

BILL NO. 31-0019

Thirty-first Legislature of the Virgin Islands

February 17, 2015

An Act amending title 14 Virgin Islands Code, chapter 1 adding subchapter VIII providing for Harassment Prevention Orders

PROPOSED BY: Senators Terrence “Positive” Nelson and Kenneth L. Gittens

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 14 Virgin Islands Code, chapter 1, is amended by adding subchapter VIII to read as follows:

SUBCHAPTER VIII RESTRAINING ORDERS

§111. As used in this subchapter the following words have the following meanings:

(1) "Abuse" means attempting to cause or causing physical harm to another or placing another in fear of imminent serious physical harm.

(2) “Harassment” means three or more acts of willful and malicious conduct aimed at a specific person committed with the intent to cause fear, verbal and/or physical intimidation, abuse or damage to property and which does in fact cause fear, intimidation,

1 verbal or physical abuse or damage to property; or an act that by force, threat or duress
2 causes another to involuntarily engage in sexual relations, or constitutes a violation of
3 this subchapter.

4 (3) "Court" means the Superior Court of the Virgin Islands

5 (4) "Peace officer" means any officer authorized to serve criminal process.

6 (5) "Malicious" means conduct characterized by cruelty, hostility or revenge.

7 (6) "Harassment Prevention Order" means an order issued by another
8 jurisdiction, an injunction or other order issued by a court of another state, territory or
9 possession of the United States, the Commonwealth of Puerto Rico, or the District of
10 Columbia, or a tribal court that is issued for the purpose of preventing violent or
11 threatening acts, abuse or harassment against, or contact or communication with or
12 physical proximity to another person, including temporary and final orders issued by civil
13 and criminal courts filed by or on behalf of a person seeking protection from a person
14 with no domestic ties.

15 **§112.** (a) Petitions for proceedings under this subchapter must be filed, heard
16 and determined in the Superior Court.

17 (b) The Court shall adopt a form of complaint for use under this subchapter
18 which shall be in such form and language to permit a petitioner to prepare and file such
19 complaint pro se.

20 (c) filing fees and the fees pertaining to obtaining of certified copies shall be
21 charged as per the instruction from the court.

22 (d) Upon the filing of a complaint under this chapter, the clerk of the Court
23 shall inform a petitioner that the proceedings under this subchapter are civil in nature, and
24 that violations of orders issued in the proceedings under this subchapter are criminal in
25 nature. The Court shall give the petitioner information prepared by the Attorney General's

1 office that other criminal proceedings may be available. The Attorney General's Office
2 shall instruct the petitioner relative to the procedures required to initiate criminal
3 proceedings including but not limited to, a complaint for any violation under title 14
4 Virgin Islands Code. Whenever possible, the Court shall provide the information in the
5 complainant's native language.

6 (e) The Court shall not deny any complaint filed under this subchapter solely
7 because it was not filed within a particular time period after the last alleged incident of
8 harassment.

9 (f) A proceeding commenced under this subchapter does not preclude any
10 other civil or criminal remedies. A party filing a petition under this subchapter shall
11 disclose any prior or pending actions involving the parties; including but not limited to,
12 court actions, administrative proceedings and disciplinary proceedings.

13 **§113.** (a) Upon the filing of a petition under this subchapter, the Court may enter
14 such temporary orders as it considers necessary to protect a petitioner from harassment,
15 including relief as provided in subsection (c) of this section.

16 (b) If the petitioner demonstrates a substantial likelihood of immediate danger
17 of harassment, the Court may enter such temporary relief orders without notice as it
18 considers necessary to protect the petitioner from harassment and shall immediately
19 thereafter notify the respondent that the temporary orders have been issued. The Court
20 shall give the respondent an opportunity to be heard on the question of continuing the
21 temporary order and of granting other relief as requested by the petitioner not later than
22 10 court business days after the orders are entered. If the respondent does not appear at
23 the subsequent hearing, the temporary orders shall continue in effect without further
24 order of the Court.

