

1 S.265

2 Introduced by Senators Clarkson, Sears, Balint, Cummings, MacDonald,

3 McCormack and Perchlik

4 Referred to Committee on Judiciary

5 Date: January 18, 2022

6 Subject: Crimes; criminal threatening; threats to third persons

7 Statement of purpose of bill as introduced: This bill proposes to expand the
8 scope of the crime of criminal threatening to include threats of violence to
9 third persons. This bill also proposes eliminating a person's lack of intent, or
10 inability, to carry out the threat as an affirmative defense.

11 An act relating to expanding criminal threatening to include threats to third
12 persons

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

14 ~~Sec. 1. 13 V.S.A. § 1702 is amended to read:~~

15 § 1702. CRIMINAL THREATENING

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

17 (1) threaten another person or a group of persons; and

18 (2) as a result of the threat, place the other person in reasonable

19 apprehension of death or serious bodily injury to the other person, a person in

20 the group of persons, or any other person.

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

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

7 (d) A person who violates subsection (a) of this section by making a threat
8 that places any person in reasonable apprehension that death or serious bodily
9 injury will occur at a place of public accommodation shall be imprisoned not
10 more than five years or fined not more than \$5,000.00, or both.

11 (e) As used in this section:

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

14 (2) "Threat" and "threaten" ~~shall~~ do not include constitutionally
15 protected activity.

16 (3) "Place of public accommodation" has the same meaning as in 9
17 V.S.A. § 4501.

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

20 (f)(g) It shall not be an affirmative defense to a charge under this section
21 ~~that the person did not have the ability to carry out the threat or did not~~

1 ~~actually intend to carry out the threat. The burden shall be on the defendant to~~
2 ~~prove the affirmative defense by a preponderance of the evidence.~~

3 Sec. 2. EFFECTIVE DATE

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

~~Sec. 1. 13 V.S.A. § 1702 is amended to read:~~

~~§ 1702. CRIMINAL THREATENING~~

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

~~(1) threaten another person or a group of particular persons; and~~

~~(2) as a result of the threat, place the other person in reasonable apprehension of death or serious bodily injury to the other person, a person in the group of particular persons, or any other person.~~

~~(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 \$2,000.00, or both.~~

~~(d) A person who violates subsection (a) of this section by making a threat that places any person in reasonable apprehension that death or serious bodily injury will occur at a public or private school; postsecondary education institution; place of worship; polling place during election activities; the Vermont State House; or any federal, State, or municipal building shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.~~

~~(e) A person who violates subsection (a) of this section with the intent to terrify, intimidate, or unlawfully influence a person to prevent that person from complying with State laws or rules, State court or administrative orders, or State executive orders shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.~~

~~(f) As used in this section:~~

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

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

~~(2) "Candidate" has the same meaning as in 17 V.S.A. § 2102.~~

~~(4) "Election official" has the same meaning as in 17 V.S.A. § 2455.~~

~~(5) "Public employee" means a classified employee within the Legislative, Executive, or Judicial Branch of the State and any of its political subdivisions and any employee within a county or local government and any of the county's or local government's political subdivisions.~~

~~(6) "Public servant" has the same meaning as in 17 V.S.A. § 2103.~~

~~(7) "Polling place" has the same meaning as in 17 V.S.A. chapter 51, subchapter 4.~~

~~(e)(g) Any person charged under this section who is under 18 years of age meets the definition of "child" pursuant to 33 V.S.A. § 5102(2)(C) and is an age enumerated in 33 V.S.A. § 5103(c)(2) shall be adjudicated as a juvenile delinquent subject to a juvenile proceeding.~~

~~(f)(h) 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. A person who violates subsection (a) of this section with the intent to terrify, intimidate, or unlawfully influence the conduct of a candidate for public office, public servant, election official, or public employee in any decision, opinion, recommendation, vote, or other exercise of discretion taken in capacity as a candidate for public office, public servant, election official, or public employee, or with the intent to retaliate against a candidate for public office, public servant, election official, or public employee for any previous action taken in capacity as a candidate for public office, public servant, election official, or public employee, shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.~~

Sec. 2. EFFECTIVE DATE

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

Sec. 1. 13 V.S.A. § 1702 is amended to read:

§ 1702. CRIMINAL THREATENING

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

(1) threaten another person or a group of particular persons; and

(2) as a result of the threat, place the other person in reasonable apprehension of death, or serious bodily injury, or sexual assault to the other person, a person in the group of particular persons, or any other person.

(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~~ \$2,000.00, or both.

(d) A person who violates subsection (a) of this section by making a threat that places any person in reasonable apprehension that death, serious bodily injury, or sexual assault will occur at a public or private school; postsecondary education institution; place of worship; polling place during election activities; the Vermont State House; or any federal, State, or municipal building shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.

(e) A person who violates subsection (a) of this section with the intent to terrify, intimidate, or unlawfully influence a person to prevent that person from complying with State laws or rules, State court or administrative orders, or State executive orders shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.

(f) A person who violates subsection (a) of this section with the intent to terrify, intimidate, or unlawfully influence the conduct of a candidate for public office, a public servant, an election official, or a public employee in any decision, opinion, recommendation, vote, or other exercise of discretion taken in capacity as a candidate for public office, a public servant, an election official, or a public employee, or with the intent to retaliate against a candidate for public office, a public servant, an election official, or a public employee for any previous action taken in capacity as a candidate for public office, a public servant, an election official, or a public employee, shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.

(g) As used in this section:

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

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

(3) "Candidate" has the same meaning as in 17 V.S.A. § 2103.

(4) "Election official" has the same meaning as in 17 V.S.A. § 2455.

(5) "Public employee" means a classified employee within the Legislative, Executive, or Judicial Branch of the State and any of its political subdivisions and any employee within a county or local government and any of the county's or local government's political subdivisions.

(6) "Public servant" has the same meaning as in 17 V.S.A. § 2103.

(7) "Polling place" has the same meaning as described in 17 V.S.A. chapter 51, subchapter 4.

(8) "Sexual assault" has the same meaning as sexual assault as described in section 3252 of this title.

~~(e)(h) Any person charged under this section who is under 18 years of age younger than the age identified in 33 V.S.A. § 5201(d) shall be adjudicated as a juvenile delinquent subject to a juvenile proceeding.~~

~~(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. 2. EFFECTIVE DATE

This act shall take effect on passage.