

The Vermont Statutes Online

Title 13: Crimes And Criminal Procedure

Chapter 72: Sexual Assault

Subchapter 1: Crimes; Trial

§ 3251. Definitions

As used in this chapter:

(1) A "sexual act" means conduct between persons consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any intrusion, however slight, by any part of a person's body or any object into the genital or anal opening of another.

(2) "Sexual conduct" means any conduct or behavior relating to sexual activities of the complaining witness, including but not limited to prior experience of sexual acts, use of contraceptives, living arrangement and mode of living.

(3) "Consent" means words or actions by a person indicating a voluntary agreement to engage in a sexual act.

(4) "Serious bodily injury" shall have the same meaning as in subdivision 1021(2) of this title.

(5) "Bodily injury" means physical pain, illness or any impairment of physical condition.

(6) "Actor" means a person charged with sexual assault or aggravated sexual assault.

(7) "Deadly force" means physical force which a person uses with the intent of causing, or which the person knows or should have known would create a substantial risk of causing, death or serious bodily injury.

(8) "Deadly weapon" means:

(A) any firearm; or

(B) any weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used, is known to be capable of producing death or serious bodily injury. (Added 1977, No. 51, § 1; amended 1985, No. 83, § 1; 1989, No. 293 (Adj. Sess.), § 4; 2005, No. 192 (Adj. Sess.), § 10, eff. May 26, 2006.)

§ 3252. Sexual assault

(a) No person shall engage in a sexual act with another person and compel the other person to participate in a sexual act:

(1) without the consent of the other person; or

(2) by threatening or coercing the other person; or

(3) by placing the other person in fear that any person will suffer imminent bodily injury.

(b) No person shall engage in a sexual act with another person and impair substantially the ability of the other person to appraise or control conduct by administering or employing drugs or intoxicants without the knowledge or against the will of the other person.

(c) No person shall engage in a sexual act with a child who is under the age of 16, except:

(1) where the persons are married to each other and the sexual act is consensual; or

(2) where the person is less than 19 years old, the child is at least 15 years old, and the sexual act is consensual.

(d) No person shall engage in a sexual act with a child who is under the age of 18 and is entrusted to the actor's care by authority of law or is the actor's child, grandchild, foster child, adopted child, or stepchild.

(e) No person shall engage in a sexual act with a child under the age of 16 if:

(1) the victim is entrusted to the actor's care by authority of law or is the actor's child, grandchild, foster child, adopted child, or stepchild; or

(2) the actor is at least 18 years of age, resides in the victim's household, and serves in a parental role with respect to the victim.

(f)(1) A person who violates subsection (a), (b), (d), or (e) of this section shall be imprisoned not less than three years and for a maximum term of life, and, in addition, may be fined not more than \$25,000.00.

(2) A person who violates subsection (c) of this section shall be imprisoned for not more than 20 years, and, in addition, may be fined not more than \$10,000.00.

(g) A person convicted of violating subsection (a), (b), (d), or (e) of this section shall be sentenced under section 3271 of this title. (Added 1977, No. 51, § 1; amended 1985, No. 83, § 2; 1989, No. 293 (Adj. Sess.), § 5; 2005, No. 192 (Adj. Sess.), § 10, eff. May 26, 2006.)

§ 3253. Aggravated sexual assault

(a) A person commits the crime of aggravated sexual assault if the person commits sexual assault under any one of the following circumstances:

(1) At the time of the sexual assault, the actor causes serious bodily injury to the victim or to another.

(2) The actor is joined or assisted by one or more persons in physically restraining, assaulting or sexually assaulting the victim.

(3) The actor commits the sexual act under circumstances which constitute the crime of kidnapping.

(4) The actor has previously been convicted in this state of sexual assault under subsection 3252(a) or (b) of this title or aggravated sexual assault or has been convicted in any jurisdiction in the United States or territories of an offense which would constitute sexual assault under subsection 3252(a) or (b) of this title or aggravated sexual assault if committed

in this state.

(5) At the time of the sexual assault, the actor is armed with a deadly weapon and uses or threatens to use the deadly weapon on the victim or on another.

