

## **Vermont General Assembly Policy for the Prevention of Sexual Harassment 2018**

It is the policy of the Vermont General Assembly to provide a professional working environment free from sexual harassment. The General Assembly prohibits both sexual harassment and retaliation for reporting sexual harassment or cooperating in an investigation of sexual harassment.

The House of Representatives has established a Prevention of Sexual Harassment Panel pursuant to House Rule 90(c), and the Senate has established a similar Panel pursuant to Senate Rule 101. Both of these Panels shall investigate and adjudicate complaints in a manner that is fair, expeditious, and nonpartisan. This Policy for the Prevention of Sexual Harassment (Policy) has been adopted by both the Senate and House Panels and shall serve as the joint Policy for both the Senate and House of Representatives.

This Policy sets standards concerning and regulates the conduct of Representatives, Senators, and all staff who work for the General Assembly (Regulated Individuals). This Policy is intended to protect Legislators, staff, legislative pages and interns, and members of the public, including lobbyists, advocates, and members of the press, who experience sexual harassment attributable to Regulated Individuals. As set forth in a later section of this Policy (Jurisdiction of Panels), complaints will be investigated and adjudicated by either the Senate or House Panel, or by a Joint Panel.

### **Definition and Examples of Sexual Harassment**

Sexual harassment is a form of discrimination based on sex, sexual orientation, or gender identity. Sexual harassment in the workplace is illegal and all employers have an obligation to ensure a workplace free of sexual harassment. Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of employment;
2. submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting the individual; or
3. the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile, or offensive working environment.

Sexual harassment may be verbal, physical, auditory, or visual, or a combination thereof. It may be subtle or overt. Sexual harassment refers not only to conduct that is unwelcome, but also to conduct that may be personally offensive, fail to respect the rights of others, lower morale, interfere with work effectiveness, or violate a person's sense of well-being. Persons of all genders may be the victims and perpetrators of sexual harassment and sexual harassment may occur in instances where the parties are, or are perceived to be, of the same or different genders. Sexual harassment may occur in situations in which one person has authority, or the appearance

of authority, over another. Harassment may also occur between persons who are equal in terms of authority or the appearance of authority, or between a person who has less, or appears to have less, authority and another person who has, or appears to have, greater authority.

Examples of sexual harassment include the following when such acts or conduct comes within the above definitions:

- either explicitly or implicitly conditioning any term of employment (e.g., continued employment, wages, evaluation, advancement, assigned duties, or shifts) on the provision of sexual favors;
- touching or grabbing a sexual part of a person's body;
- touching or grabbing any part of a person's body after that person has indicated or it is known that such physical contact is unwelcome;
- continuing to ask a person to socialize on or off duty when that person has indicated a lack of interest;
- displaying or transmitting sexually suggestive pictures, objects, cartoons, posters, or other visual matter if it is known or should be known that the conduct is unwelcome;
- continuing to write sexually suggestive notes, letters, e-mails, text messages, or other communications if it is known or should be known that the person does not welcome such conduct;
- referring to or calling a person a sexualized name if it is known or should be known that the person does not welcome such conduct;
- regularly telling sexual jokes or using sexually vulgar or explicit language in the presence of a person if it is known or should be known that the person does not welcome such conduct;
- retaliation of any kind for having filed or supported a complaint of sexual harassment (e.g., ostracizing the person, pressuring the person to drop or not support the complaint, or adversely altering that person's duties or work environment);
- derogatory or provocative remarks about or relating to a person's actual or perceived sex, sexual orientation, or gender identity;
- harassing acts or conduct directed against a person on the basis of the person's actual or perceived sex, sexual orientation, or gender identity; and
- off-duty conduct that falls within the above definitions and affects the legislative work environment.

### **Procedures and Confidentiality**

Persons who believe that a Regulated Individual has sexually harassed them have a range of options for resolution under this Policy. A person may:

- Identify objectionable conduct to the Regulated Individual.
- Informally contact a member of the appropriate Panel.

- File a written complaint with the appropriate Panel, thereby commencing the formal Panel process.

Each of these options is described in greater detail below. In addition, a person may pursue other avenues outside this Policy as set forth in the final section of this Policy (Other Resources). A person may choose to pursue, or not pursue, one or more of these options. For example, although an individual may identify objectionable conduct to a Regulated Individual, there is no requirement or expectation to do so. Similarly, an individual is not required to contact a Panel member informally before filing a formal written complaint.

However, there is an exception when any Regulated Individual witnesses or is made aware of sexual harassment committed against any person who is, or appears to be, under 18 years of age. Under these circumstances, the Regulated Individual shall immediately inform the Chief of the Capitol Police Department and the Sergeant at Arms of the sexual harassment.

