

1 Introduced by Representatives Carroll of Bennington and LaLonde of South

2 Burlington

3 Referred to Committee on

4 Date:

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

6 Statement of purpose of bill as introduced: This bill proposes to 1) amend the

7 hate-motivated crimes statutes to clarify that prohibited conduct may be

8 motivated by bias; and 2) create a civil penalty for repeated harassment or

9 intimidation of a person.

10 An act relating to bias-motivated crimes and misconduct

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

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

13 § 1454. STATEMENT OF PURPOSE

14 The Legislature finds and declares that it is the right of every person to

15 enjoy the public peace and that sense of security and tranquility afforded by the

16 protection of the law, and that wrongful activities motivated by hatred or bias

17 toward particular classes or groups of persons invade that protection. It is not

18 the intent of this chapter to interfere with the exercise of rights protected by the

19 constitutions of this State or the United States, and the Legislature recognizes

1 the constitutional rights of every citizen to harbor and express beliefs on any
2 subject and to associate with others who share similar beliefs.

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

4 § 1455. ~~HATE-MOTIVATED~~ BIAS-MOTIVATED CRIMES

5 A person who commits, causes to be committed, or attempts to commit any
6 crime and whose conduct is ~~maliciously~~ motivated by the victim's actual or
7 perceived race, color, religion, national origin, sex, ancestry, age, service in the
8 U.S. Armed Forces, disability as defined by 21 V.S.A. § 495d(5), sexual
9 orientation, or gender identity shall be subject to the following penalties:

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

13 (2) If the maximum penalty for the underlying crime is more than one
14 year but less than five years, the penalty for a violation of this section shall be
15 imprisonment for not more than five years or a fine of not more than
16 \$10,000.00, or both.

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

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

2 CHAPTER 33. INJUNCTIONS AGAINST ~~HATE-MOTIVATED~~ BIAS-
3 MOTIVATED CRIMES

4 § 1458. DEFINITIONS

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

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

8 (2) “Damage” includes destruction or defacement of personal or real
9 property, personal injury, or the receipt of threats of violence. “Threats of
10 violence” means verbal, electronic, or written communication, or course of
11 conduct, or a combination thereof, that causes reasonable fear of injury to the
12 complainant or the complainant’s property.

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

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

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

20 (6) “Protected category” includes race, color, religion, national origin,
21 sex, ancestry, age, service in the U.S. Armed Forces, disability as defined by

1 21 V.S.A. § 495d(5), sexual orientation, gender identity, and perceived
2 membership in any such group.

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

4 § 1459. COMMENCEMENT OF ACTION AND HEARING

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

8 (b) Proceedings under this chapter may be commenced in the county in
9 which the complainant or the defendant resides, or in the county in which the
10 incident occurred.

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

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

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

16 § 1460. JUVENILE DEFENDANTS

17 (a) The general public shall be excluded from hearings held in the Civil
18 Division of the Superior Court under this chapter where the defendant is under
19 ~~the age of 16 years of age~~. Only the parties, their counsel, the complainant,
20 witnesses, and other persons accompanying a party for the party's assistance,
21 and such other persons as the court finds to have a proper interest in the case,

1 or in the work of the court, may be admitted by the court. In such a case, there
2 shall be no publicity given by any person to any proceedings under the
3 authority of this chapter except with the consent of the defendant and his or her
4 parent or guardian. The records in such a case shall be subject to the
5 confidentiality provision of 33 V.S.A. § 5117. Upon its own motion or the
6 motion of a party, the court may open the hearing for good cause shown, in
7 consideration of relevant factors, including the likelihood that a court would
8 make a determination that charges against the defendant with respect to the
9 underlying crime on which the ~~hate-motivated~~ bias-motivated crime injunction
10 is based should be heard in the Criminal Division of the Superior Court
11 pursuant to 33 V.S.A. chapter 52.

12 * * *

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

14 § 1461. RELIEF

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

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

3 (2) an order restricting the defendant’s ability to contact the
4 complainant;

5 (3) an order prohibiting the defendant from coming within a fixed
6 distance of the complainant, the complainant’s residence or other designated
7 locations where the complainant is likely to spend time;

8 (4) an order to refrain from committing a ~~hate-motivated~~ bias-motivated
9 crime against the complainant, other appropriate persons who are in need of
10 protection and members of any protected category.

11 (b) A preliminary order issued under this chapter shall remain in effect
12 until a final order is issued or for a fixed period that the court deems
13 appropriate, but in no event more than 120 days without a further order from
14 the court. A final order shall be issued for a fixed period, but in no event more
15 than two years without a further order from the court. The court may extend
16 any order for such time as it deems necessary to protect the complainant, other
17 appropriate persons who are in need of protection and members of any
18 protected category. It shall not be necessary for the court to find that the
19 defendant has committed a ~~hate-motivated~~ bias-motivated crime during the
20 pendency of an order to extend the terms of the order; however, the court shall
21 find that there is a reasonable basis for continued protection. The court may

1 modify its order at any subsequent time upon motion by either party and a
2 showing of good cause.

3 * * *

4 Sec. 7. 13 V.S.A. § 1462 is amended to read:

5 § 1462. SERVICE

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

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

10 § 1465. PENALTIES

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

14 (b) A person who is convicted of a second or subsequent offense under this
15 section shall be imprisoned not more than three years or fined not more than
16 \$10,000.00, or both.

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

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

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

5 § 1457a. VIOLATION OF CONSTITUTIONAL RIGHTS; PENALTIES

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

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

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

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

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

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

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

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

10 (2) for each violation of this section, a civil penalty of not more than
11 \$5,000.00, plus costs and reasonable attorney's fees.

12 (d) Protective order.

13 (1) If the court finds by a preponderance of the evidence that the
14 defendant violated this section, the court may order the defendant to stay away
15 from the plaintiff or the plaintiff's children, or both and may make any other
16 order it deems necessary to protect the plaintiff or the plaintiff's children, or
17 both.

18 (2) Relief shall be granted for a fixed period, at the expiration of which
19 time the court may extend any order, upon motion of the plaintiff, for such
20 additional time as it deems necessary to protect the plaintiff or the plaintiff's
21 children, or both. It is not necessary for the court to find that the defendant

1 violated this section during the pendency of the order to extend the terms of the
2 order. The court may modify its order at any subsequent time upon motion by
3 either party and a showing of a substantial change in circumstance.

4 Sec. 10. EFFECTIVE DATE

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