidance counselor, and any other individual who is regularly employed by a school district, or who is contracted and paid by a school district to provide student services for five or more hours per week during the school year, mental health professional, social worker, probation officer, any employee, contractor, and grantee of the agency of human services who have contact with clients, police officer, camp owner, camp administrator, camp counselor, or member of the clergy who has reasonable cause to believe that any child has been abused or neglected shall report or cause a report to be made in accordance with the provisions of [section 4914](#) of this title within 24 hours. As used in this subsection, "camp" includes any residential or nonresidential recreational program.

(b) The commissioner shall inform the person who made the report under subsection (a) of this section:

- (1) whether the report was accepted as a valid allegation of abuse or neglect;
- (2) whether an assessment was conducted and, if so, whether a need for services was found; and
- (3) whether an investigation was conducted and, if so, whether it resulted in a substantiation.

(c) Any other concerned person not listed in subsection (a) of this section who has reasonable cause to believe that any child has been abused or neglected may report or cause a report to be made in accordance with the provisions of [section 4914](#) of this title.

(d)(1) Any person other than a person suspected of child abuse, who in good faith makes a report to the department shall be immune from any civil or criminal liability which might otherwise be incurred or imposed as a result of making a report.

- (2) An employer or supervisor shall not discharge; demote; transfer; reduce pay, benefits, or work privileges; prepare a negative work performance evaluation; or take any other action detrimental to any employee because that employee filed a good faith report in accordance with the provisions of this subchapter. Any person making a report under this subchapter shall have a civil cause of action for appropriate compensatory and punitive damages against

any person who causes detrimental changes in the employment status of the reporting party by reason of his or her making a report.

(e) The name of and any identifying information about either the person making the report or any person mentioned in the report shall be confidential unless:

- (1) the person making the report specifically allows disclosure;
- (2) a human services board proceeding or a judicial proceeding results therefrom;
- (3) a court, after a hearing, finds probable cause to believe that the report was not made in good faith and orders the department to make the name of the reporter available; or
- (4) a review has been requested pursuant to [section 4916a](#) of this title, and the department has determined that identifying information can be provided without compromising the safety of the reporter or the persons mentioned in the report.

(f)(1) A person who violates subsection (a) of this section shall be fined not more than \$500.00.

(2) A person who violates subsection (a) of this section with the intent to conceal abuse or neglect of a child shall be imprisoned not more than six months or fined not more than \$1,000.00, or both.

(3) This section shall not be construed to prohibit a prosecution under any other provision of law.

(g) Except as provided in subsection (h) of this section, a person may not refuse to make a report required by this section on the grounds that making the report would violate a privilege or disclose a confidential communication.

(h) A member of the clergy shall not be required to make a report under this section if the report would be based upon information received in a communication which is:

- (1) made to a member of the clergy acting in his or her capacity as spiritual advisor;
- (2) intended by the parties to be confidential at the time the communication is made;
- (3) intended by the communicant to be an act of contrition or a matter of conscience; and
- (4) required to be confidential by religious law, doctrine, or tenet.

(i) When a member of the clergy receives information about abuse or neglect of a child in a manner other than as described in subsection (h) of this section, he or she is required to report on the basis of that information even though he or she may have also received a report of abuse or neglect about the same person or incident in the manner described in subsection (h) of this section.

