



VERMONT  
NETWORK

**Testimony on H.25, H.27, H.74  
Sexual Violence related bills  
House Committee on Judiciary  
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**Auburn Watersong  
Policy Director**

Thank you for the opportunity to speak to you regarding House Bills 25, 27, and 74 .

On October 7, 2016, President Obama signed the first ever Sexual Assault Survivors' Bill of Rights into law. Championed by Amanda Nguyen and her organization Rise, this legislation provides civil rights and protections to more than 25 million sexual assault survivors nationwide.

On that very same day, *The Washington Post* released a video and accompanying article about then presidential candidate Donald Trump and television host Billy Bush having "an extremely lewd conversation about women" in 2005 in which Donald Trump admitted to sexually assaulting women.

What could have been an extraordinary day for sexual violence victims across our nation, became a day that will live in infamy – one filled with the visual and audible reminder that entitlement and oppression continue to permeate our culture and feed predatory and assaultive behaviors despite the decades of work to ensure that victims of sexual violence will have access to effective justice, health care, information and services.

The 14 member programs of the Vermont Network served more than one thousand two hundred victims of sexual violence last year alone. In addition, we know that numerous other victims of domestic violence also experienced sexual violence. Each year, approximately 250 sexual assault forensic exams are performed by Vermont's certified Sexual Assault Nurse Examiners. These numbers represent only a small fraction of the full number of sexual violence victims in Vermont; many victims will never access services at one of our programs, many will never seek hospital care. For those that do, we must ensure that they get all of the help they need. For those that have yet to tell their stories, we must ensure that once they come forward, whenever they come forward, Vermont's law enforcement and courts will have the necessary tools to act swiftly and effectively, nurses and labs will provide timely and high quality health care and support, and that these victims will never be blamed or charged for any services related to a crime that was committed against them.

### **H.25 Sexual Assault Survivors' Bill of Rights**

**Cost:** H.25 provides critical supports and services for victims of sexual violence in Vermont. Most importantly, it ensures that victims will receive a medical forensic examination, including any related toxicology testing, at no cost. It is critical that "no cost" include insurance premiums. Current Vermont statute (32 V.S.A. § 1407) states that the State shall only cover the costs of sexual assault exams for victims of crime committed in Vermont, who are without health insurance or whose health insurance does not pay for all of the care provided. We must remember that victims and their families pay



premiums for insurance. Furthermore, victims may be included on their parents' insurance or the partner's insurance which complicates the process for maintaining victim privacy. The state which ensures that related health care costs of victims of other violent crimes will be covered, should do no less for victims of sexual violence regardless of insurance coverage.

#### Kit processing:

This bill ensures that sexual assault evidence collection kits be delivered to a forensics laboratory within 72 hours of collection. This provisions includes kits that victims choose to report to law enforcement, and kits that victims choose NOT to report at that time. In recent years, Vermont law enforcement officers have been trained that all kits are delivered, by law enforcement to the lab within 72 hours. However there are discrepancies across jurisdiction. To date there are between 50 and 75 kits which have been completed in Vermont hospitals but have not found their way to the forensic lab. This policy in statute will guarantee that such discrepancies are less likely to occur and survivors will be assured that their kits are promptly handled.

#### Victim access to records: *recommended change*

After consulting with law enforcement and member of the SANE Board, we propose amending §3281 (4) to read:

*To be informed of a DNA profile match (whether on a reported or unreported kit), toxicology report, or medical record documenting a medical forensic examination, if such disclosure would not impede or compromise an ongoing investigation;*

This language is more specific and directive for law enforcement.

#### **H. 27 Limitations of Prosecutions for Certain Crimes**

Across the country, 34 states have statutes of limitations on rape, sexual assault or both, ranging from as little as three years up to 30. (A few states also have reporting deadlines tied to statutes of limitations; and a number of states provide for an exemption from statutes of limitations if a DNA match is later made on a reported rape or sexual assault.)

17 states have no statute of limitations AT ALL for any sexual assault charge.

Only 11 states, including Vermont, have a statute of limitations of 6 years or under for sexual assault.

In the last two years, at least six states have extended or eliminated their statutes of limitations on sexual assaults. At least three others are seeking similar changes as well.

Vermont currently has no statute of limitations for aggravated sexual assault, a 40 year statute of limitations for offenses alleged to have been committed against a child under 18 years of age, and a 6 year statute of limitations for sexual assault and sexual assault of a vulnerable adult.

An end to statutes of limitations on sexual assault in Vermont, will allow prosecutors more time to build thorough cases against alleged perpetrators, instead of rushing to meet deadlines and filing hurried



charges that could potentially compromise the rights of the accused in the process. It will also allow the accused to defend themselves in a court of law, with its high bar to conviction, rather than in the court of public opinion.

The 17 states with no statute of limitations for rape or sexual assault have not reported being overwhelmed with huge numbers of stale claims or a flood of reports of decades-old crimes. In fact, increasing reporting of rapes and sexual assaults is a complicated challenge, and requires cultural changes as well as improvements in law and policing. The elimination of the statutes of limitation for sexual assault in Vermont is a small enhancement, not a big fix. But for the women and men who find the courage to speak after years of silence and fear, it could be everything.

*Recommended change: The Network recommends that “sexual abuse of a vulnerable adult” also be moved from § 4501 (b) to § 4501 (a).*

#### **H. 74 Nonconsensual Sexual Conduct:**

On April 29, 2016, the Vermont Supreme Court decided the case *In re K.A.* The result of this case is that unless the lewdness charge is related to prostitution, an offender cannot be charged with Prohibited Acts, a misdemeanor, under §2632. See *In re K.A.*, 2016 WL 1729574 at 2. Therefore, prosecutors are left only with Lewd and Lascivious, §2601 and, Lewd and Lascivious Conduct with a Child, § 2602, both of which are felonies. Both can be used as an option to plead down other sexual assault offenses or to prosecute offences like unwanted touching of another’s intimate parts, but neither provides a misdemeanor option. Currently the definition of Lewd and Lascivious reads as follows: any lewd or lascivious act upon or with the body, or any part or member thereof, of a ... with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the person.

The Network is concerned that the Supreme Court decision *In re: K.A.* may also force prosecutors to plea down to misdemeanors such as “simple assault” which will not indicate on record the sexual nature of the crime committed. Furthermore, the Network appreciates the clear, updated language in this proposed statute. Nonconsensual touch of another’s genitalia or other intimate body part, or nonconsensual exposure of one’s own genitalia, is sexually assaultive behavior. It is important that Vermont statute is clear on this point and that Vermont prosecutors have the correct tools to hold perpetrators accountable for such actions.

H. 74 has been crafted in consultation with the Vermont Network Supervising Attorney, the Vermont Network’s Legal Aid clinic, the Center for Crime Victim Services and the office of State’s Attorneys. The draft bill is reflective of a similar statutes across the country which allow for a breadth of sexually assaultive behaviors, such as grabbing another’s genitalia without their consent, to be charged as a misdemeanor crime.<sup>i</sup> The Network strongly supports passage of H. 74.

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<sup>i</sup> For example, State of New York has a statute call Forcible Touching, N.Y. Penal Law § 130.52, which is a Class A Misdemeanor, punishable by one year in prison.