

1 S.154

2 Introduced by Senators Sears, Campbell, Ayer, Flory, and Pollina

3 Referred to Committee on Judiciary

4 Date: January 5, 2016 mn

5 Subject: Crimes; assault on employee of Family Services Division of

6 Department for Children and Families; criminal threatening

7 Statement of purpose of bill as introduced: This bill proposes to provide
8 enhanced penalties for assaulting an employee of the Family Services Division
9 of the Department for Children and Families and to establish the crime of
10 criminal threatening.

~~An act relating to enhanced penalties for assaulting an employee of the
Family Services Division of the Department for Children and Families and
to criminal threatening~~

*An act relating to stalking, criminal threatening, and enhanced penalties for
assault*

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 ~~Sec. 1. 13 V.S.A. § 1028 is amended to read:~~

13 § 1028. ASSAULT OF LAW ENFORCEMENT OFFICER, FIREFIGHTER,

14 EMERGENCY MEDICAL PERSONNEL MEMBER, EMPLOYEE

15 OF FAMILY SERVICES DIVISION OF DEPARTMENT FOR

16 CHILDREN AND FAMILIES, OR HEALTH CARE WORKER;

17 ~~ASSAULT WITH BODILY FLUIDS~~

1 ~~(a) A person convicted of a simple or aggravated assault against a law~~
2 enforcement officer, a firefighter, a health care worker, an employee of the
3 Family Services Division of the Department for Children and Families, or a
4 member of emergency medical personnel as defined in 24 V.S.A. § 2651(6)
5 while the officer, firefighter, health care worker, employee of the Family
6 Services Division, or emergency medical personnel member is performing a
7 lawful duty, in addition to any other penalties imposed under sections 1023 and
8 1024 of this title, shall:

9 (1) for the first offense, be imprisoned not more than one year;

10 (2) for the second offense and subsequent offenses, be imprisoned not
11 more than 10 years.

12 * * *

13 Sec. 2. 13 V.S.A. § 1702 is added to read:

14 § 1702. CRIMINAL THREATENING

15 (a) A person shall not by words or conduct intentionally:

16 (1) threaten another person; and

17 (2) as a result of the threat, place the other person in reasonable fear of
18 death or serious bodily injury.

19 (b) A person who violates subsection (a) of this section shall be imprisoned
20 not more than one year or fined not more than \$1,000.00, or both.

1 ~~(c) A person who violates subsection (a) of this section with the intent to~~
2 ~~prevent another person from reporting to the Department for Children and~~
3 ~~Families the suspected abuse or neglect of a child shall be imprisoned not more~~
4 ~~than two years or fined not more than \$1,000.00, or both.~~

5 ~~(d) It shall not be a defense to a charge under this section that the person~~
6 ~~did not intend or have the ability to carry out the threat.~~

7 ~~(e) As used in this section, "serious bodily injury" shall have the same~~
8 ~~meaning as in section 1021 of this title.~~

9 Sec. 3. EFFECTIVE DATE

10 ~~This act shall take effect on passage.~~

~~Sec. 1. 13 V.S.A. § 1028 is amended to read:~~

~~§ 1028. ASSAULT OF LAW ENFORCEMENT OFFICER, FIREFIGHTER,
EMERGENCY MEDICAL PERSONNEL MEMBER, MANDATED
REPORTER, EMPLOYEE OF FAMILY SERVICES DIVISION OF
DEPARTMENT FOR CHILDREN AND FAMILIES, OR HEALTH
CARE WORKER; ASSAULT WITH BODILY FLUIDS~~

~~(a) A person convicted of a simple or aggravated assault against a law
enforcement officer, a firefighter, a health care worker, a mandated reporter
as defined in 33 V.S.A. § 4913, an employee of the Family Services Division of
the Department for Children and Families, or a member of emergency medical
personnel as defined in 24 V.S.A. § 2651(6) while the officer, firefighter, health
care worker, mandated reporter, employee of the Family Services Division, or
emergency medical personnel member is performing a lawful duty, in addition
to any other penalties imposed under sections 1023 and 1024 of this title,
shall:~~

~~(1) for the first offense, be imprisoned not more than one year;~~

~~(2) for the second offense and subsequent offenses, be imprisoned not
more than 10 years.~~

~~* * *~~

~~(d) For purposes of As used in this section:~~

~~(1) "Health care facility" shall have the same meaning as defined in 18 V.S.A. § 9432(8); and.~~

~~(2) "Health care worker" means an employee of a health care facility or a licensed physician who is on the medical staff of a health care facility who provides direct care to patients or who is part of a team-response to a patient or visitor incident involving real or potential violence.~~

~~(3) "Performing a lawful duty" for a mandated reporter shall mean performing the mandated reporter's lawful duty under 33 V.S.A. § 4913(c).~~

~~(e) This section shall not apply to an individual under 18 years of age residing in a residential rehabilitation facility.~~

Sec. 2. 13 V.S.A. § 1702 is added to read:

§ 1702. CRIMINAL THREATENING

(a) A person shall not by words or conduct intentionally knowingly:

(1) threaten another person; and

(2) as a result of the threat, place the other person in reasonable apprehension of death or serious bodily injury.