(6) At the time of the sexual assault, the actor threatens to cause imminent serious bodily injury to the victim or to another and the victim reasonably believes that the actor has the present ability to carry out the threat.

(7) At the time of the sexual assault, the actor applies deadly force to the victim.

(8) The victim is under the age of 13 and the actor is at least 18 years of age.

(9) The victim is subjected by the actor to repeated nonconsensual sexual acts as part of the same occurrence or the victim is subjected to repeated nonconsensual sexual acts as part of the actor's common scheme and plan.

(b) A person who commits the crime of aggravated sexual assault shall be imprisoned not less than ten years and a maximum term of life, and, in addition, may be fined not more than \$50,000.00.

(c)(1) Except as provided in subdivision (2) of this subsection, a sentence ordered pursuant to subsection (b) of this section shall include at least a ten-year term of imprisonment. The ten-year term of imprisonment required by this subdivision shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year or ten-year term of imprisonment.

(2) The court may depart downwardly from the ten-year term of imprisonment required by subsection (b) of this section and impose a lesser term of incarceration if the court makes written findings on the record that the downward departure will serve the interests of justice and public safety, provided that in no event may the court impose a term of incarceration of less than five years.

(d) A person convicted of violating this section shall be sentenced under section 3271 of this title. (Added 1977, No. 51, § 1; amended 1989, No. 293 (Adj. Sess.), § 6; 2005, No. 79, § 10; 2005, No. 192 (Adj. Sess.), § 10, eff. May 26, 2006.)

§ 3253a. Aggravated sexual assault of a child

(a) A person commits the crime of aggravated sexual assault of a child if the actor is at least 18 years of age and commits sexual assault against a child under the age of 16 in violation of section 3252 of this title and at least one of the following circumstances exists:

(1) At the time of the sexual assault, the actor causes serious bodily injury to the victim or to another.

(2) The actor is joined or assisted by one or more persons in physically restraining, assaulting, or sexually assaulting the victim.

(3) The actor commits the sexual act under circumstances which constitute the crime of kidnapping.

(4) The actor has previously been convicted in this state of sexual assault under subsection 3252(a) or (b) of this title, aggravated sexual assault under section 3253 of this title, or aggravated sexual assault of a child under this section, or has been convicted in any jurisdiction in the United States or territories of an offense which would constitute sexual assault under subsection 3252(a) or (b) of this title, aggravated sexual assault under section 3253 of this title, or aggravated sexual assault of a child under this section if committed in this state.

(5) At the time of the sexual assault, the actor is armed with a deadly weapon and uses or threatens to use the deadly weapon on the victim or on another.

(6) At the time of the sexual assault, the actor threatens to cause imminent serious bodily injury to the victim or to another, and the victim reasonably believes that the actor has the present ability to carry out the threat.

(7) At the time of the sexual assault, the actor applies deadly force to the victim.

(8) The victim is subjected by the actor to repeated nonconsensual sexual acts as part of the same occurrence or the victim is subjected to repeated nonconsensual sexual acts as part of the actor's common scheme and plan.

(b) A person who commits the crime of aggravated sexual assault of a child shall be imprisoned for not less than 25 years with a maximum term of life, and, in addition, may be fined not more than \$50,000.00. The 25-year term of imprisonment required by this subsection shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the 25-year term of imprisonment. (Added 2009, No. 1, § 30, eff. March 4, 2009.)

§ 3254. Trial procedure; consent

In a prosecution for a crime defined in this chapter or section 2601 of this title:

(1) lack of consent may be shown without proof of resistance;

(2) a person shall be deemed to have acted without the consent of the other person where the actor:

(A) knows that the other person is mentally incapable of understanding the nature of the sexual act or lewd and lascivious conduct; or

(B) knows that the other person is not physically capable of resisting, or declining consent to, the sexual act or lewd and lascivious conduct; or

(C) knows that the other person is unaware that a sexual act or lewd and lascivious conduct is being committed; or

(D) knows that the other person is mentally incapable of resisting, or declining consent to, the sexual act or lewd and lascivious conduct, due to a mental condition or a psychiatric or developmental disability as defined in 14 V.S.A. § 3061. (Added 1977, No. 51, § 1; amended 1993, No. 100, § 13; 2013, No. 96 (Adj. Sess.), § 57.)