## **I. Identifying Objectionable Conduct to a Regulated Individual**

A person (Complainant) who believes that they have been sexually harassed by a Regulated Individual has a right to identify objectionable conduct to that individual. However, a Complainant is not required or expected to do so and there is no requirement or expectation that a Complainant will identify objectionable conduct to the Regulated Individual before pursuing other options for resolution.

## **II. Informally Contacting a Member of the Panel**

### **A. A Complainant may contact a member of the Panel**

A Complainant may informally discuss an incident or conduct with any member of the appropriate Panel without initiating the formal Panel process. Such discussions shall be kept confidential by the Panel member unless the Complainant consents to disclosure. The Panel member shall explain this Policy and the different options for resolution to the Complainant.

1. If the Complainant does not wish to attempt to resolve the situation informally, the Panel member shall take no further action and shall inform the Complainant that no Panel records will be created or retained.
2. If the Complainant gives permission for the Panel member to attempt to resolve the situation informally and to inform the other Panel members, the Panel member shall inform the other Panel members of the incident or conduct and of the Complainant's request that an informal resolution be attempted. Two or more Panel members shall meet with the Regulated Individual to attempt an informal resolution. The Panel shall not create any record of the incident, conduct, or any resolution. The Panel members shall notify the Complainant of the results of the meeting and shall inform the Complainant that no Panel records were created or will be retained.
3. Following an informal resolution, the Chair of the applicable Panel shall promptly inform the Speaker or the President Pro Tempore, as appropriate, that there was an

informal resolution, but not the conduct at issue or the identity of the Complainant or the Regulated Individual.

**B. Other persons may contact a member of the Panel**

Any person who has witnessed or is aware of conduct that may constitute a violation of this Policy may informally discuss the conduct with any Panel member. Based on the information provided, a Panel member may approach a potential Complainant to discuss the incident or conduct but shall keep any information provided by the potential Complainant or any other person confidential unless the potential Complainant agrees otherwise.

**III. The Formal Panel Process**

**A. Filing a complaint**

If a Complainant decides to pursue a formal process, the Complainant shall submit a written and signed complaint to any member of the appropriate Panel. If a Panel member other than the Chair receives a complaint, the member shall immediately notify the Chair and provide the complaint to the Chair. The complaint does not need to be in any specific format, and although it must be signed by the Complainant, it may be written by or on behalf of the Complainant. The complaint shall include a description of the conduct at issue and identify the Regulated Individual who allegedly engaged in that conduct. A person may submit a complaint to the Panel about a current Regulated Individual regarding conduct that allegedly occurred at any time during which the individual was a Regulated Individual, and there is no requirement or expectation that an informal resolution be attempted or completed before the person does so.

The Chair of the House Panel shall promptly inform the Speaker and the Chair of the Senate Panel shall promptly inform the President Pro Tempore that a complaint has been filed and of the identities of the Complainant and the Regulated Individual, but not of the alleged conduct at issue.

**B. Procedures**

Once a written complaint has been received by the Chair, the following procedures shall be followed:

1. The Panel shall provide the Regulated Individual alleged in the complaint to have engaged in sexual harassment (Respondent) a copy of the complaint. The Respondent may file a response with the Panel, a copy of which the Panel shall provide to the Complainant.
2. The Panel may choose not to take any further action on a matter at issue in a pending criminal proceeding related to the same allegation by the Complainant in which the Respondent is a defendant until either the criminal proceeding is dismissed or a decision no longer subject to appeal has been issued.
3. A Panel member who is a Complainant or Respondent in a complaint made to the Panel shall not participate in any Panel proceedings or discussions concerning that

complaint. A Panel member who is a witness in a complaint may be prohibited from participating in Panel proceedings or discussions as the Panel deems appropriate.

