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H.496

Introduced by Representatives Carroll of Bennington, LaLonde of South Burlington, Austin of Colchester, Bates of Bennington, Bock of Chester, Burke of Brattleboro, Christensen of Weathersfield, Christie of Hartford, Cina of Burlington, Coffey of Guilford, Colburn of Burlington, Colston of Winooski, Corcoran of Bennington, Cordes of Lincoln, Demrow of Corinth, Dolan of Waitsfield, Elder of Starksboro, Fegard of Berkshire, Gannon of Wilmington, Gonzalez of Winooski, Hashim of Dummerston, Houghton of Essex, James of Manchester, Jerome of Brandon, Killacky of South Burlington, Morrissey of Bennington, Notte of Rutland City, O'Brien of Tunbridge, Ode of Burlington, O'Sullivan of Burlington, Rachelson of Burlington, Ralph of Hartland, Redmond of Essex, Sibia of Dover, Squirrell of Underhill, Stevens of Waterbury, Sullivan of Dorset, Till of Jericho, Townsend of South Burlington, and White of Hartford

Referred to Committee on

Date:

Subject: Crimes; hate crimes; bias-motivated crimes; civil injunctions

Statement of purpose of bill as introduced: This bill proposes to 1) amend the hate-motivated crimes statutes to clarify that prohibited conduct may be

1 motivated by bias; and 2) create a civil penalty for repeated harassment or
2 intimidation of a person.

3 An act relating to bias-motivated crimes and misconduct

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

5 Sec. 1. 13 V.S.A. § 1454 is amended to read:

6 § 1454. STATEMENT OF PURPOSE

7 The Legislature finds and declares that it is the right of every person to
8 enjoy the public peace and that sense of security and tranquility afforded by the
9 protection of the law, and that wrongful activities motivated by hatred or bias
10 toward particular classes or groups of persons invade that protection. It is not
11 the intent of this chapter to interfere with the exercise of rights protected by the
12 constitutions of this State or the United States, and the Legislature recognizes
13 the constitutional rights of every citizen to harbor and express beliefs on any
14 subject and to associate with others who share similar beliefs.

15 Sec. 2. 13 V.S.A. § 1455 is amended to read:

16 § 1455. ~~HATE-MOTIVATED~~ BIAS-MOTIVATED CRIMES

17 A person who commits, causes to be committed, or attempts to commit any
18 crime and whose conduct is ~~maliciously~~ motivated by the victim's actual or
19 perceived race, color, religion, national origin, sex, ancestry, age, service in the

1 U.S. Armed Forces, disability as defined by 21 V.S.A. § 495d(5), sexual
2 orientation, or gender identity shall be subject to the following penalties:

3 (1) If the maximum penalty for the underlying crime is one year or less,
4 the penalty for a violation of this section shall be imprisonment for not more
5 than two years or a fine of not more than \$2,000.00, or both.

6 (2) If the maximum penalty for the underlying crime is more than one
7 year but less than five years, the penalty for a violation of this section shall be
8 imprisonment for not more than five years or a fine of not more than
9 \$10,000.00, or both.

10 (3) If the maximum penalty for the underlying crime is five years or
11 more, the penalty for the underlying crime shall apply; however, the court shall
12 consider the motivation of the defendant as a factor in sentencing.

13 Sec. 3. 13 V.S.A. chapter 33 is amended to read:

14 CHAPTER 33. INJUNCTIONS AGAINST ~~HATE-MOTIVATED~~
15 BIAS-MOTIVATED CRIMES

16 § 1458. DEFINITIONS

17 ~~For purposes of this chapter only~~ As used in this chapter:

18 (1) “Complainant” means a person who has suffered damage as a result
19 of a ~~hate-motivated~~ bias-motivated crime.

20 (2) “Damage” includes destruction or defacement of personal or real
21 property, personal injury, or the receipt of threats of violence. “Threats of

1 violence” means verbal, electronic, or written communication, or course of
2 conduct, or a combination thereof, that causes reasonable fear of injury to the
3 complainant or the complainant’s property.

4 (3) A ~~“hate-motivated crime”~~ “bias-motivated crime” occurs whenever a
5 person engages in conduct prohibited by chapter 31 of this title or section 1063
6 of this title that causes damage to the person at whom the conduct was
7 directed.

8 (4) ~~“Hate-motivated~~ Bias-motivated crime injunction” or “order” means
9 an injunction or other order issued under this chapter.

10 (5) “Plaintiff” means the Attorney General or a complainant.

11 (6) “Protected category” includes race, color, religion, national origin,
12 sex, ancestry, age, service in the U.S. Armed Forces, disability as defined by
13 21 V.S.A. § 495d(5), sexual orientation, gender identity, and perceived
14 membership in any such group.

15 Sec. 4. 13 V.S.A. § 1459 is amended to read:

16 § 1459. COMMENCEMENT OF ACTION AND HEARING

17 (a) The Superior Court shall have jurisdiction over proceedings under this
18 chapter. The Vermont Rules of Civil Procedure and the Vermont Rules of
19 Evidence shall apply.

1 (b) Proceedings under this chapter may be commenced in the county in
2 which the complainant or the defendant resides, or in the county in which the
3 incident occurred.

4 (c) A plaintiff may seek a ~~hate-motivated~~ bias-motivated crime injunction
5 by filing a complaint under this chapter.

