

S.154

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

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

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.

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(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 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.