



**Testimony on Loopholes in Vermont Sex Abuse Laws
House and Senate Committees on Judiciary
January 19, 2017**

**Auburn Watersong
Policy Director**

CONCERN: Where do Vermont statutes need improvement in order to ensure that students are safe in their schools, and that teachers who sexually abuse students are held accountable?

Thank you for the opportunity to discuss the current effectiveness of Vermont's Sex Abuse Laws.

Background and Development:

In 2006, then Governor Jim Douglas signed into law the Sexual Violence Prevention Act which aimed at enhancing sentences for and preventing risks posed by dangerous sex offenders. This Act included the formation of a statewide work group tasked with providing guidelines for schools' capacity-building around sexual violence prevention education. In 2007, the workgroup completed its directive to inventory sexual violence prevention programs in the state, specifically those that are delivered in schools, and subsequently, in the spring of 2008, made recommendations to the Legislature regarding the findings.²

These recommendations were completed in tandem with a five-year state planning effort, *The Vermont Approach: A Strategic Plan for Comprehensive Sexual Violence Prevention 2006-2010*, also initiated by the Legislature in 2006, under the direction of the Anti-Violence Partnership at the University of Vermont.³ It represents the culmination of collaborative vision and planning by sexual violence prevention and advocacy stakeholders in state and community-based agencies and policymakers, and reflects sexual violence prevention best practice thinking from around the nation.

During the summer of 2008, after the shocking report of the case of a young Vermont girl's brutal and ongoing victimization and subsequent murder by a family member, the Senate Judiciary researched the issues of child sexual abuse, sexual violence and sexual offending behavior, and gathered testimony statewide.

As a result, the 2009 legislative session saw the passage of S.13/ACT 1, an Act Relating To Improving Vermont's Sexual Abuse Response System. The purpose of this act was to increase child sexual abuse prevention efforts, enhance investigations and prosecutions of child sexual abuse, provide sentencing courts with the information necessary to devise appropriate sentences for sex offenders, and improve supervision of sex offenders. Act 1 included among its numerous measures the creation of a statute entitled "sexual exploitation of minors" designed to ensure that teachers and those in positions of authority would be held accountable when violating a student or a minor in their care (see below).

Then in 2014, sadly, following the deaths of two children in state custody, Vermont again reviewed its child protection and reporting laws to ensure that Vermont maintain the most effective tools possible to protect the most vulnerable children in our state.



Current Status:

Throughout these challenges, the Vermont Network has worked closely with the Dept. of Children and Families in efforts to address and prevent child sexual abuse and the sexual exploitation of minors in Vermont. To that end, the Vermont legislature has ensured that children in our state, and in our schools, are protected by a collection of laws that: require criminal background checks for all teachers (in public and independent schools), clearly mandate reporting of child abuse, and ensure the publically accessible sharing of educator licensure and disciplinary information (via AOE website).

In addition, Vermont criminal laws regarding sexual assault, have generally provide prosecutors with the tools necessary to move forward in prosecuting sexual predators. Perhaps the most significant sexual crime relevant to the teacher/student relationship in Vermont is found in VSA 13 §3258, entitled “Sexual Exploitation of a Minor”. While the general age of consent in Vermont is considered 16 (with some exceptions), this statute and Vermont’s sexual assault statute prohibit teachers from engaging in a sexual act with a child who is under the age of 18 (see 13 V.S.A. § 3252 (d)).

This statute states that

(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.)

These statutes recognize the severity of sexual assault and the importance of the role that power and authority plays in issues of coercion and consent. However, there are more possibilities for ensuring that Vermont schools are safe places for our students to learn and grow. Critical to such safety is clear acknowledgment of the breadth and scope of sexual misconduct and the ensured protection of all enrolled students (regardless of chronological age).

Possible improvements moving forward:

1. Revise 13 V.S.A. § 3252 (d)) and § 3258 to
 - broaden the definition of “sexual act” in 13 V.S.A. to include known grooming behaviors such as: “Any act, including, but not limited to, any verbal, nonverbal, written or electronic communication or physical activity, directed toward or with a child or a student regardless of the age of the child or student that is designed to establish a romantic or sexual relationship with the child or student. Such acts include, but are not



limited to: (1) sexual or romantic invitation; (2) dating or soliciting dates; (3) engaging in sexualized or romantic dialogue; (4) making sexually suggestive comments; (5) self-disclosure or physical exposure of a sexual, romantic or erotic nature; or (6) any sexual, indecent, romantic or erotic contact with the child or student.”ⁱ

- Expand/clarify the age of the “minor” such that it includes the complete length of their student status in secondary education.
2. Expand the statute of limitations on sexual assault *and* sexual exploitation of minors beyond the current 6 years. (13 V.S.A. § 4501 (b)) Often due to the traumatic effects of sexual abuse, it is far more than 6 years before a victim is ready to report to law enforcement. In cases involving teachers who prey upon students – if no report has been made, it is possible they could still be teaching 10 or 15 years beyond their first offense and leaving many more victims in their wake.
 3. Require every Vermont school to adopt a written policy on electronic communications between school employees and students. The policy must include provisions designed to prevent improper communications between school employees and students made via e-mail, cellular phones, social networking websites, and other internet-based social media.ⁱⁱ
 4. Develop a model policy for Vermont schools to implement which requires employment history reviews for all new employees having direct contact with children and the additional pre-employment requirements for educators.
 5. Create a sexual assault misdemeanor in statute (current option for a misdemeanor crime that is sexual in nature is called “prohibited acts”. The Vermont Supreme Court recently ruled that this statute can no longer be used as a misdemeanor sexual assault charge). By creating a misdemeanor such as “Nonconsensual Sexual Conduct” Vermont again would be acknowledging the breadth and scope of sexual assault while at the same time providing prosecutors with a necessary tool to use when charging sexual predators.
 6. Ensure that all Vermont sexual abuse victims have access to forensic exams at no cost. This protects victims’ privacy (not guaranteed if the student is on the parents’ insurance) and supports the likelihood that they will pursue an exam. (see 8 V.S.A. § 4089) It also meets that element of the recently passed federal Sexual Assault Survivor Bill of Rights.

The Network is deeply committed to improving the safety of Vermont’s schools for our students. We welcome the opportunity to work with colleagues in further assessment and development of policies that will support student safety and ensure perpetrator accountability.

Thank you.

ⁱ Act 168, Commonwealth of PA, FAQs published by S.E.S.A.M.E., Jan 9, 2015.

ⁱⁱ see New Jersey Law S-441, 2014.