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Draft recommendations of HGO

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 sexual act 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. § 147.

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~~

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

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

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

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

17 * * *

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

21 * * *

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

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

4 § 3254. TRIAL PROCEDURE; CONSENT

5 In a prosecution for a crime defined in this chapter or section 2601 of this
6 title:

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

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

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

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

15 (5) A sleeping or unconscious person cannot consent.

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

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

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

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

7 (D) ~~knows~~ knew or reasonably should have known that the other
8 person ~~is~~ was ~~mentally~~ incapable of ~~resisting, or declining consent to,~~
9 consenting to the sexual act or lewd and lascivious conduct; due to a ~~mental~~
10 ~~condition or a psychiatric or developmental disability as defined in 14 V.S.A. §~~
11 3061; or

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

16 Sec. 4. DATA COLLECTION AND REPORTING

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

1 (A) The number of sexual violence cases reported to State, county,
2 and municipal law enforcement agencies and every constable who exercises
3 law enforcement authority pursuant to 24 V.S.A. § 1936a and who is trained in
4 compliance with 5 20 V.S.A. § 2358.

5 (B) The number of civil sexual assault or stalking orders granted.

6 (C) The number of sexual violence cases referred by law enforcement
7 to a state’s attorney or the Attorney General for potential charges.

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

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

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

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

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

18 § 2187. INTERCOLLEGIATE SEXUAL VIOLENCE PREVENTION

19 COUNCIL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 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) The Council shall meet quarterly.

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

1 **Sec. 6. REPEAL**

2 16 V.S.A. § 2187 (Intercollegiate Sexual Violence Prevention Council) is
3 repealed on July 1, 2028.

4 Sec. 7. APPROPRIATIONS

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

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

14 Sec. 8. EFFECTIVE DATE

15 This act shall take effect on July 1, 2021.

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19 (Committee vote: _____)

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Representative _____

FOR THE COMMITTEE