(c) A person claiming harassment may file a petition in the Court requesting a Harassment Prevention Order. A person may petition the Court under this subchapter for an order that shall require the respondent do any or all of the following:

- (1) refrain from abusing or harassing the petitioner;
- (2) refrain from contacting the petitioner, unless authorized by the Court;
- (3) remain away from the petitioner's household or workplace, workspace or work area and any other personal or private property;
- (4) pay the petitioner monetary compensation for the losses suffered as a direct result of the harassment; the compensatory, damages shall include, but shall not be limited to, loss of earnings, out-of-pocket losses for injuries sustained or property damaged, cost of replacement of locks, medical expenses, cost for obtaining an unlisted phone number and reasonable attorney's fees; or
- (5) refrain from specified behavior that the Court determines is necessary to effectuate orders described this subsection.

(d) each Harassment Prevention Order must contain a statement in substantially the following form:

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

Any violation of this order or a protection order issued by another jurisdiction is punishable by a fine of not more than \$5,000, or by imprisonment for not more than 2 1/2 years or by both such fine and imprisonment. In addition to, but not in lieu of, the foregoing penalties and any other sentence, fee or assessment, the Court shall order persons convicted of a violation of such an order to pay a fine of \$125 which the Court shall remit to the Commissioner of Finance for deposit into the Harassment and Violence Prevention and Treatment Fund, and may order the respondent to complete an

1 appropriate treatment program based on the offense.

2 (e) Any relief granted by the Court may not extend for a period exceeding two
3 years. Every order must, on its face, state the time and date the order is to expire and
4 must include the date and time that the matter will again be heard. If the petitioner
5 appears at the Court at the date and time the order is to expire, the Court shall determine
6 whether or not to extend the order for any additional time reasonably necessary to protect
7 the petitioner or to enter a permanent order. When the expiration date stated on the order
8 is on a date when the Court is closed to business, the order expires the next date that the
9 Court is open to business. The petitioner may appear on such next court business day at
10 the time designated by the order to request that the order be extended. The Court may
11 also extend the order upon motion of the petitioner, for such additional time as the Court
12 considers necessary to protect the petitioner from harassment. The fact that harassment
13 has not occurred during the pendency of an order does not, in itself, constitute sufficient
14 ground for denying or failing to extend the order, or allowing an order to expire or be
15 vacated or for refusing to issue a new order.

16 (f) The Court may modify its order at any subsequent time upon motion by
17 either party. However, the Court shall give the non-moving party sufficient notice and
18 opportunity to be heard on the modification. When the petitioner's address is inaccessible
19 to the respondent as provided in section 118 and the respondent has filed a motion to
20 modify the court's order, the Court is responsible for notifying the petitioner. In no event
21 may the Court disclose any such inaccessible address.

22 (g) When considering a petition filed under this subchapter, the Court shall
23 determine whether the named respondent has a civil or criminal record involving violent
24 crimes or abuse. Upon receipt of information that an outstanding warrant exists against
25 the named respondent, a judge shall order that the appropriate law enforcement officials

1 be notified and shall order that any information regarding the respondent's most recent
2 whereabouts must be forwarded to such officials. In all instances in which an
3 outstanding warrant exists, the Court shall make a finding, based upon all of the
4 circumstances, as to whether an imminent threat of bodily injury exists to the petitioner.
5 In all instances in which such an imminent threat of bodily injury is found to exist, the
6 judge shall notify the appropriate law enforcement officials of such finding and such
7 officials shall take all necessary actions to execute any such outstanding warrant as soon
8 as is practicable. Whenever the Court orders that the respondent refrain from harassing
9 the petitioner or have no contact with the petitioner, under sections 113 or 114, the Clerk
10 or Clerk-Magistrate shall transmit:

11 (i) to the probation office information for filing in the court activity record
12 information system or the territory wide domestic violence recordkeeping system, or in a
13 recordkeeping system created by the probation office to record the issuance of, or
14 violation of, prevention orders issued pursuant to this subchapter; and

15 (ii) two (2) certified copies of each such order and one (1) copy of the
16 complaint and summons forthwith to the appropriate law enforcement agency which,
17 unless otherwise ordered by the Court, shall serve one copy of each order upon the
18 respondent, together with a copy of the complaint and order and summons. The law
19 enforcement agency shall promptly make its return of service to the Court. The
20 Commissioner of Police shall develop and implement a territory wide Harassment
21 Prevention Order recordkeeping system.