(b) A person who violates subsection (a) of this section shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.

(c) A person who violates subsection (a) of this section with the intent to prevent another person from reporting to the Department for Children and Families the suspected abuse or neglect of a child shall be imprisoned not more than two years or fined not more than \$1,000.00, or both.

(d) As used in this section:

(1) "Serious bodily injury" shall have the same meaning as in section 1021 of this title.

(2) "Threat" and "threaten" shall not include constitutionally protected activity.

(e) Any person charged under this section who is under 18 years of age shall be adjudicated as a juvenile delinquent.

(f) It shall be an affirmative defense to a charge under this section that the person did not have the ability to carry out the threat. The burden shall be on the defendant to prove the affirmative defense by a preponderance of the evidence.

Sec. 3. EFFECTIVE DATE

~~This act shall take effect on passage.~~

Sec. 1. FINDINGS

The General Assembly finds the following:

- (1) Stalking is a serious problem in Vermont and nationwide.
- (2) Stalking involves severe intrusions on the victim's personal privacy and autonomy.
- (3) Stalking causes a long-lasting impact on the victim's quality of life and creates risks to the security and safety of the victim and others even in the absence of express threats of physical harm.
- (4) Stalking conduct often becomes increasingly violent over time.
- (5) There is a strong connection between stalking and domestic violence and sexual assault.

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

§ 5131. DEFINITIONS

As used in this chapter:

~~(1)(A) "Course of conduct" means a pattern of conduct composed of two or more acts over a period of time, however short, evidencing a continuity of purpose two or more acts over a period of time, in which a person follows, monitors, surveils, threatens, or makes threats about another person, or interferes with another person's property. This definition shall apply to acts conducted by the person directly or indirectly, and by any action, method, device, or means. Constitutionally protected activity is not included within the meaning of "course of conduct."~~

~~(B) As used in subdivision (A) of this subdivision (1), threaten shall not be construed to require an express or overt threat.~~

~~(2) "Following" means maintaining over a period of time a visual or physical proximity to another person in such manner as would cause a reasonable person to have fear of unlawful sexual conduct, unlawful restraint, bodily injury, or death. [Repealed.]~~

~~(3) "Lying in wait" means hiding or being concealed for the purpose of attacking or harming another person.~~

~~(4) "Nonphysical contact" includes telephone calls, mail, e-mail, social media commentary or comment, or other electronic communication, fax, and written notes.~~

~~(4) "Reasonable person" means a reasonable person in the victim's circumstances.~~

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

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

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

~~(B) that the person engaging in the conduct knows or should know would cause a reasonable person to:~~

~~(A) fear for his or her safety or the safety of a family member; or~~

~~(B) would cause a reasonable person suffer substantial emotional distress as evidenced by:~~

~~(i) a fear of unlawful sexual conduct, unlawful restraint, bodily injury, or death; or~~

~~(ii) significant modifications in the person’s actions or routines, including moving from an established residence, changes to established daily routes to and from work that cause a serious disruption in the person’s life, changes to the person’s employment or work schedule, or the loss of a job or time from work.~~

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

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

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

(C) engaging in nonphysical contact with the plaintiff through third parties who may or may not know of the order.

(8) *~~“Threatening behavior” means acts which would cause a reasonable person to fear unlawful sexual conduct, unlawful restraint, bodily injury, or death, including verbal threats, written, telephonic, or other electronically communicated threats, vandalism, or physical contact without consent. [Repealed.]~~*

Sec. 3. 12 V.S.A. § 5133 is amended to read:

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

(a) A person, other than a family or household member as defined in 15 V.S.A. § 1101(2), may seek an order against stalking or sexual assault on behalf of ~~him~~ him- or herself or his or her children by filing a complaint under this chapter. A minor 16 years of age or older may file a complaint under this chapter seeking relief on his or her own behalf. The plaintiff shall submit an affidavit in support of the order.

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

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

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

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

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

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

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

(e) Relief shall be granted for a fixed period, at the expiration of which time the court may extend any order, upon motion of the plaintiff, for such additional time as it deems necessary to protect the plaintiff or the plaintiff's children, or both. It is not necessary for the court to find that the defendant stalked or sexually assaulted the plaintiff during the pendency of the order to extend the terms of the order. The court may modify its order at any subsequent time upon motion by either party and a showing of a substantial change in circumstance.

