

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred House Bill No. 183  
3 entitled “An act relating to sexual violence” respectfully reports that it has  
4 considered the same and recommends that the Senate propose to the House that  
5 the bill be amended by striking out all after the enacting clause and inserting in  
6 lieu thereof the following:

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

8 § 3251. DEFINITIONS

9 As used in this chapter:

10 \* \* \*

11 (3) “Consent” means ~~words or actions by a person indicating a voluntary~~  
12 ~~agreement to engage in a sexual act~~ the affirmative, unambiguous, and  
13 voluntary agreement to engage in a sexual act, which can be revoked at any  
14 time.

15 \* \* \*

16 (10) “Incapable of consenting” means the person:

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

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

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

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

2 § 3252. SEXUAL ASSAULT

3 (a) No person shall engage in a sexual act with another person ~~and compel~~  
4 ~~the other person to participate in a sexual act:~~

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

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

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

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

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

19 (2) No person shall engage in a sexual act with another person when the  
20 other person is incapable of consenting to the sexual act due to substantial

1 impairment by alcohol, drugs, or other intoxicants and that condition is known  
2 or reasonably should be known by the person.

3 \* \* \*

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

7 \* \* \*

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

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

11 § 3254. TRIAL PROCEDURE; CONSENT

12 In a prosecution for a crime defined in this chapter or section 2601 of this  
13 title:

14 (1) ~~lack~~ Lack of consent may be shown without proof of resistance;

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

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

19 (4) A sleeping or unconscious person cannot consent.

20 (5) a A person shall be deemed to have acted without the consent of the  
21 other person where the actor:

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

4           (B) ~~knows that the other person is not physically capable of resisting,~~  
5 ~~or declining consent to, the sexual act or lewd and lascivious conduct; or~~

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

9           (D)~~(C)~~ ~~knows that the other person is mentally incapable of resisting, or~~  
10 ~~declining consent to, the sexual act or lewd and lascivious conduct, due to a~~  
11 ~~mental condition or a psychiatric or developmental disability as defined in 14~~  
12 ~~V.S.A. § 3061~~ knew or reasonably should have known that the other person  
13 was incapable of consenting to the sexual act or lewd and lascivious conduct  
14 with the actor because the person was substantially impaired by alcohol, drugs,  
15 or other intoxicants.

16           Sec. 4. VERMONT SENTENCING COMMISSION

17           The Vermont Sentencing Commission shall examine whether the  
18 application of 13 V.S.A. § 3254 (trial procedure; consent) to 13 V.S.A. § 2601

1 (lewd and lascivious conduct) continues to be appropriate given recent  
2 amendments to 13 V.S.A. chapter 59 (lewdness and prostitution).

3 Sec. 5. DATA COLLECTION AND REPORTING

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

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

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

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

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

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

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

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

4           Sec. 6. EFFECTIVE DATE

5           This act shall take effect July 1, 2021.

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10           (Committee vote: \_\_\_\_\_)

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\_\_\_\_\_

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Senator \_\_\_\_\_

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FOR THE COMMITTEE