Testimony on H.25, H.27, H.74, H. 493
Domestic and Sexual Violence related bills
Senate Committee on Judiciary
March 30, 2017

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Thank you for the opportunity to speak to you regarding House Bills 25, 27, 74, and 493.

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

Safety and Confidentiality Provision: 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 to the victim if s/he has concerns about safety or confidentiality. 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. Unfortunately,

victims may be included on their parents' insurance or the partner's insurance which complicates the process for maintaining victim privacy. They may also be the victim of the insurance policy holder which could also compromise safety. The Vermont Center for Crime Victim Services indicates that covering the cost of forensic exams for victims' who have safety or confidentiality concerns is current practice and thus will not present a notable increase in budget expense. This clarification in statute would reflect current practice, ensure that victims are informed of this option, and better define the process for Sexual Assault Nurse Examiners.

Kit processing:

This bill ensures that sexual assault evidence collection kits be delivered to a forensics laboratory within 72 hours of collection. This provision 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:

SANE Program clinical coordinators, law enforcement, and members of the SANE Board all agree that the following language clarifies what forensic exam information can be shared with the sexual violence survivor.

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;

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.

Experiencing a traumatic event such as a sexual assault has significant impact on the brain and memory and it can take years, even decades, for sexual assault victims to be ready to engage with the legal system. Victims of serious and intimate trauma such as sexual assault may remain fearful and silenced for years following an assault. Frequently the perpetrator is known to the victim, or the victim's family, and this can complicate the victim's ability to come forward within a proscribed timeline. Eliminating the statute 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.

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.

The Network also recommended that "sexual abuse of a vulnerable adult" also be moved from § 4501 (b) to § 4501 (a). The Network supports the expansion of the statute of limitations on "sexual exploitation of children" to 40 years.

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, 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.

The Network strongly supports passage of H. 74 and recommends that the committee consider whether clarification or further definition of "open and gross lewdness" might be necessary in order for prosecutors and judges to fully understand the breadth and scope of the conduct being addressed. While established case law might be clear on this point, it is imperative that the language of "open and

gross lewdness" not be allowed to exclude assaultive behaviors. The Network remains concerned that the intention, to have a tool which allows prosecutors to charge a misdemeanor of nonconsensual sexual contact including behaviors such as grabbing and groping of genitalia without consent, is fully understood. Numerous other states have similar statutes across the country which allow for a breadth of sexually assaultive behaviors to be charged as a misdemeanor crime, and which outline detailed definition of the behaviors that are included.[i]

H. 493 – "no contact" in relief from abuse orders

In December of 2016, the Vermont Supreme Court considered the Carpenter case from Bennington. The Supreme Court found that the Emergency Relief From Abuse Order statute (15 VSA § 1104) does not provided for a blanket "no contact" provision in a Temporary Order, despite the fact that this is common practice by Vermont judges to issue such an order. (See attached court form completed by Judges when issuing emergency and final relief from abuse orders). Since the Carpenter decision, while a judge has the discretion to order no contact, judges have now been advised to only do so by making specific findings to support the no contact.

It is best practice, and it has been common practice in Vermont, to issue a no contact order at the time of granting a temporary relief from abuse order because it is known that this is often the most dangerous and volatile time for victims. Furthermore, the domestic violence offender will often seek new and various ways to exert and increase the coercive control over her/his victim when s/he realizes that the victim may be trying to leave and find safety.

The Network is very concerned that the Carpenter case results are changing current protective practice in our courts. Just last month, I received a call from an advocate conveying that the judge in her district denied the issuance of "no contact" in a TRO stating that he no longer has the ability to put "no contact" on temporary relief from abuse orders. The Network respectfully requests that the legislature clarify this statute in order to provide Judges with the tools they need to continue to protect victims of domestic violence.

H. 493 likewise updates 15 VSA § 1103 (Requests for Relief – for *final* orders) to include no contact in "any way, directly, indirectly, or through a third party, including in writing or by telephone, e-mail, or other electronic communication" which the Network believes will help to clarify and make consistent the orders of no contact throughout the relief application and hearing process.

Recommendation: change effective date to "upon passage".

Thank you for your time.

[i] 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.