



H. 40– An act relating to the nonconsensual removal of or tampering with a sexually protective device

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Thank you for the invitation to speak with the committee today about H. 40. The issue this bill is trying to address is colloquially known as “stealthing”. That is during consensual sex, the individual who is wearing a condom, removes that condom without the knowledge or consent of their partner. This behavior is harmful and it violates the trust of their partner.

When you agree to any sexual act you are aware of the inherent risks associated with that act and part of that equation is the understanding that you cannot fully know that everything your partner is saying to you is factual. One of the ways we attempt to mitigate these risks is to use a barrier contraceptive method like a condom. In these instances, a person is agreeing to have their skin touched by a barrier- a condom- not by the other partner’s bare skin. When that barrier is removed without knowledge or consent that ability to understand and accept the risks involved in the sex act is taken from them.

This is happening in Vermont, particularly on our college campuses. We know that it is harmful and should be viewed as part of the spectrum of gender-based violence. If we were looking at this issue broadly and were to come up with what we thought the ideal policy solution would be, it would be related to prevention and education, and that is something we are working on in tandem with this bill in Senate Education with S. 120 related to strengthening our prevention and support efforts on college campuses.

Overall, we don’t do a great job of preparing young people for navigating sexual relationships and consent and boundaries or acknowledging the harms that happen when consent is violated. The most impactful way of approaching this issue would be a public awareness and education campaign about consent and the harms of non-consensual condom removal. It is my hope that this bill will play a role in raising awareness about this issue and act as a deterrent for this harmful behavior but it should be viewed as a small part of this larger need.

Other states:

While a number of states have introduced language to address this issue, CA is the only state that has passed a law. The National Alliance to End Sexual Violence (NAESV) is broadly supportive of civil remedies for this issue but doesn’t support criminalizing this behavior. Maine, Wisconsin, Minnesota, Illinois and Connecticut among others also have pending legislation.

Civil vs Criminal Procedure

There are many reasons why a civil process is more amendable than a criminal one and why we would never support criminalizing this behavior, despite its egregiousness. In a civil process, the victim is in



charge and can decide whether or not to proceed. The victim doesn't have to report to law enforcement or hand the case over to prosecutors.

The civil process also has a lower burden of proof. In these intimate scenarios, proving that something happened and the intent behind it is incredibly challenging, and most cases are unlikely to be able to reach even this lower standard. This would be even more so at a higher burden of proof.

Conclusions

A civil damages law against nonconsensual condom removal or "stealthing" would provide one pathway to survivors who choose to use it to reclaim some agency and resources after their assault. This is not a perfect solution, nor will it be a viable one for most survivors but that shouldn't prevent us from making it available for those survivors who would benefit from it. This should be seen within the same context as we talk about other pathways for survivors. No one pathway is going to be the answer for all survivors and so in order to support all survivors we attempt to create a wide breath of options. This legislation gives voice to the harm of nonconsensual condom removal and will provide validation for survivors of this harm, even if they choose not to pursue civil damages.