

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred House Bill No. 475
3 entitled “An act relating to the classification system for criminal offenses”
4 respectfully reports that it has considered the same and recommends that the
5 bill be amended by striking Sec. 25 in its entirety and adding new Secs. 25- to
6 read as follows:

7 Sec. 25. 13 V.S.A. § 205 is amended to read:

8 § 205. INTERMARRIAGE OF OR FORNICATION BY PERSONS
9 PROHIBITED TO MARRY

10 Persons between whom marriages are prohibited by the laws of this State
11 ~~who shall not~~ intermarry or commit fornication with each other ~~shall be~~
12 ~~imprisoned not more than five years or fined not more than \$1,000.00, or both.~~

13 A person who violates this section commits a Class D felony. (5 years,
14 \$10,000)

15 Sec. 26. 13 V.S.A. § 1379 is amended to read:

16 § 1379. SEXUAL ABUSE

17 (a) A person who volunteers for or is paid by a caregiving facility or
18 program shall not engage in any sexual activity with a vulnerable adult. It shall
19 be an affirmative defense to a prosecution under this subsection that the sexual
20 activity was consensual between the vulnerable adult and a caregiver who was
21 hired, supervised, and directed by the vulnerable adult. A person who violates

1 this subsection ~~shall be imprisoned for not more than two years or fined not~~
2 ~~more than \$10,000.00, or both~~ commits a Class A misdemeanor. (2 years,
3 \$5,000)

4 (b) No person, whether or not the person has actual knowledge of the
5 victim's vulnerable status, shall engage in sexual activity with a vulnerable
6 adult if:

7 (1) the vulnerable adult does not consent to the sexual activity; or

8 (2) the person knows or should know that the vulnerable adult is
9 incapable of resisting, declining, or consenting to the sexual activity due to his
10 or her specific vulnerability or due to fear of retribution or hardship.

11 (c) A person who violates subsection (b) of this section ~~shall be:~~

12 (1) ~~imprisoned for not more than five years or fined not more than~~
13 ~~\$10,000.00, or both,~~ commits a Class C felony (10 years, \$25,000) if the
14 sexual activity involves lewd and lascivious conduct;

15 (2) ~~imprisoned for not more than 20 years or fined not more than~~
16 ~~\$10,000.00, or both,~~ commits a Class A felony (life, \$100,000) if the sexual
17 activity involves a sexual act.

18 (d) A caregiver who violates subsection (b) of this section ~~shall be:~~

19 (1) ~~imprisoned for not more than seven years or fined not more than~~
20 ~~\$10,000.00, or both,~~ commits a Class C felony (10 years, \$25,000) if the
21 sexual activity involves lewd and lascivious conduct.

1 (2) ~~imprisoned for not more than 25 years or fined not more than~~
2 ~~\$10,000.00, or both,~~ commits a Class A felony (life, \$100,000) if the sexual
3 activity involves a sexual act.

4 Sec. 27. 13 V.S.A. § 2601 is amended to read:

5 § 2601. LEWD AND LASCIVIOUS CONDUCT

6 A person guilty of open and gross lewdness and lascivious behavior ~~shall be~~
7 ~~imprisoned not more than five years or fined not more than \$300.00, or both~~
8 commits a Class D felony. (5 years, \$10,000)

9 Sec. 28. 13 V.S.A. § 2601a is amended to read:

10 § 2601A. PROHIBITED CONDUCT

11 (a) No person shall engage in open and gross lewdness.

12 (b) A person who violates this section ~~shall~~:

13 (1) ~~be imprisoned not more than one year or fined not more than~~
14 ~~\$300.00, or both,~~ commits a Class B misdemeanor (1 year, \$2,500) for a first
15 offense; and

16 (2) ~~be imprisoned not more than two years or fined not more than~~
17 ~~\$1,000.00, or both,~~ commits a Class A misdemeanor (2 years, \$5,000) for a
18 second or subsequent offense.