4. If the complaint does not contain any allegations that may constitute a potential violation of this Policy, the Panel shall dismiss the complaint and notify all parties of the decision.
5. The Panel may contract with an attorney or with another independent individual or entity with expertise in the area of workplace harassment. The contract shall outline the scope of work to be done, and may include a requirement that the attorney, individual, or entity produce a report.
6. The Chair of the Panel shall make a written request that the Office of Legislative Council and the Senate Secretary, and any other office of the General Assembly that may have relevant records, shall provide to the Panel prior records involving the Complainant and the Respondent and any other records or information that may assist the Panel in determining if a pattern exists.
7. Outcome of investigation. The Panel shall review the report, if any, and determine if there are reasonable grounds to believe that the Respondent committed a violation of this Policy.
  - i. If the Panel determines that there are no reasonable grounds to believe the Respondent committed a violation of this Policy, the complaint shall be closed and remain confidential.
    - I. The Chair or the Panel shall meet with the Complainant and Respondent, either separately or together, and shall summarize the basis for the Panel's decision.
    - II. A brief letter summarizing the Panel's action but without names or other identifying information shall be provided to the Complainant and Respondent.
    - III. The Chair shall notify the Speaker or President Pro Tempore that the complaint has been closed.
  - ii. If the Panel determines that there are reasonable grounds to believe the Respondent committed a violation of this Policy, the Panel shall meet with the Respondent and Complainant, either separately or together, and shall allow the Respondent and the Complainant to review any report prepared by any attorney, individual, or entity that the Panel has contracted with, and any documents or evidence. The Panel shall inform the Respondent and Complainant of the basis for the Panel's determination. The Panel shall consider the nature of the conduct at issue and may do any of the following:
    - I. Issue a written warning to the Respondent. The Panel shall provide to the Complainant a brief letter summarizing the Panel's action, including a reference to the provision or provisions of the Policy that the Panel finds there are reasonable grounds to believe the Respondent violated, but without names or other identifying information. Following issuance of the written

warning, the Chair shall promptly inform the Speaker or President Pro Tempore, as applicable, of the conduct at issue and the disposition of the complaint.

- II. Enter into a mutually agreed to resolution with the Respondent and the Complainant. Following the parties' agreement to a resolution, the Chair shall promptly inform the Speaker or President Pro Tempore, as applicable, of the conduct at issue and the disposition of the complaint.
- III. Draft and present charges and set the matter for a hearing. The Panel shall provide the Complainant and Respondent with the charges and the time, date, and location of the hearing. The Panel shall provide the Respondent with a copy of any report prepared by any attorney, individual, or entity that the Panel has contracted with, and any documents or evidence and the Respondent may file an answer to the charges, a copy of which the Panel shall provide to the Complainant. After the date and time have been set for the hearing, the Chair shall promptly inform the Speaker or President Pro Tempore, as applicable, of the conduct at issue and that the Panel has drafted charges and set the matter for a hearing.

### **C. Hearings**

#### **1. General.**

If charges are drafted, the Panel shall conduct a hearing.

- i. The Chair of the Panel shall preside. The Senate Secretary (for the Senate Panel) or Office of Legislative Council (for the House Panel) shall provide legal advice, assistance, and administrative support to the Panel.
- ii. If a report was prepared by an attorney, individual, or entity that the Panel contracted with, that report shall be presented to the Panel. The Panel may contract with that person, or another, to prosecute the charges and that person may present evidence, call and question witnesses, and present arguments to the Panel.
- iii. The Complainant and the Respondent may have an individual of their choosing present to provide support at the hearing and may hire their own counsel at their own expense. Counsel, or any individual who is present to provide support, shall not be a potential witness at the hearing. The Complainant and Respondent may testify, and the Complainant and Respondent, or their attorneys, may present evidence, call and question witnesses, and present arguments to the Panel.
- iv. If a Joint Panel is required, the Chair of the House Panel and the Chair of the Senate Panel shall each appoint two members from their panels to serve on the Joint Panel in addition to the Chairs.

#### **2. Setting of the hearing.**

The hearing shall be closed to the public unless the Respondent and Complainant both agree that it be open to the public.

#### **3. Rules of procedure and evidence.**

The Panel shall not be bound by the Vermont Rules of Evidence and may admit any evidence that the Panel considers to be reliable, material, and relevant. The Chair shall

make evidentiary rulings that may be overruled by a majority of the Panel present at the hearing. The decision of the Panel shall not be based solely on hearsay evidence.

4. Burden of proof.

Burden of proof that a violation occurred is clear and convincing evidence. This standard indicates that the alleged violation is highly probable or reasonably certain. Evidence is “clear” if it is certain, unambiguous, and plain to the understanding; it is “convincing” if it is reasonable and persuasive enough to cause the Panel to believe it.

5. Findings.

Outcome of hearing.

