

1 H.183

2 Introduced by Representatives Copeland Hanzas of Bradford, Grad of
3 Moretown, Colburn of Burlington, Anthony of Barre City,
4 Briglin of Thetford, Burke of Brattleboro, Campbell of St.
5 Johnsbury, Christie of Hartford, Coffey of Guilford, Colston of
6 Winooski, Cordes of Lincoln, Donnally of Hyde Park, Elder of
7 Starksboro, Goldman of Rockingham, James of Manchester,
8 Killacky of South Burlington, Kornheiser of Brattleboro,
9 Masland of Thetford, McCullough of Williston, Mrowicki of
10 Putney, Patt of Worcester, Stebbins of Burlington, Stevens of
11 Waterbury, Surprenant of Barnard, Townsend of South
12 Burlington, Wood of Waterbury, Yacovone of Morristown, and
13 Yantachka of Charlotte

14 Referred to Committee on

15 Date:

16 Subject: Crimes; sexual assault

17 Statement of purpose of bill as introduced: This bill proposes to revise and
18 clarify the laws concerning consent to sexual activity, require data collection
19 and reporting of information concerning reports of domestic and sexual
20 violence, establish the Intercollegiate Sexual Violence Prevention Council, and

1 fund the expansion of forensic medical care for sexual assault patients within
2 primary care and reproductive health care settings.

3 An act relating to sexual violence

4 It is hereby enacted by the General Assembly of the State of Vermont:

5 ~~Sec. 1. 13 V.S.A. § 3251 is amended to read:~~

6 § 3251. DEFINITIONS

7 As used in this chapter:

8 * * *

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

11 * * *

12 (10) "Developmental disability" has the same meaning as in 18 V.S.A.
13 § 9302.

14 (11) "Psychiatric disability" has the same meaning as in 1 V.S.A. § 147.

15 * * *

16 Sec. 2. 13 V.S.A. § 3252 is amended to read:

17 § 3252. SEXUAL ASSAULT

18 (a) No person shall engage in a sexual act with another person ~~and compel~~
19 ~~the other person to participate in a sexual act.~~

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

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

3 ~~(3) by placing the other person in fear that any person will suffer~~
4 ~~imminent bodily injury; or~~

5 ~~(4) when the person knows or reasonably should know that the other~~
6 ~~person is asleep, unconscious, or otherwise unaware that the sexual act is~~
7 ~~occurring.~~

8 ~~(b)(1) No person shall engage in a sexual act with another person and~~
9 ~~impair substantially the ability of the other person to appraise or control~~
10 ~~conduct by administering or employing drugs or intoxicants without the~~
11 ~~knowledge or against the will of the other person administer any alcohol,~~
12 ~~drugs, or other intoxicants to another person, without the person's knowledge~~
13 ~~or against the person's will and, while the person is impaired by the alcohol,~~
14 ~~drugs, or intoxicants, engage in a sexual act with that person.~~

15 ~~(2) No person shall engage in a sexual act with another person when the~~
16 ~~other person is incapable of consenting to the sexual act due to:~~

17 ~~(A) impairment by alcohol, drugs, or other intoxicants, and that~~
18 ~~condition is known or reasonably should be known by the person; or~~

19 ~~(B) psychiatric or developmental disability and that condition is~~
20 ~~known or reasonably should be known by the person.~~

21

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

4 * * *

5 (g) A person convicted of violating subsection (a), (b), (d), or (e) of this
6 section shall be sentenced under section 3271 of this title.

7 Sec. 3. 13 V.S.A. § 3254 is amended to read:

8 § 3254. TRIAL PROCEDURE; CONSENT

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

11 ~~(1) lack of consent may be shown without proof of resistance; Lack of~~
12 verbal or physical resistance does not constitute consent.

13 ~~(2) An expression of lack of consent through words or conduct means~~
14 there is no consent.

15 ~~(3) Submission resulting from the use of force, threat of force, or~~
16 placing another person in fear does not constitute consent.

17 ~~(4) A current or previous dating, social, or sexual relationship by itself~~
18 or the manner of dress of the person involved with the accused in the conduct
19 at issue does not constitute consent.