19 Sec. 29. 13 V.S.A. § 2602 is amended to read:

20 § 2602. LEWD OR LASCIVIOUS CONDUCT WITH CHILD

1 (a)(1) No person shall willfully and lewdly commit any lewd or lascivious
2 act upon or with the body, or any part or member thereof, of a child under the
3 age of 16 years, with the intent of arousing, appealing to, or gratifying the lust,
4 passions, or sexual desires of such person or of such child.

5 (2) This section shall not apply if the person is less than 19 years old, the
6 child is at least 15 years old, and the conduct is consensual.

7 (b) A person who violates subsection (a) of this section ~~shall be:~~

8 (1) For a first offense, ~~imprisoned not less than two years and not more~~
9 ~~than 15 years, and, in addition, may be fined not more than \$5,000.00, or both~~
10 ~~commits a Class C felony.~~ (10 years, \$25,000)

11 (2) For a second offense, ~~imprisoned not less than five years and a~~
12 ~~maximum term of life, and, in addition, may be fined not more than~~
13 ~~\$25,000.00, or both~~ commits a Class A felony. (life, \$100,000)

14 (3) For a third or subsequent offense, ~~imprisoned not less than 10 years~~
15 ~~and a maximum term of life, and, in addition, may be fined not more than~~
16 ~~\$25,000.00, or both~~ commits a Class A felony. (life, \$100,000)

17 (c)(1) Except as provided in subdivision (2) of this subsection, a sentence
18 ordered pursuant to subdivision (b)(2) of this section shall include at least a
19 five-year term of imprisonment and a sentence ordered pursuant to subdivision
20 (b)(3) of this section shall include at least a 10-year term of imprisonment. The
21 five-year and 10-year terms of imprisonment required by this subdivision shall

1 be served and may not be suspended, deferred, or served as a supervised
2 sentence. The defendant shall not be eligible for probation, parole, furlough, or
3 any other type of early release until the expiration of the five-year or 10-year
4 term of imprisonment.

5 (2) The court may depart downwardly from the five-year and 10-year
6 terms of imprisonment required by subdivisions (b)(2) and (3) of this section
7 and impose a lesser term of incarceration if the court makes written findings on
8 the record that the downward departure will serve the interests of justice and
9 public safety.

10 (d) A person convicted of violating subdivision (b)(2) or (3) of this section
11 shall be sentenced under section 3271 of this title.

12 * * *

13 Sec. 30. 13 V.S.A. § 2605 is amended to read:

14 § 2605. VOYEURISM

15 * * *

16 (b) No person shall intentionally view, photograph, film, or record in any
17 format:

18 (1) the intimate areas of another person without that person's knowledge
19 and consent while the person being viewed, photographed, filmed, or recorded
20 is in a place where he or she would have a reasonable expectation of privacy;
21 or

1 (2) the intimate areas of another person without that person’s knowledge
2 and consent and under circumstances in which the person has a reasonable
3 expectation of privacy.

4 (c) No person shall display or disclose to a third party any image recorded
5 in violation of subsection (b), (d), or (e) of this section.

6 (d) No person shall intentionally conduct surveillance or intentionally
7 photograph, film, or record in any format a person without that person’s
8 knowledge and consent while the person being surveilled, photographed,
9 filmed, or recorded is in a place where he or she would have a reasonable
10 expectation of privacy within a home or residence. Bona fide private
11 investigators and bona fide security guards engaged in otherwise lawful
12 activities within the scope of their employment are exempt from this
13 subsection.

14 (e) No person shall intentionally photograph, film, or record in any format a
15 person without that person’s knowledge and consent while that person is in a
16 place where a person has a reasonable expectation of privacy and that person is
17 engaged in sexual conduct.

