

Journal of the Senate

THURSDAY, MAY 13, 2021

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the Governor

A message was received from His Excellency, the Governor, by Ms. Brittney L. Wilson, Secretary of Civil and Military Affairs, as follows:

Madam President:

I am directed by the Governor to inform the Senate that on the twelfth day of May, 2021 he approved and signed bills originating in the Senate of the following titles:

S. 39. An act relating to the Judicial Branch fee report and electronic filing fees.

S. 45. An act relating to earned discharge from probation.

S. 88. An act relating to insurance, banking, and securities.

S. 99. An act relating to repealing the statute of limitations for civil actions based on childhood physical abuse.

Bill Referred to Committee on Appropriations

H. 431.

House bill of the following title, appearing on the Calendar for notice, and carrying an appropriation or requiring the expenditure of funds, under the rule, was referred to the Committee on Appropriations:

An act relating to miscellaneous energy subjects.

Bills Passed

Senate bills of the following titles were severally read the third time and passed:

H. 140. An act relating to approval of amendments to the charter of the Town of Williston.

H. 445. An act relating to approval of an amendment to the charter of the Town of Underhill.

Bills Passed in Concurrence with Proposals of Amendment

House bills of the following titles were severally read the third time and passed in concurrence with proposals of amendment:

H. 225. An act relating to possession of a therapeutic dosage of buprenorphine.

H. 313. An act relating to miscellaneous amendments to alcoholic beverage laws.

Proposal of Amendment; Third Reading Ordered

H. 183.

Senator Sears, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to sexual violence.

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

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 voluntary agreement to engage in a sexual act the affirmative, unambiguous, and voluntary agreement to engage in a sexual act, which can be revoked at any time.

* * *

(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~~ Lack of consent may be shown without proof of resistance;

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

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

(4) A sleeping or unconscious person cannot consent.

(5) a 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. VERMONT SENTENCING COMMISSION

The Vermont Sentencing Commission shall examine whether the application of 13 V.S.A. § 3254 (trial procedure; consent) to 13 V.S.A. § 2601 (lewd and lascivious conduct) continues to be appropriate given recent amendments to 13 V.S.A. chapter 59 (lewdness and prostitution).

Sec. 5. 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. 6. EFFECTIVE DATE

This act shall take effect July 1, 2021.

And that the bill ought to pass in concurrence with such proposal of amendment.

Senator Sears, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Judiciary.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Judiciary?, Senators Lyons, Campion, Chittenden, Hooker, Perchlik and Terenzini moved to amend the proposal of amendment of the Committee on Judiciary by striking out Sec. 6, effective date, in its entirety and inserting in lieu thereof four new sections to be numbered Secs. 6 through 9 to read as follows:

Sec. 6. 16 V.S.A. § 2187 is added to read:

§ 2187. INTERCOLLEGIATE SEXUAL HARM PREVENTION COUNCIL

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

(b) Membership.

(1) The Council shall be composed of the following members:

(A) a Title IX coordinator and a campus-based sexual harm prevention/education coordinator from an institution of higher learning, appointed by the Chancellor of the Vermont State Colleges;

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

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

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

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

(F) three 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;

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

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

(I) 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

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

(2) To ensure a council that is reflective of Vermont's college campuses, appointing authorities shall consider diversity when making appointments to the Council.

(c) Duties. The Council shall:

(1) Review the recommendations from the Report of the Vermont Campus Sexual Harm Task Force and develop prevention solutions to sexual harm based on those recommendations.

(2) Implement interdisciplinary planning and information sharing to support sexual violence prevention programs on every college campus in Vermont.

(3) Undertake an annual review of trends in aggregate data collected by institutions of higher learning regarding sexual violence on college campuses in Vermont.

(4) Identify and share effective practices on violence prevention, sexual health education, and strategies for mitigating sexual harm and secondary impacts of sexual harm on college campuses in Vermont.

(5) Identify campus-wide activities, publications, and services that promote a campus culture of respect to support the prevention of sexual harm.

(6) Recommend statutory protections to the General Assembly not later than November 1, 2021 to ensure that survivors of sexual harm are not punished for reporting an incident of sexual violence due to alcohol, drug use, or other minor conduct violations occurring at or around the time of an assault.

(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 1, 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 July 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. 7. REPEAL

16 V.S.A. § 2187 (Intercollegiate Sexual Harm Prevention Council) is repealed on July 1, 2025.

Sec. 8. APPROPRIATIONS

(a) 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 Harm Prevention Council.

(b) 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.

Sec. 9. EFFECTIVE DATES

(a) This section and Secs. 6 (Intercollegiate Sexual Harm Prevention Council) and 8 (Appropriations) shall take effect on passage.

(b) The remaining sections shall take effect on July 1, 2021.

Which was agreed to.

Thereupon, the proposal of amendment of the Committee on Judiciary, as amended, was agreed to and third reading of the bill was ordered.

**House Proposal of Amendment to Senate Proposal of Amendment
Concurred In**

H. 434.

House proposal of amendment to Senate proposal of amendment to House bill entitled:

An act relating to establishing the Agricultural Innovation Board.

Was taken up.

The House concurs in the Senate proposal of amendment with further proposal of amendment thereto as follows:

In Sec. 1, 6 V.S.A. chapter 215, subchapter 7A, in section 4964, by striking out subsection (d) in its entirety and inserting in lieu thereof the following:

(d) Seed review. The Agricultural Innovation Board shall advise the Secretary regarding the sale, distribution, or use of genetically engineered seed in the State and may recommend to the Secretary limits or conditions on the sale, distribution, or use of a genetically engineered seed or seeds or recommend a limited period of time for sale of a genetically engineered seed or seeds.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment to the Senate proposal of amendment?, was decided in the affirmative.

Committee of Conference Appointed**H. 449.**

An act relating to the membership and duties of the Vermont Pension Investment Commission and the creation of the Pension Benefits, Design, and Funding Task Force.

Was taken up. Pursuant to the request of the House, the President announced the appointment of

Senator White
Senator Pollina
Senator Collamore

as members of the Committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses.

Adjournment

On motion of Senator Balint, the Senate adjourned until ten o'clock in the morning.