

Draft alternative language for H.183

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

§ 3251. DEFINITIONS

As used in this chapter:

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(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 or conduct defined under section 2601 of this title 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. 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, consent shall be considered based on the totality of the circumstances subject to the following:

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

(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 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.