18 * * *

19 (j) For a first offense, a person who violates subsection (b), (d), or (e) of this
20 section shall be imprisoned not more than two years or fined not more than
21 \$1,000.00, or both commits a Class A misdemeanor. (2 years, \$5,000) For a

1 second or subsequent offense, a person who violates subsection (b), (d), or (e)
2 of this section ~~shall be imprisoned not more than three years or fined not more~~
3 ~~than \$5,000.00, or both~~ commits a Class E felony. (3 years, \$7,500) A person
4 who violates subsection (c) of this section ~~shall be imprisoned not more than~~
5 ~~five years or fined not more than \$5,000.00, or both~~ commits a Class D felony.
6 (5 years, \$10,000)

7 Sec. 31. 13 V.S.A. § 2606 is amended to read:

8 § 2606. DISCLOSURE OF SEXUALLY EXPLICIT IMAGES WITHOUT
9 CONSENT

10 * * *

11 (b)(1) A person violates this section if he or she knowingly discloses a
12 visual image of an identifiable person who is nude or who is engaged in sexual
13 conduct, without his or her consent, with the intent to harm, harass, intimidate,
14 threaten, or coerce the person depicted, and the disclosure would cause a
15 reasonable person to suffer harm. A person may be identifiable from the image
16 itself or information offered in connection with the image. Consent to
17 recording of the visual image does not, by itself, constitute consent for
18 disclosure of the image. A person who violates this subdivision (1) ~~shall be~~
19 ~~imprisoned not more than two years or fined not more than \$2,000.00, or both~~
20 commits a Class A misdemeanor. (2 years, \$5,000)

1 (2) A person who violates subdivision (1) of this subsection with the
2 intent of disclosing the image for financial profit ~~shall be imprisoned not more~~
3 ~~than five years or fined not more than \$10,000.00, or both~~ commits a Class D
4 felony. (5 years, \$10,000)

5 * * *

6 Sec. 32. 13 V.S.A. § 2632 is amended to read:

7 § 2632. PROSTITUTION

8 (a) A person shall not:

9 (1) occupy a place, structure, building, or conveyance for the purpose of
10 prostitution, lewdness, or assignation;

11 (2) knowingly permit a place, structure, building, or conveyance owned
12 by the person or under the person’s control to be used for the purpose of
13 prostitution, lewdness, or assignation;

14 (3) receive or offer, or agree to receive, a person into a place, structure,
15 building, or conveyance for the purpose of prostitution, lewdness, or
16 assignation;

17 (4) permit a person to remain in a place, structure, building, or
18 conveyance for the purpose of prostitution, lewdness, or assignation;

19 (5) direct, take or transport, or offer or agree to take or transport a person
20 to a place, structure, building, or conveyance or to any other person knowingly,

1 or with reasonable cause to know that the purpose of such directing, taking, or
2 transporting is prostitution, lewdness, or assignation;

3 (6) procure or solicit or offer to procure or solicit a person for the
4 purpose of prostitution, lewdness, or assignation;

5 (7) reside in, enter or remain in a place, structure, or building or enter or
6 remain in a conveyance for the purpose of prostitution, lewdness, or
7 assignation;

8 (8) engage in prostitution, lewdness, or assignation; or

9 (9) aid or abet prostitution, lewdness, or assignation, by any means
10 whatsoever.

11 (b) A person who violates a provision of subsection (a) of this section ~~shall~~
12 ~~be fined not more than \$100.00 or may be imprisoned not more than one year~~
13 commits a Class B misdemeanor. (1 year, \$2,500) For a second offense such
14 ~~person shall be imprisoned for not more than three years~~ commits a Class A
15 misdemeanor. (2 years, \$5,000)

16 Sec. 33. 13 V.S.A. § 2635 is amended to read:

17 § 2635. SLAVE TRAFFIC

18 (a) A person shall not:

19 (1) induce, entice, or procure a person to come into the State or to go
20 from the State for the purpose of prostitution or for any immoral purpose or to
21 enter a house of prostitution in the State;

1 (2) willfully or knowingly aid such person in obtaining transportation to
2 or within the State for such purposes;

3 (3) place a person in the charge or custody of another person for immoral
4 purposes or in a house of prostitution;

5 (4) induce, entice, procure, or compel such person to reside in a house of
6 prostitution; or

7 (5) induce, entice, procure, or compel such person to live a life of
8 prostitution.