§ 3255. Evidence

(a) In a prosecution for a crime defined in this chapter and in sections 2601 and 2602 of this title, for human trafficking or aggravated human trafficking under chapter 60 of this title, or for abuse of a vulnerable adult under chapter 28 of this title or 33 V.S.A. chapter 69:

(1) Neither opinion evidence of, nor evidence of the reputation of the complaining witness' sexual conduct shall be admitted.

(2) Evidence shall be required as it is for all other criminal offenses and additional corroborative evidence heretofore set forth by case law regarding sexual assault shall no longer be required.

(3) Evidence of prior sexual conduct of the complaining witness shall not be admitted; provided, however, where it bears on the credibility of the complaining witness or it is material to a fact at issue and its probative value outweighs its private character, the court may admit:

(A) evidence of the complaining witness' past sexual conduct with the defendant;

(B) evidence of specific instances of the complaining witness' sexual conduct showing the source of origin of semen, pregnancy, or disease; and

(C) evidence of specific instances of the complaining witness' past false allegations of violations of this chapter.

(b) In a prosecution for a crime defined in this chapter and in a prosecution pursuant to sections 2601 and 2602 of this title, for human trafficking or aggravated human trafficking under chapter 60 of this title, or for abuse or exploitation of a vulnerable adult under 33 V.S.A. § 6913(b), if a defendant proposes to offer evidence described in subdivision (a)(3) of this section, the defendant shall prior to the introduction of such evidence file written notice of intent to introduce that evidence, and the court shall order an in camera hearing to determine its admissibility. All objections to materiality, credibility and probative value shall be stated on the record by the prosecutor at the in camera hearing, and the court shall rule on the objections forthwith, and prior to the taking of any other evidence.

(c) In a prosecution for a crime defined in this chapter and in sections 2601 and 2602 of this title or for human trafficking or aggravated human trafficking under chapter 60 of this title, if the defendant takes the deposition of the complaining witness, questions concerning the evidence described in subdivisions (a)(1) and (3) of this section shall not be permitted.

(Added 1977, No. 51, § 1; amended 1993, No. 100, § 14; 1995, No. 170 (Adj. Sess.), § 23, eff. Sept. 1, 1996; 2011, No. 55, § 8.)

§ 3256. Testing for infectious diseases

(a) The victim of an offense involving a sexual act may obtain an order from the Criminal or Family Division of the Superior Court in which the offender was convicted of the offense, or was adjudicated delinquent, requiring that the offender be tested for the presence of the etiologic agent for acquired immune deficiency syndrome (AIDS) and other sexually-transmitted diseases, including gonorrhea, herpes, chlamydia, and syphilis. If requested by

the victim, the State's Attorney shall petition the court on behalf of the victim for an order under this section. For the purposes of this section, "offender" includes a juvenile adjudicated a delinquent.

(b) For purposes of this section, "sexual act" means a criminal offense:

(1) where the underlying conduct of the offender constitutes a sexual act as defined in section 3251 of this title; and

(2) which creates a risk of transmission of the etiologic agent for AIDS to the victim as determined by the federal Centers for Disease Control and Prevention.

(c) If the court determines that the offender was convicted or adjudicated of a crime involving a sexual act with the victim, the court shall order the test to be administered by the Department of Health in accordance with applicable law. If appropriate under the circumstances, the court may include in its order a requirement for follow-up testing of the offender. An order for follow-up testing shall be terminated if the offender's conviction is overturned. A sample taken pursuant to this section shall be used solely for purposes of this section. All costs of testing the offender shall, if not otherwise funded, be paid by the Department of Public Safety.

(d) The results of the offender's test shall be disclosed only to the offender and the victim.

(e) If an offender who is subject to an order pursuant to subsection (c) of this section refuses to comply with the order, the victim, or State's Attorney on behalf of the victim, may seek a civil contempt order pursuant to 12 V.S.A. chapter 5.