20 ~~(5) A sleeping or unconscious person cannot consent.~~

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

3 ~~(A) knows knew or reasonably should have known that the other~~
4 ~~person is was mentally incapable of understanding the nature of the sexual act~~
5 ~~or lewd and lascivious conduct; or~~

6 ~~(B) knows knew or reasonably should have known that the other~~
7 ~~person is was not physically capable of resisting, or declining consent to, the~~
8 ~~sexual act or lewd and lascivious conduct; or~~

9 ~~(C) knows knew or reasonably should have known that the other~~
10 ~~person is was unaware that a sexual act or lewd and lascivious conduct is was~~
11 ~~being committed; or~~

12 ~~(D) knows knew or reasonably should have known that the other~~
13 ~~person is was mentally incapable of resisting, or declining consent to, the~~
14 ~~sexual act or lewd and lascivious conduct; due to a mental condition or a~~
15 ~~psychiatric or developmental disability as defined in 14 V.S.A. § 3061; or~~

16 ~~(E) knew or reasonably should have known that the other person was~~
17 ~~incapable of making a knowing and voluntary decision to engage in the sexual~~
18 ~~act with the actor because the person was substantially impaired by alcohol,~~
19 ~~drugs, or other intoxicants.~~

1 Sec. 4. DATA COLLECTION AND REPORTING

2 (a)(1) On or before July 1, 2021, every State, county, and municipal law
3 enforcement agency and every constable who exercises law enforcement
4 authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with
5 20 V.S.A. § 2358 shall begin to collect data on the following:

6 (A) the number of domestic and sexual violence cases reported to the
7 agency or constable; and

8 (B) the number of domestic and sexual violence cases the agency or
9 constable refers to a State's attorney or the Attorney General for potential
10 charges.

11 (2) On or before September 1, 2022 and annually thereafter, every State,
12 county, and municipal law enforcement agency and every constable who
13 exercises law enforcement authority pursuant to 24 V.S.A. § 1936a and who is
14 trained in compliance with 20 V.S.A. § 2358 shall report the data collected
15 pursuant to subdivision (a)(1) of this section to the Vermont Crime
16 Information Center.

17 (b)(1) On or before July 1, 2021, the Judiciary shall begin to collect data
18 on the following:

19 (A) the number of domestic and sexual violence cases charged and
20 the nature of the charge; and

21 (B) the disposition of those charges.

1 ~~(2) On or before September 1, 2022 and annually thereafter, the~~
2 Judiciary shall report the data collected pursuant to subdivision (b)(1) of this
3 section to the Vermont Crime Information Center.

4 (c) Not later than December 1, 2023 and annually thereafter, the Vermont
5 Crime Information Center shall aggregate by county the data collected
6 pursuant to subsections (a) and (b) of this section, report that data to the
7 General Assembly, and post the data on its website in a manner that is clear,
8 understandable, analyzable, and accessible to the public.

9 Sec. 5. 16 V.S.A. § 2187 is added to read:

10 § 2187. INTERCOLLEGIATE SEXUAL VIOLENCE PREVENTION

11 COUNCIL

12 (a) Creation. There is created the Intercollegiate Sexual Violence
13 Prevention Council to create a coordinated response to campus sexual harm,
14 including across institutions of higher learning in Vermont.

15 (b) Membership. The Council shall be composed of the following
16 members:

17 (1) the Title IX coordinator from each institution of higher learning in
18 Vermont;

19 (2) a campus-based prevention/education coordinator appointed by the
20 Vermont State Colleges,

1 ~~(3) a campus-based prevention/education coordinator appointed by the~~

2 University of Vermont;

3 ~~(4) a campus-based prevention/education coordinator appointed by the~~

4 Association of Vermont Independent Colleges;

5 ~~(5) two community-based sexual violence advocates appointed by the~~

6 Network Against Domestic and Sexual Violence;

7 ~~(6) two law enforcement or public safety representatives with~~

8 experience responding to and investigating campus sexual violence appointed

9 by the Commissioner of Public Safety;