9 (b) A person ~~violating a provision hereof shall be imprisoned not more than~~
10 ~~10 years nor less than one year or fined not more than \$2,000.00 nor less than~~
11 ~~\$200.00, or both~~ who violates this section commits a Class C felony. (10 years,
12 \$25,000)

13 Sec. 34. 13 V.S.A. § 2636 is amended to read:

14 § 2636. UNLAWFUL PROCUREMENT

15 (a) A person shall not:

16 (1) induce, entice, procure, or compel a person, for the purpose of
17 prostitution or for any other immoral purposes, to enter a house of prostitution;

18 (2) receive money or other valuable consideration for or on account of
19 placing a person in a house of prostitution;

1 (3) pay money or other valuable consideration to procure a person for the
2 purpose of placing such person for immoral purposes in a house of prostitution,
3 with or without the person’s consent; or

4 (4) knowingly receive money or other valuable thing for or on account of
5 procuring or placing a person in a house of prostitution for immoral purposes,
6 with or without the person’s consent.

7 (b) A person ~~violating a provision hereof shall be punished as provided in~~
8 ~~section 2635 of this title~~ who violates this section commits a Class C felony.
9 **(10 years, \$25,000)**

10 Sec. 35. 13 V.S.A. § 2637 is amended to read:

11 § 2637. APPROPRIATING OR LEVYING UPON EARNINGS OF
12 PROSTITUTE

13 (a) A person shall not:

14 (1) hold, detain, or restrain a person in a house of prostitution for the
15 purpose of compelling such person, directly or indirectly, by the person’s
16 voluntary or involuntary service or labor, to pay, liquidate, or cancel a debt,
17 dues, or obligations incurred or claimed to have been incurred in such house of
18 prostitution; or

19 (2) accept, receive, levy, or appropriate money or other valuable thing
20 from the proceeds or earnings of a person engaged in prostitution.

1 (b) An acceptance, receipt, levy, or appropriation of such money or valuable
2 thing shall be presumptive evidence of lack of consideration.

3 (c) A person who violates a provision of this section ~~shall be punished as~~
4 ~~provided in section 2635 of this title~~ commits a Class C felony. (10 years,
5 \$25,000)

6 Sec. 36. 13 V.S.A. § 2652 is amended to read:

7 § 2652. HUMAN TRAFFICKING

8 (a) No person shall knowingly:

9 (1) recruit, entice, harbor, transport, provide, or obtain by any means a
10 person under the age of 18 for the purpose of having the person engage in a
11 commercial sex act;

12 (2) recruit, entice, harbor, transport, provide, or obtain a person through
13 force, fraud, or coercion for the purpose of having the person engage in a
14 commercial sex act;

15 (3) compel a person through force, fraud, or coercion to engage in a
16 commercial sex act;

17 (4) benefit financially or by receiving anything of value from
18 participation in a venture, knowing that force, fraud, or coercion was or will be
19 used to compel any person to engage in a commercial sex act as part of the
20 venture;

21 (5) subject a person to labor servitude;

1 (6) recruit, entice, harbor, transport, provide, or obtain a person for the
2 purpose of subjecting the person to labor servitude; or

3 (7) benefit financially or by receiving anything of value from
4 participation in a venture, knowing that a person will be subject to labor
5 servitude as part of the venture.

6 (b) A person who violates subsection (a) of this section ~~shall be imprisoned~~
7 ~~for a term up to and including life or fined not more than \$500,000.00, or both~~
8 commits a Class A felony. (life, \$100,000)

9 * * *

10 Sec. 37. 13 V.S.A. § 2653 is amended to read:

11 § 2653. AGGRAVATED HUMAN TRAFFICKING

12 (a) A person commits the crime of aggravated human trafficking if the
13 person commits human trafficking in violation of section 2652 of this title
14 under any of the following circumstances:

15 (1) the offense involves a victim of human trafficking who is a child
16 under the age of 18;

17 (2) the person has previously been convicted of a violation of section
18 2652 of this title;

19 (3) the victim of human trafficking suffers serious bodily injury or death;

20 or

1 (4) the actor commits the crime of human trafficking under
2 circumstances that constitute the crime of sexual assault as defined in section
3 3252 of this title, aggravated sexual assault as defined in section 3253 of this
4 title, or aggravated sexual assault of a child as defined in section 3253a of this
5 title.