22 (h) Peace officers shall use every reasonable means to enforce Harassment
23 Prevention Orders. The Virgin Islands Police Department shall establish procedures
24 adequate to ensure that an officer on the scene of an alleged violation of such order shall
25 be informed of the existence and terms of such order. The Court shall notify the

1 appropriate law enforcement agency in writing whenever any such order is withdrawn
2 and shall direct the agency to destroy all record of such vacated order and such agency
3 shall comply with that directive.

4 **§114.** (a) When the Court is closed for business or the petitioner is unable to
5 appear in court because of severe hardship due to the petitioner's physical condition, the
6 Court may grant relief to the petitioner as provided under section 113 if the petitioner
7 demonstrates a substantial likelihood of immediate danger of harassment. In the
8 discretion of the justice, such relief may be granted and communicated by telephone to an
9 officer or employee of an appropriate law enforcement agency, who shall record the order
10 on a form of order promulgated for such use by the Court and shall deliver a copy of the
11 order on the next court day to the clerk of the Court. If relief has been granted without
12 the filing of a complaint pursuant to this section, the petitioner shall appear in court on
13 the next available business day to file a complaint. If the petitioner in such a case is
14 unable to appear in court without severe hardship due to the petitioner's physical
15 condition, a representative may appear in court, on the petitioner's behalf and file the
16 requisite complaint with an affidavit setting forth the circumstances preventing the
17 petitioner from appearing personally. Notice to the petitioner and respondent and an
18 opportunity for the respondent to be heard must be given as provided in section 113.

19 (b) Any order issued under this section and any documentation in support
20 thereof must be certified on the next court day by the Clerk of the Court issuing the order
21 to the court having venue and jurisdiction over the matter. Such certification to the court
22 has the effect of commencing proceedings under this subchapter and invoking the other
23 provisions of this subchapter, but shall not be deemed necessary for an emergency order
24 issued under this section to take effect.

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2 **§115.** (a) Any protection order issued by another jurisdiction must be given full
3 faith and credit throughout the territory and enforced as if it were issued in the territory
4 for as long as the order is in effect in the issuing jurisdiction. A person entitled to
5 protection under a protection order issued by another jurisdiction may file such order
6 with the Court by filing a certified copy of the order. The person shall swear under oath
7 in an affidavit, to the best of the person's knowledge that the order is presently in effect as
8 written. Upon request by a law enforcement agency, the Clerk of the Court shall provide
9 a certified copy of the protection order issued by the other jurisdiction.

10 (b) A Peace Officer may presume the validity of, and enforce in accordance
11 with section 116, a copy of a protection order issued by another jurisdiction which has
12 been provided to the peace officer by any source; if the officer is also provided with a
13 statement by the person protected by the order that such order remains in effect. Peace
14 Officers may rely on such statement by the person protected by such order.

15 **116.** (a) Whenever a peace officer has reason to believe that a person has been
16 abused or harassed or is in danger of being abused or harassed, such officer shall use all
17 reasonable means to prevent further abuse or harassment. Peace officers shall make
18 every reasonable effort to do the following as part of the emergency response:

19 (1) assess the immediate physical danger to the victim and provide assistance
20 reasonably intended to mitigate the safety risk;

21 (2) if there is observable injury to the victim or if the victim is complaining of
22 injury, encourage the victim to seek medical attention and arrange for medical assistance
23 or request an ambulance for transport to a hospital;

24 (3) if a sexual assault has occurred, advise the victim that there are time-
25 sensitive medical or forensic options that may be available, encourage the victim to seek

1 medical attention and arrange for medical assistance or request an ambulance for
2 transport to a hospital;

3 (4) provide the victim with referrals to local resources that may assist the
4 victim in locating and getting to a safe place;

5 (5) provide adequate notice to the victim of the victim's rights including, but
6 not limited to, obtaining a Harassment Prevention Order; provided, however, that the
7 notice shall consist of providing the victim with a copy of the following statement before
8 the officer leaves the scene or premises and after reading the statement to the victim;
9 provided further, that if the victim's native language is not English, the statement shall be
10 then provided in the victim's native language whenever possible:

11 "You have the right to appear at the Superior Court, and file a complaint
12 requesting any of the following applicable orders: (i) an order restraining your attacker
13 from harassing or abusing you; (ii) an order directing your attacker to refrain from
14 contacting you; (iii) an order directing your attacker to stay away from your home or your
15 workplace, workspace or work area and personal property; (iv) an order directing your
16 attacker to pay you for losses suffered as a result of the harassment or abuse, including
17 loss of earnings, out-of-pocket losses for injuries sustained or property damaged, costs of
18 replacement of locks, medical expenses, cost for obtaining an unlisted phone number, and
19 reasonable attorneys' fees. For an emergency on weekends, holidays or weeknights, the
20 police will assist you in activating the emergency response system so that you may file a
21 complaint and request a Harassment Prevention Order.

22 You have the right to go to the Superior Court and apply for a criminal complaint
23 for sexual assault, verbal or physical threats, criminal stalking, criminal harassment,
24 assault and battery, assault with a deadly weapon, and assault with intent to kill or other
25 related offenses.

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2 If you are in need of medical treatment, you have the right to request that an
3 officer present drive you to the nearest hospital or otherwise assist you in obtaining
4 medical treatment.

5 If you believe that police protection is needed for your physical safety, you have
6 the right to request that the officer present remain at the scene until you can leave or until
7 your safety is otherwise ensured. You may also request that the officer assist you in
8 locating and taking you to a safe place including, but not limited to, a designated meeting
9 place for a shelter or a family member's or a friend's residence or a similar place of
10 safety.

11 You may request and obtain a copy of the police incident report, at a cost
12 instructed, the police department.”

13 (6) assist the victim by activating the emergency judicial system when the
14 court is closed for business;

15 (7) inform the victim that the abuser will be eligible for bail and may be
16 promptly released; and

17 (8) arrest any person that a peace officer witnessed or has probable cause to
18 believe violated a temporary or permanent vacate, restraining, stay-away or no-contact
19 order or judgment issued under this subchapter or similar protection order issued by
20 another jurisdiction; but if there are no vacate, restraining, stay-away or no-contact orders
21 or judgments in effect, arresting the person is the preferred response if the peace officer
22 witnessed or has probable cause to believe that a person: (i) has committed a felony; (ii)
23 has committed a misdemeanor involving harassment or abuse as defined in section 111;
24 or (iii) has committed an assault and battery in violation of sections 295, 296, and 297 of
25 title 14; the safety of the victim must be paramount in any decision to arrest. If a peace

1 officer arrests both parties, the peace officer shall submit a detailed, written report in
2 addition to an incident report, setting forth the grounds for arresting both parties.

3 (b) No peace officer shall be held liable in a civil action for personal injury or
4 property damage brought by a party to an incident of abuse or for an arrest based on
5 probable cause when such officer acted reasonably and in good faith and in compliance
6 with this subchapter.

7 (c) Whenever a peace officer investigates an incident of harassment, the
8 officer shall immediately file a written incident report in accordance with the standards of
9 the V.I. Police Department and, wherever possible, in the form of the National Incident -
10 Based Reporting System, as defined by the Federal Bureau of Investigation

11 (d) The victim shall be provided with a copy of the full incident report, at a
12 nominal cost, upon request to VI Police Department.

13 (e) When any person arrested under this subchapter is released on bail
14 reasonable efforts must be made to inform the victim of the release prior to or at the time
15 of the release. When any person charged with or arrested for a crime involving
16 harassment under this subchapter is released from custody, the Court shall issue, upon the
17 request of the victim, a written no-contact order or stay-away order prohibiting the person
18 charged or arrested from having any contact with the victim and shall use all reasonable
19 means to notify the victim immediately of release from custody. The victim must be
20 provided, at no cost, with a certified copy of the no-contact or stay-away order.

21 **§117.** (a) In each instance in which there is a violation of a Harassment
22 Prevention Order or a protection order issued by another jurisdiction, the Court may order
23 the respondent to pay the petitioner for all damages including, but not limited to, loss of
24 earnings, out-of-pocket losses for injuries sustained or property damaged, cost of
25 replacement locks, medical expenses, cost for obtaining an unlisted telephone number

1 and reasonable attorney's fees.