10 ~~(7) two college students appointed by the Center for Crime Victim~~

11 Services; and

12 ~~(8) a person with expertise in sexual violence responses within the~~

13 lesbian, gay, bisexual, transgender, queer community appointed by the

14 Vermont Center for Crime Victim Services.

15 (c) Duties. The Council shall be responsible for the following:

16 ~~(1) interdisciplinary planning and information sharing to support sexual~~

17 violence prevention programs on every college campus in Vermont;

18 ~~(2) an annual review of aggregate data collected from climate surveys~~

19 on sexual violence on college campuses in Vermont, and

1 ~~(3) development and distribution of best practices and recommendations~~
2 on violence prevention, sexual health education, and strategies for mitigating
3 sexual violence and tertiary violence on college campuses in Vermont.

4 (d) Assistance. The Council shall have the administrative and technical
5 assistance of the Network Against Domestic and Sexual Violence.

6 (e) Report. On or before December 2022 and annually thereafter, the
7 Council shall submit a written report to the General Assembly with a summary
8 of activities and any recommendations for legislative action.

9 (f) Meetings.

10 (1) The Network Against Domestic and Sexual Violence shall call the
11 first meeting of the Council to occur on or before September 15, 2021.

12 (2) The Council shall select a chair from among its members at the first
13 meeting.

14 (3) A majority of the membership shall constitute a quorum.

15 (4) Members who are not otherwise compensated by the member's
16 employer for attendance at meetings shall be entitled to per diem
17 compensation and reimbursement of expenses as permitted under 32 V.S.A. §
18 1010. These payments shall be made from monies appropriated to the
19 Network Against Domestic and Sexual Violence for such purposes.

1 ~~Sec. 6. APPROPRIATIONS~~

2 ~~(a) In fiscal year 2022, \$13,000.00 is appropriated to the Network Against~~
3 ~~Domestic and Sexual Violence for the purpose of staffing the Intercollegiate~~
4 ~~Sexual Violence Prevention Council and per diem compensation and~~
5 ~~reimbursement of expenses for members who are not otherwise compensated~~
6 ~~by the member's employer for attendance at meetings.~~

7 ~~(b) In fiscal year 2022, \$40,000.00 is appropriated to the Vermont Center~~
8 ~~for Crime Victim Services for use in the Vermont Forensic Nursing Program~~
9 ~~for the purpose of providing forensic medical care for sexual assault patients~~
10 ~~within primary care and reproductive health care settings.~~

11 Sec. 7. EFFECTIVE DATE

12 ~~This act shall take effect on July 1, 2021.~~

~~Sec. 1. 13 V.S.A. § 3251 is amended to read:~~

~~§ 3251. DEFINITIONS~~

~~As used in this chapter:~~

~~* * *~~

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

~~* * *~~

~~(10) "Incapable of consenting" means the person is:~~

~~(A) incapable of appraising the nature of the conduct at issue, or~~

~~(B) physically incapable of declining participation in, or communicating unwillingness to engage in, the conduct at issue.~~

~~(11) "Developmental disability" has the same meaning as in 18 V.S.A. § 9302.~~

~~(12) "Psychiatric disability" has the same meaning as in 1 V.S.A. § 1171.~~

Sec. 1. 13 V.S.A. § 3251 is amended to read:

§ 3251. DEFINITIONS

As used in this chapter:

* * *

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

* * *

(10) "Incapable of consenting" means the person:

(A) is incapable of understanding the nature of the conduct at issue;

(B) is physically incapable of resisting, declining participation in, or communicating unwillingness to engage in the conduct at issue; or

(C) lacks the mental ability to make or communicate a decision about whether to engage in the conduct at issue.

Sec. 2. 13 V.S.A. § 3252 is amended to read:

§ 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; or~~

~~(4) when the person knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring.~~

~~(b)(1) 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 administer any alcohol, drugs, or other intoxicants to another person without the person's knowledge or against the person's will and, while the person is impaired by the alcohol, drugs, or intoxicants, engage in a sexual act with that person.~~

~~(2) No person shall engage in a sexual act with another person when the other person is incapable of consenting to the sexual act due to substantial impairment by alcohol, drugs, or other intoxicants and that condition is known or reasonably should be known by the person.~~

* * *

(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.