6 (b) A person who violates this section ~~shall be imprisoned not less than 20~~
7 ~~years and a maximum term of life or fined not more than \$100,000.00, or both~~
8 commits a Class A felony. (life, \$100,000)

9 (c) The provisions of this section do not limit or restrict the prosecution for
10 murder or manslaughter.

11 Sec. 38. 13 V.S.A. § 2654 is amended to read:

12 § 2654. PATRONIZING OR FACILITATING HUMAN TRAFFICKING

13 (a) No person shall knowingly:

14 (1) permit a place, structure, or building owned by the person or under
15 the person's control to be used for the purpose of human trafficking;

16 (2) receive or offer or agree to receive or offer a person into a place,
17 structure, or building for the purpose of human trafficking; or

18 (3) permit a person to remain in a place, structure, building, or
19 conveyance for the purpose of human trafficking.

1 (b) A person who violates this section ~~shall be imprisoned not more than~~
2 ~~five years or fined not more than \$100,000.00, or both~~ commits a Class D
3 felony. (5 years, \$10,000)

4 Sec. 39. 13 V.S.A. § 2655 is amended to read:

5 § 2655. SOLICITATION

6 (a) No person shall knowingly solicit a commercial sex act from a victim of
7 human trafficking.

8 (b) A person who violates this section ~~shall be imprisoned not more than~~
9 ~~five years or fined not more than \$100,000.00, or both~~ commits a Class D
10 felony. (5 years, \$10,000).

11 Sec. 40. 13 V.S.A. § 2802b is amended to read:

12 § 2802B. MINOR ELECTRONICALLY DISSEMINATING INDECENT
13 MATERIAL TO ANOTHER PERSON

14 (a)(1) No minor shall knowingly and voluntarily and without threat or
15 coercion use a computer or electronic communication device to transmit an
16 indecent visual depiction of himself or herself to another person.

17 (2) No person shall possess a visual depiction transmitted to the person
18 in violation of subdivision (1) of this subsection. It shall not be a violation of
19 this subdivision if the person took reasonable steps, whether successful or not,
20 to destroy or eliminate the visual depiction.

21 (b) Penalties; minors.

1 (1) Except as provided in subdivision (3) of this subsection, a minor who
2 violates subsection (a) of this section shall be adjudicated delinquent. An
3 action brought under this subdivision (1) shall be filed in family court and
4 treated as a juvenile proceeding pursuant to 33 V.S.A. chapter 52, and may be
5 referred to the juvenile diversion program of the district in which the action is
6 filed.

7 (2) A minor who violates subsection (a) of this section and who has not
8 previously been adjudicated in violation of that section shall not be prosecuted
9 under chapter 64 of this title (sexual exploitation of children), and shall not be
10 subject to the requirements of chapter 167, subchapter 3 of this title (sex
11 offender registration).

12 (3) A minor who violates subsection (a) of this section who has
13 previously been adjudicated in violation of that section may be adjudicated in
14 ~~family court~~ as the Family Division under subdivision (b)(1) of this section or
15 prosecuted for a Class C misdemeanor (6 months, \$1,000) in ~~district court~~ the
16 Criminal Division under chapter 64 of this title (sexual exploitation of
17 children), but shall not be subject to the requirements of chapter 167,
18 subchapter 3 of this title (sex offender registration).

19 (4) Notwithstanding any other provision of law, the records of a minor
20 who is adjudicated delinquent under this section shall be expunged when the
21 minor reaches 18 years of age.