2 (b) Any such violation may be enforced by the Court. Criminal remedies
3 provided herein are not exclusive and do not preclude any other available civil or
4 criminal remedies. The Court may enforce by civil contempt procedure a violation of its
5 own court order.

6 **§118.** (a) The records of cases arising out of an action brought under this
7 subchapter in which the petitioner or respondent is a minor must be withheld from public
8 inspection except by order of the court; provided, however, that such records shall be
9 open, at all reasonable times, to the inspection of the minor, such minor's parent,
10 guardian and attorney and to the petitioner and the petitioner's attorney.

11 (b) The petitioner's residential address, residential telephone number, mobile
12 phone number and workplace name, address and telephone number, contained within the
13 Court's records of cases arising out of an action brought by a petitioner under this
14 subchapter, is confidential and must be withheld from public inspection, except by order
15 of the Court provided; unless the petitioner specifically requests that this information be
16 withheld from the order, that the petitioner's residential address and workplace address
17 appear on the court order and be accessible to the respondent and the respondent's
18 attorney. All confidential portions of the records must be accessible at all reasonable
19 times to the petitioner and petitioner's attorney, to others specifically authorized by the
20 petitioner to obtain such information and to prosecutors, victim-witness advocates, sexual
21 assault counselors and peace officers, if such access is necessary in the performance of
22 their duties. This section applies to any protection order issued by another jurisdiction.
23 The confidential portions of the court records shall not be deemed to be public records.

24 **§119.** (a) The Court shall impose an assessment of \$350 against any person who
25 has been referred to a treatment program as a condition of probation. The assessment is

1 in addition to the cost of the treatment program. In the discretion of the Court, the
2 assessment may be reduced or waived if the Court finds that the respondent is indigent or
3 that payment of the assessment would cause the respondent, or the dependents of the
4 respondent, severe financial hardship. Assessments made pursuant to this section are in
5 addition to any other fines, assessments or restitution imposed in any disposition. All
6 funds collected by the Court pursuant to this section must be transmitted monthly to the
7 Commissioner of Finance, who shall deposit such funds into the Harassment and
8 Violence Prevention and Treatment Fund.

9 **§120.** (a) The Harassment & Domestic Violence Prevention & Treatment Fund
10 are established in the Treasury of the Virgin Islands as a separate and distinct fund. The
11 Commissioner of Finance shall maintain and provide for the administration of the Fund
12 and no monies shall be made available for expenditure, except as provided in this section.
13 The Fund consists of all fines, assessments and fees collected pursuant to the provisions
14 of this subchapter. The Fund shall be used exclusively for persons referred to a treatment
15 program pursuant to this subchapter.

16 **BILL SUMMARY**

17 This bill amends title 14, chapter 1 of the Virgin Islands Code by adding
18 subchapter VIII. Subchapter VIII proposes to establish a Harassment Prevention Order
19 and proceeding. The proceeding is civil in nature but violation of an order issued in the
20 proceeding is criminal.

21 Harassment is defined as three or more acts of willful and malicious conduct
22 aimed at a specific person committed with the intent to cause fear, intimidation, abuse or
23 damage to property and which does in fact cause fear, intimidation, abuse or damage to
24 property; or an act that by force, threat or duress causes another to involuntarily engage in
25 sexual relations, or constitutes a violation of this title [the criminal code]. The bill

1 establishes protections for victims of harassment. The bill also establishes remedies for
2 victims of harassment. Under this bill a victim of harassment may seek an order from the
3 court to refrain the respondent from abusing or harassing the petitioner; to refrain him
4 from contacting the petitioner; unless authorized by the Court; to remain away from the
5 petitioner's household or workplace, workspace or work area and any personal property;
6 to pay the petitioner monetary compensation for the losses suffered as a direct result of
7 the harassment; to grant compensatory damages, including loss of earnings, out-of-pocket
8 losses for injuries sustained or property damaged, cost of replacement of locks, medical
9 expenses, cost for obtaining an unlisted phone number and reasonable attorney's fees; or
10 to refrain from specified behavior that the Court determines is necessary to effectuate
11 orders described in this subsection.

12 The bill also establishes a fund for persons referred to a treatment program
13 pursuant to this Act.

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19 **BR15-0061/January 16, 2015/**
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