- i. If the Panel finds that there is not clear and convincing evidence that a violation of this Policy occurred, it shall dismiss the complaint. The Panel shall meet with the Respondent and Complainant, either separately or together, and shall summarize the basis for the Panel’s determination. The Panel shall provide to the Respondent and Complainant a brief letter summarizing the Panel’s action but with no names or other identifying information.
- ii. If the Panel finds that there is clear and convincing evidence that a violation of this Policy occurred, the Panel shall impose or recommend corrective action.
  - I. If the Regulated Individual is a Representative or Senator, corrective action may include counseling or training, removal from a committee or committee leadership, censure, or expulsion from the House or Senate. The Panel shall impose or recommend corrective action pursuant to applicable policies and Rules.
  - II. If the Regulated Individual is the House Clerk, Senate Secretary, or Sergeant at Arms, corrective action may include counseling or training, censure, or removal.
    - (aa) If the Regulated Individual is the House Clerk, the House Panel shall recommend appropriate corrective action to the House Rules Committee. The House Rules Committee shall determine the appropriate action and may propose a resolution for House consideration imposing that action.
    - (bb) If the Regulated Individual is the Senate Secretary, the Senate Panel shall recommend appropriate corrective action to the Senate Rules Committee. The Senate Rules Committee shall determine the appropriate action and may propose a resolution for Senate consideration imposing that action.
    - (cc) If the Regulated Individual is the Sergeant at Arms, the Joint Panel shall recommend appropriate corrective action to the Joint Rules Committee. The Joint Rules Committee shall determine the appropriate action and may propose a resolution for consideration by both the House and Senate imposing that action.
  - III. If the Regulated Individual is the Chief Fiscal Officer or Director of the Office of Legislative Council, corrective action may include counseling or training, reprimand, loss of pay or vacation days, demotion, or termination.

The Joint Panel shall meet with the Joint Fiscal Committee or Legislative Council Committee, as applicable, and shall present its findings and recommendation for corrective action. The Joint Fiscal Committee or Legislative Council Committee, as applicable, shall impose appropriate corrective action.

- IV. If the Regulated Individual is an employee of the President Pro Tempore, Speaker, Senate Secretary, House Clerk, Joint Fiscal Office, or Office of Legislative Council, recommended corrective action may include counseling or training, reprimand, loss of pay or vacation days, demotion, or termination. The Joint Panel, House Panel, or Senate Panel, as set forth in “Jurisdiction of Panels” section, shall meet with the President Pro Tempore, Speaker, Senate Secretary, House Clerk, or head of the Joint Fiscal Office or Office of Legislative Council, as applicable, and shall present its findings and recommendation for corrective action. The President Pro Tempore, Speaker, Senate Secretary, House Clerk, or head of the office shall impose appropriate corrective action.
- V. After corrective action has been recommended, the Chair of the House Panel shall meet with the Speaker and the Chair of the Senate Panel with the President Pro Tempore. The Chair shall inform the Speaker or President Pro Tempore of the nature of the complaint and the identities of the Complainant and of the Regulated Individual, and summarize the basis for the Panel’s determination and the recommended corrective action. This meeting shall not be necessary if the Speaker or President Pro Tempore has previously received this information.

6. Public statement.

After the imposition of the following corrective actions, the Panel Chair, President Pro Tempore, or Speaker, as appropriate, shall issue a public statement that shall include the nature of the complaint, the identity of the Regulated Individual, and a summary of the basis for the Panel’s determination and for the corrective action:

- i. if the Regulated Individual is a Senator or Representative, removal from a committee or committee leadership, censure, or expulsion from the House or Senate;
- ii. if the Regulated Individual is the House Clerk, Senate Secretary, or Sergeant at Arms, censure or removal;
- iii. if the Regulated Individual is the Chief Fiscal Officer or Director of the Office of Legislative Council, demotion or termination; or
- iv. if the Regulated Individual is an employee of the President Pro Tempore, Speaker, Senate Secretary, House Clerk, Joint Fiscal Office, or Office of Legislative Council, demotion or termination.

7. Time periods.

The Panel shall conclude any investigation and hearing and shall impose or recommend corrective action as soon as reasonably possible.

## **Confidentiality and Maintenance of Records**

Confidentiality.

1. In order to encourage persons who believe that they have experienced sexual harassment attributable to a Regulated Individual to feel comfortable contacting members of the Panel and pursuing a formal Panel process, members of the Panel, the Office of Legislative Council, the Senate Secretary, and any attorney, individual, or entity that the Panel has contracted with shall keep confidential any information obtained and all records produced or acquired in accordance with this Policy except as otherwise set forth in this Policy.
2. All records produced or acquired in accordance with this Policy are not subject to the Public Records Act.

Maintenance of records. The Office of Legislative Council shall maintain all records associated with complaints or proceedings pursuant to this Policy conducted by the House Panel, and the Senate Secretary shall maintain all records associated with complaints or proceedings pursuant to this Policy conducted by the Senate Panel. All records associated with complaints or proceedings pursuant to this Policy conducted by the Joint Panel shall be maintained by the Office of Legislative Council if the Chair of the House Panel presides as Chair of the Joint Panel and by the Senate Secretary if the Chair of the Senate Panel presides as Chair of the Joint Panel.

