

PUBLIC ACTS, 1977

NO. 51. AN ACT TO ADD 13 V.S.A. CHAPTER 72 AND TO REPEAL 13 V.S.A. CHAPTER 71 AND SECTION 2603 RELATING TO CRIMES AND CRIMINAL PROCEDURE.

(S.34)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 13 V.S.A. chapter 72 is added to read:

CHAPTER 72. SEXUAL ASSAULT

§ 3251. DEFINITIONS

As used in this chapter:

(1) A "sexual act" means conduct between persons consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any intrusion, however slight, by any part of a person's body other than the fingers or any object into the genital or anal opening of another;

(2) "Sexual conduct" means any conduct or behavior relating to sexual activities of the complaining witness, including but not limited to prior experience of sexual acts, use of contraceptives, living arrangement and mode of living;

(3) "Consent" means words or actions by a person indicating a voluntary agreement to engage in a sexual act;

(4) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

§ 3252. SEXUAL ASSAULT

A person who engages in a sexual act with another person, other than a spouse, and

(1) Compels the other person to participate in a sexual act:

(A) Without the consent of the other person; or

(B) By threatening or coercing the other person; or

(C) By placing the other person in fear that any person will be harmed imminently; or

(2) Has impaired 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; or

(3) The other person is under the age of 16 and they are not married to each other;

shall be imprisoned for not more than 20 years, or fined not more than \$10,000.00, or both.

§ 3253. AGGRAVATED SEXUAL ASSAULT

A person who violates section 3252 of this title and causes the other person serious bodily injury shall be imprisoned for not more than 25 years, or fined not more than \$15,000.00, or both.

§ 3254. TRIAL PROCEDURE

In a prosecution for a crime defined in this chapter:

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

(2) A person shall be deemed to have acted without the consent of the other person where the actor:

(A) Knows that the other person is mentally incapable of understanding the nature of the sexual act; or

sis

bein

§ 3:

(€

the

fens

case

shal

bili

and

admi

the

sexu

dise

past

(B) Knows that the other person is not physically capable of resisting, or declining consent to, the sexual act; or

(C) Knows that the other person is unaware that a sexual act is being committed.

§ 3255. EVIDENCE

(a) In a prosecution for a crime defined in this chapter:

(1) Neither opinion evidence of, nor evidence of the reputation of the complaining witness' sexual conduct shall be admitted;

(2) Evidence shall be required as it is for all other criminal offenses and additional corroborative evidence heretofore set forth by case law regarding rape shall no longer be required.

(3) Evidence of prior sexual conduct of the complaining witness shall not be admitted; provided, however, where it bears on the credibility of the complaining witness or it is material to a fact at issue and its probative value outweighs its private character, the court may admit:

(A) Evidence of the complaining witness' past sexual conduct with the defendant;

(B) Evidence of specific instances of the complaining witness' sexual conduct showing the source of origin of semen, pregnancy or disease;

(C) Evidence of specific instances of the complaining witness' past false allegations of violations of this chapter.

(b) In a prosecution for a crime defined in this chapter, if a defendant proposes to offer evidence described in subsection (a)(3) of this section, the defendant shall prior to the introduction of such evidence file written notice of intent to introduce that evidence, and the court shall order an in camera hearing to determine its admissibility. All objections to materiality, credibility and probative value shall be stated on the record by the prosecutor at the in camera hearing, and the court shall rule on the objections forthwith, and prior to the taking of any other evidence.

Sec. 2. 13 V.S.A. Chapter 71 and 13 V.S.A. § 2603 are repealed. However, acts committed prior to July 1, 1977, are subject to prosecution pursuant to 13 V.S.A. Chapter 71.

Sec. 3. This act shall take effect July 1, 1977 and shall apply only to acts committed on or after that date.

Approved: April 23, 1977