1 (c) Penalties; adults. A person 18 years of age or older who violates
2 subdivision (a)(2) of this section ~~shall be fined not more than \$300.00 or~~
3 ~~imprisoned for not more than six months, or both~~ commits a Class C
4 misdemeanor. (6 months, \$1,000)

5 * * *

6 Sec. 41. 13 V.S.A. § 2807 is amended to read:

7 § 2807. PENALTY

8 A person who violates any provision of section 2802 (disseminating
9 indecent material to a minor in the presence of the minor), 2802a
10 (disseminating indecent material to a minor outside the presence of the minor),
11 2803 (hiring/permitting a minor to distribute indecent material), 2804
12 (exhibiting film or show harmful to minors), 2804a (publicly displaying sex or
13 nudity for advertising purposes), or 2804b (displaying obscene material to
14 minors) of this title ~~shall be imprisoned not more than one year or fined not~~
15 ~~more than \$1,000.00, or both~~ commits a Class B misdemeanor. (1 year,
16 \$2,500)

17 Sec. 42. 13V.S.A. § 2825 is amended to read:

18 § 2825. PENALTIES

19 (a) A person who violates section 2822 (use of a child in a sexual
20 performance), 2823 (parent/guardian consenting to use of a child in a sexual
21 performance), or 2824 (promoting a recording of sexual conduct by a child) of

1 this title ~~shall be imprisoned not more than 10 years or fined not more than~~
2 ~~\$20,000.00, or both~~ commits a Class C felony. (10 years, \$25,000)

3 (b) ~~Upon conviction for a violation of section 2822, 2823, or 2824 of this~~
4 ~~title of a person who has earlier been convicted under any of those sections, the~~
5 ~~person shall be imprisoned not less than one year nor more than 15 years or~~
6 ~~fined not more than \$50,000.00, or both.~~ [Repealed.]

7 (c) A person who violates section 2827 (possession of child sexual abuse
8 material) this title by possessing or accessing with intent to view a photograph,
9 film, or visual depiction, including a depiction stored electronically, which
10 constitutes:

11 (1) a clearly lewd exhibition of a child's genitals or anus, other than a
12 depiction of sexual conduct by a child, ~~shall be imprisoned not more than two~~
13 ~~years or fined not more than \$5,000.00, or both~~ commits a Class A
14 misdemeanor; (2 years, \$5,000)

15 (2) sexual conduct by, with, or on a child, ~~shall be imprisoned not more~~
16 ~~than five years or fined not more than \$10,000.00, or both~~ commits a Class D
17 felony. (5 years, \$10,000)

18 (d) A person who violates section 2827 of this title after being convicted of
19 a previous violation of the same section ~~shall be imprisoned not more than 10~~
20 ~~years or fined not more than \$50,000.00, or both~~ commits a Class C felony. (10
21 years, \$25,000)

1 (e) A person who violates section 2828 (luring a child to engage in a sexual
2 act) of this title ~~shall be imprisoned not more than five years or fined not more~~
3 ~~than \$10,000.00, or both~~ commits a Class D felony. (5 years, \$10,000)

4 Sec. 43. 13 V.S.A. § 3252 is amended to read:

5 § 3252. SEXUAL ASSAULT

6 * * *

7 (f)(1) A person who violates subsection (a), (b), (d), or (e) of this section
8 ~~shall be imprisoned not less than three years and for a maximum term of life~~
9 ~~and, in addition, may be fined not more than \$25,000.00~~ commits a Class A
10 felony. (life, \$100,000)

11 (2) A person who violates subsection (c) of this section ~~shall be~~
12 ~~imprisoned for not more than 20 years, and, in addition, may be fined not more~~
13 ~~than \$10,000.00~~ commits a Class B felony. (20 years, \$50,000)

14 * * *

15 Sec. 44. 13 V.S.A. § 3253 is amended to read:

16 § 3253. AGGRAVATED SEXUAL ASSAULT

17 (a) A person commits the crime of aggravated sexual assault if the person
18 commits sexual assault under any one of the following circumstances:

19 (1) At the time of the sexual assault, the actor causes serious bodily
20 injury to the victim or to another.