** * **

(g) A person convicted of violating subsection (a), (b), (d), or (e) of this section shall be sentenced under section 3271 of this title.

Sec. 3. 13 V.S.A. § 3254 is amended to read:

§ 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;~~ Lack of verbal or physical resistance does not constitute consent.

(2) An expression of lack of consent through words or conduct means there is no consent.

(3) Submission resulting from the use of force, threat of force, or placing another person in fear does not constitute consent.

(4) Consent shall not be demonstrated by evidence prohibited under section 3255 of this title.

(5) A sleeping or unconscious person cannot consent.

~~*(6) A person shall be deemed to have acted without the consent of the other person where the actor.*~~

~~(A) knows know or reasonably should have known that the other person is was mentally incapable of understanding the nature of the sexual act or lewd and lascivious conduct; or~~

~~(B) knows knew or reasonably should have known that the other person is was not physically capable of resisting, or declining consent to, the sexual act or lewd and lascivious conduct; or~~

~~(C) knows knew or reasonably should have known that the other person is was unaware that a sexual act or lewd and lascivious conduct is was being committed; or~~

~~(D) knows knew or reasonably should have known that the other person is was mentally incapable of resisting, or declining consent to, consenting 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; or~~

~~(E) knew or reasonably should have known that the other person was incapable of consenting to the sexual act or lewd and lascivious conduct with the actor because the person was substantially impaired by alcohol, drugs, or other intoxicants.~~

~~(6) A person shall be deemed to have acted without the consent of the other person where the actor:~~

~~(A) knows~~ knew or reasonably should have known that the other person is was mentally incapable of understanding the nature of consenting to 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 ~~knew or reasonably should have known that the other person is~~ was ~~unaware that a sexual act or lewd and lascivious conduct is~~ was ~~being committed; or~~

~~(D)(C) 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~~ knew or reasonably should have known that the other person was incapable of consenting to the sexual act or lewd and lascivious conduct with the actor because the person was substantially impaired by alcohol, drugs, or other intoxicants.

Sec. 4. DATA COLLECTION AND REPORTING

(a)(1) On or before September 1, 2024 and bi-annually thereafter, the Department of Public Safety shall provide a statistical report to the General Assembly based on data from the National Incident Based Reporting System and the Vermont Judiciary on the following:

(A) the number of sexual violence cases reported to State, county, and municipal law enforcement agencies and every constable who exercises law enforcement authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with 20 V.S.A. § 2358;

(B) the number of civil sexual assault or stalking orders granted;

(C) the number of sexual violence cases referred by law enforcement to a State's Attorney or the Attorney General for potential charges; and

(D) the number of sexual violence cases charged, the nature of the charge, and the disposition of the charges.

(2) The data identified in subdivision (a)(1) of this section shall be organized and reported to the General Assembly by county.

(b) The Department of Public Safety shall make a reasonable effort to protect victim confidentiality when statistical information may be identifying.

(c) The Department of Public Safety shall post the data collected pursuant to subsection (a) of this section on its website in a manner that is clear, understandable, and accessible to the public.

Sec. 5. 16 V.S.A. § 2187 is added to read:

§ 2187. INTERCOLLEGIATE SEXUAL VIOLENCE PREVENTION

COUNCIL

(a) Creation. There is created the Intercollegiate Sexual Violence Prevention Council to create a coordinated response to campus sexual harm, including across institutions of higher learning in Vermont.