6 (d) A preliminary hearing upon the complaint shall be scheduled as soon as
7 reasonably possible in consideration of the safety of the complainant.

8 Sec. 5. 13 V.S.A. § 1460 is amended to read:

9 § 1460. JUVENILE DEFENDANTS

10 (a) The general public shall be excluded from hearings held in the Civil
11 Division of the Superior Court under this chapter where the defendant is under
12 ~~the age of~~ 16 years of age. Only the parties, their counsel, the complainant,
13 witnesses, and other persons accompanying a party for the party's assistance,
14 and such other persons as the court finds to have a proper interest in the case,
15 or in the work of the court, may be admitted by the court. In such a case, there
16 shall be no publicity given by any person to any proceedings under the
17 authority of this chapter except with the consent of the defendant and his or her
18 parent or guardian. The records in such a case shall be subject to the
19 confidentiality provision of 33 V.S.A. § 5117. Upon its own motion or the
20 motion of a party, the court may open the hearing for good cause shown, in
21 consideration of relevant factors, including the likelihood that a court would

1 make a determination that charges against the defendant with respect to the
2 underlying crime on which the ~~hate-motivated~~ bias-motivated crime injunction
3 is based should be heard in the Criminal Division of the Superior Court
4 pursuant to 33 V.S.A. chapter 52.

5 * * *

6 Sec. 6. 13 V.S.A. § 1461 is amended to read:

7 § 1461. RELIEF

8 (a) If the court finds by a preponderance of the evidence that the defendant
9 has committed a ~~hate-motivated~~ bias-motivated crime against the complainant,
10 or if the parties stipulate to an order, the court shall make such preliminary and
11 final orders as it deems necessary to protect the complainant and the
12 complainant's property and other appropriate persons who are in need of
13 protection and such persons' property, including any of the following orders:

14 (1) an order to refrain from committing any crime against the
15 complainant;

16 (2) an order restricting the defendant's ability to contact the
17 complainant;

18 (3) an order prohibiting the defendant from coming within a fixed
19 distance of the complainant, the complainant's residence or other designated
20 locations where the complainant is likely to spend time;

1 ~~Hate-motivated~~ Bias-motivated crime complaints, notices of hearing, and
2 orders shall be served as soon as reasonably possible and in a manner that
3 takes into consideration the safety of the complainant.

4 Sec. 8. 13 V.S.A. § 1465 is amended to read:

5 § 1465. PENALTIES

6 (a) Provided that notice was properly served, a person who violates a ~~hate-~~
7 ~~motivated~~ bias-motivated crime injunction issued under this chapter shall be
8 imprisoned not more than one year or fined not more than \$2,000.00, or both.

9 (b) A person who is convicted of a second or subsequent offense under this
10 section shall be imprisoned not more than three years or fined not more than
11 \$10,000.00, or both.

12 (c) Nothing in this section shall be construed to diminish the inherent
13 authority of the courts to enforce their lawful orders through contempt
14 proceedings.

15 (d) Prosecution under this section shall not bar prosecution for any other
16 crime, including any crime that may have been committed at the time of the
17 violation of the ~~hate-motivated~~ bias-motivated crime injunction.

18 Sec. 9. 13 V.S.A. § 1457a is added to read:

19 § 1457a. VIOLATION OF CONSTITUTIONAL RIGHTS; PENALTIES

20 (a) Definitions. As used in this section:

1 (1) “Repeated harassment or intimidation” means engaging purposefully
2 in a course of conduct directed at a specific person that the person engaging in
3 the conduct knows or should know would cause a reasonable person to:

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

5 (B) suffer substantial emotional distress as evidenced by significant
6 modifications in the person’s actions or routines, including moving from an
7 established residence, changes to established daily routes to and from work
8 that cause a serious disruption in the person’s life, changes to the person’s
9 employment or work schedule, or the loss of a job or time from work.

10 (2) “Course of conduct” means two or more acts over a period of time,
11 however short, in which a person harasses, intimidates, threatens, or makes
12 threats about another person, or interferes with another person’s property. This
13 definition shall apply to acts conducted by the person directly or indirectly, and
14 by any action, method, device, or means. Constitutionally protected activity is
15 not included within the meaning of “course of conduct.”

16 (b) Violation. No person shall, through repeated harassment or
17 intimidation, willfully injure, interfere with, or attempt to injure or interfere
18 with, or oppress or threaten any other person in the free exercise or enjoyment
19 of any right or privilege secured to him or her by the Constitution or laws of
20 Vermont or by the Constitution or laws of the United States.

1 (c) Penalty. Any person injured as a result of a violation of this section
2 shall have a private right of action in Superior Court against the person
3 violating this section for:

4 (1) injunctive relief arising from the violation; and

5 (2) for each violation of this section, a civil penalty of not more than
6 \$5,000.00, plus costs and reasonable attorney's fees.

7 (d) Protective order.

8 (1) If the court finds by a preponderance of the evidence that the
9 defendant violated this section, the court may order the defendant to stay away
10 from the plaintiff or the plaintiff's children, or both and may make any other
11 order it deems necessary to protect the plaintiff or the plaintiff's children, or
12 both.

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

20 Sec. 10. EFFECTIVE DATE

21 This act shall take effect on July 1, 2019.