### **Interns, Staff, and Volunteers Who Work for a Senator or Representative**

Any Senator or Representative who employs an intern or staff person or accepts the services of a volunteer to do legislative work shall provide the Sergeant at Arms with the name, address, and contact information for that person. If the intern, staff person, or volunteer is a minor, the Senator or Representative shall also provide the name, address, and contact information for the parent(s) or guardian(s) and shall provide additional information as the Sergeant at Arms requires.

The Sergeant at Arms shall provide every intern, staff person, or volunteer with a copy of this Policy and with contact information for the Chair of the appropriate Panel, and shall ensure that the person understands how to report sexual harassment. If the intern, staff person, or volunteer is a minor, the Sergeant at Arms shall also provide a copy of the Policy and contact information for the Chair of the appropriate Panel to the minor's parent(s) or guardian(s).

The Sergeant at Arms shall provide the name, address, and contact information of all interns, staff persons, and volunteers, and the contact information for their parent(s) or guardian(s), if applicable, to the President Pro Tempore or Speaker, as appropriate.

### **Training and Information**

The President Pro Tempore, the Speaker, and the Chairs of the House and Senate Panels shall ensure that Regulated Individuals receive training on this Policy. That training shall be open to members of the public, including lobbyists, advocates, and members of the press who may work

in or be present in the State House. This Policy shall be posted on the General Assembly's website. Members of the Panels may receive additional training to assist them in carrying out their responsibilities.

### **Jurisdiction of Panels**

The House or Senate Panel shall investigate and adjudicate the conduct of Regulated Individuals as set forth in the chart below. If a Complainant or other person contacts a member of a Panel that does not have jurisdiction, that Panel member shall ensure that the Complainant or other person is informed about whom to contact and assist them in doing so. For example, if a staff member approaches a member of the House Panel concerning the conduct of a Senator, the member of the House Panel shall inform that person that they should approach the Senate Panel, tell the staff person the names of the Senators on the Panel, and assist them in contacting one of those Senators.

Any complaints concerning the conduct of employees of the Joint Fiscal Office, the Office of Legislative Council, and the Sergeant at Arms shall be adjudicated by a Joint Panel composed of the Chair of the House Panel, two members of the House Panel to be chosen by the Chair, the Chair of the Senate Panel, and two members of the Senate Panel to be chosen by the Chair. If the Joint Panel meets during 2018, the Chair of the House Panel shall serve as the Chair of the Joint Panel. Thereafter, the Chair of the Joint Panel shall rotate biennially between the Senate and the House Panels. It is the intent of the General Assembly that all Panels shall apply this Policy in a consistent manner.

<b>Adjudication of Complaints</b>		
<b>Respondent</b>	<b>Complainant</b>	<b>Panel</b>
Representative, staff of Speaker's office or Clerk's office	Representative, staff from any office, member of public	House
Senator, staff of President Pro Tempore's office or Secretary's office	Senator, staff from any office, member of public	Senate
Representative	Senator	House
Senator	Representative	Senate
Any person employed by the Joint Fiscal Office, the Office of Legislative Council, or the Sergeant at Arms	Representative, Senator, staff from any office, member of public	Joint

### **Annual Report**

Annually, on or before December 31, the Panels shall submit a joint written report to the General Assembly with information concerning the number of informal resolutions attempted by the

Panels pursuant to Sec. II.A.2 of this Policy, the number of formal complaints filed with the Panels pursuant to Sec. III of this Policy, and the disposition of the formal complaints. This report shall be posted on the website of the General Assembly.

### **Other Resources**

A person who pursues any of the options for resolution under this Policy does not give up the right to pursue other remedies provided by law. This Policy is not intended to preclude a person from hiring a private attorney, pursuing legal remedies, or making a complaint to:

- The Equal Employment Opportunity Commission (EEOC), John F. Kennedy Federal Building, 475 Government Center, Boston, MA 02203, tel. (800) 669-4000.
- The Vermont Human Rights Commission, 14–16 Baldwin St., Montpelier, VT 05633, tel. (800) 416-2010.
- The Vermont Attorney General, Civil Rights Unit, 109 State St., Montpelier, VT 05609, tel. (802) 828-3657.
- The Vermont State Ethics Commission, 6 Baldwin St., Room 315, Montpelier, VT 05633, tel. (802) 828-7187.