* * *

Sec. 4. 13 V.S.A. § 1021 is amended to read:

§ 1021. DEFINITIONS

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

* * *

(4) ~~Course~~ (b) As used in this subchapter, "course of conduct" means a pattern of conduct composed of two or more acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

Sec. 5. 13 V.S.A. chapter 19, subchapter 7 is amended to read:

Subchapter 7. Stalking

§ 1061. DEFINITIONS

As used in this subchapter:

(1)(A) ~~"Stalk" means to engage in a course of conduct which consists of following, lying in wait for, or harassing, and:~~

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

~~(B) would cause a reasonable person to fear for his or her physical safety or would cause a reasonable person substantial emotional distress.~~

(2) ~~"Following" means maintaining over a period of time a visual or physical proximity to another person in such manner as would cause a reasonable person to have a fear of unlawful sexual conduct, unlawful restraint, bodily injury, or death.~~

(3) ~~"Harassing" means actions directed at a specific person, or a member of the person's family, which would cause a reasonable person to fear unlawful sexual conduct, unlawful restraint, bodily injury, or death, including verbal threats, written, telephonic, or other electronically communicated threats, vandalism, or physical contact without consent~~ "Course of conduct" means two or more acts over a period of time, however short, in which a

person follows, monitors, surveils, threatens, or makes threats about another person, or interferes with another person's property. This definition shall apply to acts conducted by the person directly or indirectly, and by any action, method, device, or means. Constitutionally protected activity is not included within the meaning of "course of conduct."

(B) As used in subdivision (A) of this subdivision (1), threaten shall not be construed to require an express or overt threat.

(4) "Lying in wait" means hiding or being concealed for the purpose of attacking or harming another person.

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

(3) "Reasonable person" means a reasonable person in the victim's circumstances.

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

§ 1062. STALKING

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

§ 1063. AGGRAVATED STALKING

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

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

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

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

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

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

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

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

§ 1064. DEFENSES

In a prosecution under this subchapter, it shall not be a defense that the defendant was not provided actual notice that the course of conduct was unwanted.

Sec. 6. 13 V.S.A. § 1028 is amended to read:

§ 1028. ASSAULT OF ~~LAW ENFORCEMENT OFFICER, FIREFIGHTER, EMERGENCY MEDICAL PERSONNEL MEMBER, OR HEALTH CARE WORKER~~ PROTECTED PROFESSIONAL; ASSAULT WITH BODILY FLUIDS

(a) ~~A person convicted of a simple or aggravated assault against a law enforcement officer, a firefighter, a health care worker, or a member of emergency medical personnel as defined in 24 V.S.A. § 2651(6) protected professional as defined in subdivision (d)(1) of this section while the officer, firefighter, health care worker, or emergency medical personnel member protected professional is performing a lawful duty, or with the intent to prevent the protected professional from performing his or her lawful duty, in addition to any other penalties imposed under sections 1023 and 1024 of this title, shall:~~

~~(1) for the first offense, be imprisoned not more than one year;~~

~~(2) for the second offense and subsequent offenses, be imprisoned not more than 10 years.~~

~~(b)(1) No person shall intentionally cause blood, vomitus, excrement, mucus, saliva, semen, or urine to come in contact with a person designated in subsection (a) of this section protected professional while the person is performing a lawful duty.~~

~~(2) A person who violates this subsection shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.~~

* * *

~~(d) For purposes of~~ As used in this section:

~~(1) "Protected professional" shall mean a law enforcement officer, a firefighter, a health care worker, an employee, contractor, or grantee of the Department for Children and Families, or any emergency medical personnel as defined in 24 V.S.A. § 2651(6).~~

~~(2) "Health care facility" shall have the same meaning as defined in 18 V.S.A. § 9432(8); and.~~

(3) "Health care worker" means an employee of a health care facility or a licensed physician who is on the medical staff of a health care facility who provides direct care to patients or who is part of a team-response to a patient or visitor incident involving real or potential violence.

(e) This section shall not apply to an individual under 18 years of age residing in a residential rehabilitation facility.

**Sec. 6a. DEPARTMENT FOR CHILDREN AND FAMILIES; VERMONT
STATE EMPLOYEES ASSOCIATION; SAFETY TRAINING
STUDY**

The Commissioner of the Department for Children and Families (DCF), in collaboration with DCF's contractors and grantees and the Vermont State Employees Association, shall conduct a review of the safety trainings available to the employees, contractors, and grantees of DCF and the employees of the State of Vermont, and shall report any findings and recommendations to the House and Senate Committees on Judiciary and on Government Operations, the House Committee on Human Services, and the Senate Committee on Health and Welfare on or before January 15, 2017.

Sec. 6b. 13 V.S.A. § 1702 is added to read:

§ 1702. CRIMINAL THREATENING

(a) A person shall not by words or conduct knowingly:

(1) threaten another person; and

(2) as a result of the threat, place the other person in reasonable apprehension of death or serious bodily injury.

(b) A person who violates subsection (a) of this section shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.

(c) A person who violates subsection (a) of this section with the intent to prevent another person from reporting to the Department for Children and Families the suspected abuse or neglect of a child shall be imprisoned not more than two years or fined not more than \$1,000.00, or both.

(d) As used in this section:

(1) "Serious bodily injury" shall have the same meaning as in section 1021 of this title.

(2) "Threat" and "threaten" shall not include constitutionally protected activity.

(e) Any person charged under this section who is under 18 years of age shall be adjudicated as a juvenile delinquent.

(f) It shall be an affirmative defense to a charge under this section that the person did not have the ability to carry out the threat. The burden shall be on the defendant to prove the affirmative defense by a preponderance of the evidence.

Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2016.