1 (2) The actor is joined or assisted by one or more persons in physically
2 restraining, assaulting, or sexually assaulting the victim.

3 (3) The actor commits the sexual act under circumstances which
4 constitute the crime of kidnapping.

5 (4) The actor has previously been convicted in this State of sexual assault
6 under subsection 3252(a) or (b) of this title or aggravated sexual assault or has
7 been convicted in any jurisdiction in the United States or territories of an
8 offense which would constitute sexual assault under subsection 3252(a) or (b)
9 of this title or aggravated sexual assault if committed in this State.

10 (5) At the time of the sexual assault, the actor is armed with a deadly
11 weapon and uses or threatens to use the deadly weapon on the victim or on
12 another.

13 (6) At the time of the sexual assault, the actor threatens to cause
14 imminent serious bodily injury to the victim or to another and the victim
15 reasonably believes that the actor has the present ability to carry out the threat.

16 (7) At the time of the sexual assault, the actor applies deadly force to the
17 victim.

18 (8) The victim is under the age of 13 and the actor is at least 18 years of
19 age.

1 (9) The victim is subjected by the actor to repeated nonconsensual sexual
2 acts as part of the same occurrence or the victim is subjected to repeated
3 nonconsensual sexual acts as part of the actor's common scheme and plan.

4 (b) A person who commits the crime of aggravated sexual assault ~~shall be~~
5 ~~imprisoned not less than ten years and a maximum term of life, and, in~~
6 ~~addition, may be fined not more than \$50,000.00~~ commits a Class A felony.

7 (life, \$100,000)

8 (c)(1) Except as provided in subdivision (2) of this subsection, a sentence
9 ordered pursuant to subsection (b) of this section shall include at least a ten-
10 year term of imprisonment. The ten-year term of imprisonment required by this
11 subdivision shall be served and may not be suspended, deferred, or served as a
12 supervised sentence. The defendant shall not be eligible for probation, parole,
13 furlough, or any other type of early release until the expiration of the five-year
14 or ten-year term of imprisonment.

15 (2) The court may depart downwardly from the ten-year term of
16 imprisonment required by subsection (b) of this section and impose a lesser
17 term of incarceration if the court makes written findings on the record that the
18 downward departure will serve the interests of justice and public safety,
19 provided that in no event may the court impose a term of incarceration of less
20 than five years.

21

* * *

1 Sec. 45. 13 V.S.A. § 3253a is amended to read:

2 § 3253A. AGGRAVATED SEXUAL ASSAULT OF A CHILD

3 (a) A person commits the crime of aggravated sexual assault of a child if the
4 actor is at least 18 years of age and commits sexual assault against a child
5 under the age of 16 in violation of section 3252 of this title and at least one of
6 the following circumstances exists:

7 (1) At the time of the sexual assault, the actor causes serious bodily
8 injury to the victim or to another.

9 (2) The actor is joined or assisted by one or more persons in physically
10 restraining, assaulting, or sexually assaulting the victim.

11 (3) The actor commits the sexual act under circumstances which
12 constitute the crime of kidnapping.

13 (4) The actor has previously been convicted in this State of sexual assault
14 under subsection 3252(a) or (b) of this title, aggravated sexual assault under
15 section 3253 of this title, or aggravated sexual assault of a child under this
16 section, or has been convicted in any jurisdiction in the United States or
17 territories of an offense which would constitute sexual assault under subsection
18 3252(a) or (b) of this title, aggravated sexual assault under section 3253 of this
19 title, or aggravated sexual assault of a child under this section if committed in
20 this State.

1 (5) At the time of the sexual assault, the actor is armed with a deadly
2 weapon and uses or threatens to use the deadly weapon on the victim or on
3 another.

4 (6) At the time of the sexual assault, the actor threatens to cause
5 imminent serious bodily injury to the victim or to another, and the victim
6 reasonably believes that the actor has the present ability to carry out the threat.