(b) Membership. The Council shall be composed of the following members:

(1) a Title IX coordinator and a campus-based prevention/education coordinator from an institution of higher learning appointed by the chancellor of the Vermont State Colleges;

(2) a Title IX coordinator and a campus-based prevention/education coordinator from an institution of higher learning appointed by the President of the University of Vermont;

(3) a Title IX coordinator and a campus-based prevention/education coordinator from an institution of higher learning appointed by the President of the Association of Vermont Independent Colleges;

(4) two community-based sexual violence advocates appointed by the Network Against Domestic and Sexual Violence;

(5) two law enforcement or public safety representatives with experience responding to and investigating campus sexual violence appointed by the Commissioner of Public Safety;

(6) two college students, at least one of whom has lived experience as a sexual violence survivor and one who represents a campus-based racial justice organization, appointed by the Center for Crime Victim Services;

(7) a person with expertise in sexual violence responses within the lesbian, gay, bisexual, transgender, queer community appointed by the Vermont Center for Crime Victim Services;

(8) a sexual assault nurse examiner appointed by the Network Against Domestic and Sexual Violence;

(9) a prosecutor with experience in prosecuting sexual violence cases from either the Department of State's Attorneys and Sheriffs or the Office of the Attorney General appointed by the Attorney General; and

(10) an attorney with experience in sexual violence cases appointed by the Defender General.

(c) Duties. The Council shall be responsible for the following:

(1) interdisciplinary planning and information sharing to support sexual violence prevention programs on every college campus in Vermont;

(2) annual review of trends in aggregate data collected by institutions of higher learning regarding sexual violence on college campuses in Vermont;

and

(3) development and distribution of best practices and recommendations on violence prevention, sexual health education, and strategies for mitigating sexual violence and tertiary violence on college campuses in Vermont.

(d) Assistance. The Council shall have the administrative and technical assistance of the Network Against Domestic and Sexual Violence.

(e) Report. On or before December 2022 and annually thereafter, the Council shall submit a written report to the General Assembly with a summary of activities and any recommendations for legislative action.

(f) Meetings.

(1) The Network Against Domestic and Sexual Violence shall call the first meeting of the Council to occur on or before September 15, 2021.

(2) The Council shall select a chair from among its members at the first meeting.

(3) A majority of the membership shall constitute a quorum.

(4) The Council shall meet quarterly.

(5) Members who are not otherwise compensated by the member's employer for attendance at meetings shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010. These payments shall be made from monies appropriated to the Network Against Domestic and Sexual Violence for such purposes.

Sec. 6. REPEAL

16 V.S.A. § 2187 (Intercollegiate Sexual Violence Prevention Council) is repealed on July 1, 2028.

~~*Sec. 7. APPROPRIATIONS*~~

~~*(a) In fiscal year 2022, \$13,000.00 is appropriated to the Network Against Domestic and Sexual Violence for the purpose of staffing the Intercollegiate Sexual Violence Prevention Council and per diem compensation and reimbursement of expenses for members who are not otherwise compensated by the member's employer for attendance at meetings.*~~

~~*(b) In fiscal year 2022, \$40,000.00 is appropriated to the Vermont Center for Crime Victim Services for use in the Vermont Forensic Nursing Program for the purpose of providing forensic medical care for sexual assault patients within primary care and reproductive health care settings.*~~

Sec. 7. APPROPRIATIONS

(a)(1) In fiscal year 2022, \$11,990.00 is appropriated to the Center for Crime Victim Services to provide a grant for the purpose of staffing the Intercollegiate Sexual Violence Prevention Council.

(2) In fiscal year 2022, \$1,010.00 is appropriated to the Center for Crime Victim Services to provide for per diem compensation and reimbursement of expenses for members who are not otherwise compensated by the member's employer for attendance at meetings.

(b)(1) In fiscal year 2022, \$40,000.00 is appropriated to the Vermont Center for Crime Victim Services to provide a grant for the Vermont Forensic Nursing Program. The funds shall be used to recruit, train, and credential nurses to provide forensic medical care for sexual assault patients within primary care, reproductive health, or campus health care settings in order to expand medical care for sexual assault patients beyond hospital emergency departments.

(2) On or before January 15, 2022, the Vermont Center for Crime Victim Services shall report to the House and Senate Committees on Judiciary on the progress of the pilot program identified in subdivision (1) of this subsection and November 1, 2022 regarding the implementation and results of the pilot program.

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2021.