(f) After arraignment, a defendant who is charged with an offense involving a sexual act may offer to be tested for the presence of the etiologic agent for acquired immune deficiency syndrome (AIDS) and other

sexually transmitted diseases, including gonorrhea, herpes, chlamydia, and syphilis. Such testing shall follow the same procedures set forth for testing an offender who is subject to an order pursuant to subsection (c) of this section. The defendant's offer to be tested after arraignment shall not be used as evidence at the defendant's trial. If the defendant is subsequently convicted of an offense involving a sexual act, the court may consider the offender's offer for testing as a mitigating factor.

(g) Upon request of the victim at any time after the commission of a crime involving a sexual act under subsection (b) of this section, the State shall provide any of the following services to the victim:

(1) counseling regarding human immunodeficiency virus (HIV);

(2) testing, which shall remain confidential unless otherwise provided by law, for HIV and other sexually transmitted diseases, including gonorrhea, herpes, chlamydia, and syphilis;

(3) counseling by a medically trained professional on the accuracy of the testing, and the risk of transmitting HIV and other sexually transmitted diseases to the victim as a result of the crime involving a sexual act; and

(4) prophylaxis treatment, crisis counseling, and support services.

(h) A victim who so requests shall receive monthly follow-up HIV testing for six months after the initial test.

(i) The State shall provide funding for HIV or AIDS, or both, and sexual assault cross-training between sexual assault programs and HIV and AIDS service organizations.

(j) The record of the court proceedings and test results pursuant to this section shall be sealed.

(k) The Court Administrator's Office shall develop and distribute forms to implement this section in connection with a criminal conviction or adjudication of delinquency.

(l) The Center for Crime Victim Services shall be the primary coordinating agent for the services to be provided in subsections (g), (h), and (i) of this section. (Added 2001, No. 49, § 12, eff. June 12, 2001; amended 2009, No. 154 (Adj. Sess.), § 100; 2015, No. 97 (Adj. Sess.), § 74.)

§ 3257. Sexual exploitation of an inmate

(a) No correctional employee, contractor, or other person providing services to offenders on behalf of the department of corrections or pursuant to a court order or in accordance with a condition of parole, probation, supervised community sentence, or furlough shall engage in a sexual act with a person who the employee, contractor, or other person providing services knows:

(1) is confined to a correctional facility; or

(2) is being supervised by the department of corrections while on parole, probation, supervised community sentence, or furlough, where the employee, contractor, or other service provider is currently engaged in a direct supervisory relationship with the person being supervised. For purposes of this subdivision, a person is engaged in a direct supervisory relationship with a supervisee if the supervisee is assigned to the caseload of that person.

(b) A person who violates subsection (a) of this section shall be imprisoned for not more than five years or fined not more than \$10,000.00, or both. (Added 2005, No. 177 (Adj. Sess.), § 1.)

§ 3258. Sexual exploitation of a minor

(a) No person shall engage in a sexual act with a minor if:

(1) the actor is at least 48 months older than the minor; and

(2) the actor is in a position of power, authority, or supervision over the minor by virtue of the actor's undertaking the responsibility, professionally or voluntarily, to provide for the health or welfare of minors, or guidance, leadership, instruction, or organized recreational activities for minors.

(b) A person who violates subsection (a) of this section shall be imprisoned for not more

than one year or fined not more than \$2,000.00, or both.

(c) A person who violates subsection (a) of this section and who abuses his or her position of power, authority, or supervision over the minor in order to engage in a sexual act shall be imprisoned for not more than five years or fined not more than \$10,000.00, or both. (Added 2009, No. 1, § 13, eff. March 4, 2009.)

Subchapter 2: Sentencing, Treatment, And Supervision

§ 3271. Indeterminate life sentence

(a) A person who commits one of the following offenses shall be sentenced under this section:

(1) Lewd and lascivious conduct with a child, second or subsequent offense, in violation of subdivision 2602(b)(2) of this title.

(2) Sexual assault in violation of subsection 3252(a), (b), (d), or (e) of this title.

(3) Aggravated sexual assault in violation of section 3253 of this title.

(4) Violation of sex offender registry requirements by noncompliant high-risk sex offenders, in violation of subsection 5411d(g) of this title.

(b) If a person is sentenced under this section, the person's maximum sentence shall be imprisonment for life.