7 (7) At the time of the sexual assault, the actor applies deadly force to the
8 victim.

9 (8) The victim is subjected by the actor to repeated nonconsensual sexual
10 acts as part of the same occurrence or the victim is subjected to repeated
11 nonconsensual sexual acts as part of the actor’s common scheme and plan.

12 (b) A person who commits the crime of aggravated sexual assault of a child
13 ~~shall be imprisoned for not less than 25 years with a maximum term of life,~~
14 ~~and, in addition, may be fined not more than \$50,000.00~~ commits a Class A
15 felony. A sentence ordered pursuant to subsection (b) of this section shall
16 include at least a 25-year term of imprisonment. The 25-year term of
17 imprisonment required by this subsection shall be served and may not be
18 suspended, deferred, or served as a supervised sentence. The defendant shall
19 not be eligible for probation, parole, furlough, or any other type of early
20 release until the expiration of the 25-year term of imprisonment.

21 Sec. 46. 13 V.S.A. § 3257 is amended to read:

1 § 3257. SEXUAL EXPLOITATION OF A PERSON UNDER THE
2 SUPERVISION OF THE DEPARTMENT OF CORRECTIONS

3 (a) A correctional employee, contractor, or other person providing services
4 to offenders on behalf of the Department of Corrections or pursuant to a court
5 order or in accordance with a condition of parole, probation, supervised
6 community sentence, or furlough shall not engage in a sexual act with:

7 (1) a person who the employee, contractor, or other person providing
8 services knows is confined to a correctional facility; or

9 (2) any offender being supervised by the Department of Corrections
10 while on parole, probation, supervised community sentence, or furlough, where
11 the employee, contractor, or other service provider knows or reasonably should
12 have known that the offender is being supervised by the Department, unless the
13 offender and the employee, contractor, or person providing services were
14 married, parties to a civil union, or engaged in a consensual sexual relationship
15 at the time of sentencing for the offense for which the offender is being
16 supervised by the Department.

17 (b) A person who violates subsection (a) of this section ~~shall be imprisoned~~
18 ~~for not more than five years or fined not more than \$10,000.00, or both~~
19 commits a Class D felony. (5 years, \$10,000)

20 Sec. 47. 13 V.S.A. § 3258 is amended to read:

21 § 3258. SEXUAL EXPLOITATION OF A MINOR

1 (a) No person shall engage in a sexual act with a minor if:

2 (1) the actor is at least 48 months older than the minor; and

3 (2) the actor is in a position of power, authority, or supervision over the
4 minor by virtue of the actor's undertaking the responsibility, professionally or
5 voluntarily, to provide for the health or welfare of minors, or guidance,
6 leadership, instruction, or organized recreational activities for minors.

7 (b) A person who violates subsection (a) of this section ~~shall be imprisoned~~
8 ~~for not more than one year or fined not more than \$2,000.00, or both~~ commits
9 a Class B misdemeanor. (1 year, \$2,500)

10 (c) A person who violates subsection (a) of this section and who abuses his
11 or her position of power, authority, or supervision over the minor in order to
12 engage in a sexual act ~~shall be imprisoned for not more than five years or fined~~
13 ~~not more than \$10,000.00, or both~~ commits a Class D felony. (5 years,
14 \$10,000)

15 Sec. 48. 13 V.S.A. § 3259 is amended to read:

16 § 3259. SEXUAL EXPLOITATION OF A PERSON IN THE CUSTODY OF
17 A LAW ENFORCEMENT OFFICER

18 (a) No law enforcement officer shall engage in a sexual act with a person
19 whom the officer is detaining, arresting, or otherwise holding in custody or
20 who the officer knows is being detained, arrested, or otherwise held in custody
21 by another law enforcement officer.

1 (b) A person who violates subsection (a) of this section ~~shall be imprisoned~~
2 ~~for not more than five years or fined not more than \$10,000.00, or both~~
3 commits a Class D felony. (5 years, \$10,000)

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