(c) If a person sentenced under this section receives a sentence that is wholly or partially suspended, sex offender conditions and treatment shall be a condition of the person's probation agreement.

(d) If a person sentenced under this section receives a sentence for an unsuspended term of incarceration, the person shall not be released until the person successfully completes all sex offender treatment and programming required by the department of corrections, unless the department determines that the person poses a sufficiently low risk of reoffense to protect the community or that a program can be implemented which adequately supervises the person and addresses any risk the person may pose to the community. (Added 2005, No. 192 (Adj. Sess.), § 10, eff. May 26, 2006; amended 2007, No. 77, § 11, eff. June 7, 2007.)

§ 3272. Community reentry; prerelease planning

(a) Consistent with section 721 of Title 28, the department of corrections shall jointly establish with the community of planned residence a community reentry support team for all offenders designated as high risk under section 5411b of this title. The department, the reentry support team, and the offender shall jointly begin developing a release plan for each offender subject to this subsection beginning at least 12 months prior to the offender's release. The department shall designate a person to oversee the creation of prerelease plans developed under this section and to review completed plans.

(b) A release plan developed under this section shall be individually tailored for each offender, shall describe in detail the community reentry programming planned for the offender, and shall include provisions addressing:

(1) the appropriate residence for the offender;

(2) postrelease treatment;

(3) the community support and accountability network available to the offender; and

(4) potential employment for the offender, including job and skills training.

(c) A release plan developed under this section shall include a plan for victim safety developed jointly by the department and any known victim desiring to participate. A plan developed pursuant to this subsection shall include victim wraparound services when practicable and desired by the victim.

(d) Notwithstanding the provisions of chapter 25 of Title 3, the department shall develop an internal directive to

implement the provisions of this section.

(e) This section shall not be construed to affect in any way the department's duty to develop and implement plans for offenders to return to the community under subsection 1(b) of Title 28. (Added 2005, No. 192 (Adj. Sess.), § 14, eff. May 26, 2006.)

§ 3273. -3280. [Reserved for future use.]

§ 3281. Sexual assault survivors' rights

(a) Short title. This section may be cited as the "Bill of Rights for Sexual Assault Survivors."

(b) Definition. As used in this section, "sexual assault survivor" means a person who is a victim of an alleged sexual offense.

(c) Survivors' rights. When a sexual assault survivor makes a verbal or written report to a law enforcement officer, emergency department, sexual assault nurse examiner, or victim's advocate of an alleged sexual offense, the recipient of the report shall provide written notification to the survivor that he or she has the following rights:

(1) The right to receive a medical forensic examination and any related toxicology testing at no cost to the survivor in accordance with 32 V.S.A. § 1407, irrespective of whether the survivor reports to or cooperates with law enforcement. If the survivor opts to have a medical forensic examination, he or she shall have the following additional rights:

(A) the right to have the medical forensic examination kit or its probative contents delivered to a forensics laboratory within 72 hours of collection;

(B) the right to have the sexual assault evidence collection kit or its probative contents preserved without charge for the duration of the maximum applicable statute of limitations;

(C) the right to be informed in writing of all policies governing the collection, storage, preservation, and disposal of a sexual assault evidence collection kit;

(D) the right to be informed of a DNA profile match on a kit reported to law enforcement or on a confidential kit, on a toxicology report, or on a medical record documenting a medical forensic examination, if the disclosure would not impede or compromise an ongoing investigation; and

(E) upon written request from the survivor, the right to:

(i) receive written notification from the appropriate official with custody not later than 60 days before the date of the kit's intended destruction or disposal; and

(ii) be granted further preservation of the kit or its probative contents.

(2) The right to consult with a sexual assault advocate.

(3) The right to information concerning the availability of protective orders and policies related to the enforcement of protective orders.

(4) The right to information about the availability of, and eligibility for, victim compensation and restitution.

(5) The right to information about confidentiality.

(d) Notification protocols. The Vermont Network Against Domestic and Sexual Violence and the Sexual Assault Nurse Examiner Program, in consultation with other parties referred to in this section, shall develop protocols and written materials to assist all responsible entities in providing notification to victims. (Added 2017, No. 44, § 4.)