

§ 501. Arson causing death

A person who willfully and maliciously burns the building of another, or willfully and maliciously sets fire to a building owned in whole or in part by himself or herself, by means of which the life of a person is lost, shall be guilty of murder in the first degree.

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§ 2301. Murder-degrees defined

Murder committed by means of poison, or by lying in wait, or by willful, deliberate, and premeditated killing, or committed in perpetrating or attempting to perpetrate arson, sexual assault, aggravated sexual assault, kidnapping, robbery, or burglary shall be murder in the first degree. All other kinds of murder shall be murder in the second degree.

Second degree: defendant acted with an intent to kill, or an intent to do great bodily harm, or a wanton disregard of the likelihood that death or great bodily harm would result. (Model Jury Instructions)

§ 2303. Penalties for first and second degree murder

(a)(1) The punishment for murder in the first degree shall be imprisonment for:

(A) a minimum term of not less than 35 years and a maximum term of life; or

(B) life without the possibility of parole.

(2) The punishment for murder in the second degree shall be imprisonment for:

(A) a minimum term of not less than 20 years and a maximum term of life; or

(B) life without the possibility of parole.

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Voluntary manslaughter is an intentional, unlawful killing of another human being, committed under sudden passion or great provocation that would mitigate, but not justify, the killing. Sudden passion or great provocation can reduce a charge of murder to a charge of voluntary manslaughter. (Model Jury Instructions)

Involuntary manslaughter is an unlawful killing of another human being, done with no intent to take human life. It is an unintentional killing where the person acts [recklessly by disregarding] [with criminal negligence by failing to perceive] the risk of death or serious bodily injury. (Model Jury Instructions)

§ 2304. Manslaughter- Penalties

A person who commits manslaughter shall be fined not more than \$3,000.00 or imprisoned for not less than one year nor more than 15 years, or both.

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§ 2405. Kidnapping

(a) A person commits the crime of kidnapping if the person:

(1) knowingly restrains another person with the intent to:

(A) hold the restrained person for ransom or reward; or

(B) use the restrained person as a shield or hostage; or

(C) inflict bodily injury upon the restrained person or place the restrained person or a third person in fear that any person will be subjected to bodily injury; or

(D) sexually assault the restrained person or place the restrained person or a third person in fear that any person will be sexually assaulted; or

(E) facilitate the commission of another crime or flight thereafter; or

(2) not being a relative of a person under the age of 16, knowingly restrains that person, without the consent of the person's custodian, with the intent to keep the person from his or her lawful custodian for a substantial period.

(b) Kidnapping is punishable by a maximum sentence of life imprisonment or a fine of not more than \$50,000.00, or both. It is, however, an affirmative defense which reduces the penalty to imprisonment for not more than 30 years or a fine of not more than \$50,000.00, or both, that the defendant voluntarily caused the release of the victim alive in a safe place before arraignment without having caused serious bodily injury to the victim.

§ 2602. Lewd or lascivious conduct with child

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

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

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

(1) For a first offense, imprisoned not less than two years and not more than 15 years, and, in addition, may be fined not more than \$5,000.00, or both.

(2) For a second offense, imprisoned not less than five years and a maximum term of life, and, in addition, may be fined not more than \$25,000.00, or both.

(3) For a third or subsequent offense, imprisoned not less than 10 years and a maximum term of life, and, in addition, may be fined not more than \$25,000.00, or both.

(c)(1) Except as provided in subdivision (2) of this subsection, a sentence ordered pursuant to subdivision (b)(2) of this section shall include at least a five-year term of imprisonment and a sentence ordered pursuant to subdivision (b)(3) of this section shall include at least a 10-year term of imprisonment. The five-year and 10-year terms of imprisonment required by this subdivision shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year or 10-year term of imprisonment.

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

Model Jury Instructions

To act willfully means to act intentionally. In other words, it means to do an act on purpose, and not inadvertently, because of mistake, or by accident.

To act lewdly means to act in an obscene or indecent manner. The words lewd or lascivious mean that Defendant's conduct was lustful, indecent,

or sexual behavior that offends current morality in Vermont. Lewdness is defined as “gross and wanton indecency in sexual relations,” whereas lascivious means “tending to excite lust.” To determine whether Defendant’s behavior was lewd or lascivious, you should apply your sense of the community standards of decency, propriety, and morality.

Reporter’s Note

A charge of lewd or lascivious conduct with a child, under 13 V.S.A. § 2602, can involve any part of the victim’s body. The actual lewd “act upon or with” the body of a child cannot be viewed in isolation from the context in which the touching occurs and, in particular, the intent of the perpetrator. State v. Squiers, 2006 VT 26, 179 Vt. 388. “[T]he determination of whether an act is ‘lewd’ under § 2602 depends on the nature and quality of the contact, judged by community standards of morality and decency, in light of all the surrounding circumstances, accompanied by the requisite, specific lewd intent on the part of the defendant.” Id. ¶ 11 ;

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§ 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

(3) by placing the other person in fear that any person will suffer imminent bodily injury.

(b) No person shall engage in a sexual act with another person and impair 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.

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

§ 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 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" shall have the same meaning as in subdivision 1021(2) of this title.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition.

** (2) "Serious bodily injury" means:

(A) bodily injury that creates any of the following:

(i) a substantial risk of death;

(ii) a substantial loss or impairment of the function of any bodily member or organ;

(iii) a substantial impairment of health; or

(iv) substantial disfigurement; or

(B) strangulation by intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.**

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§ 3253. Aggravated sexual assault

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

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

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

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

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

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

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

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

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

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

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

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

§ 3253a. Aggravated sexual assault of a child

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

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

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

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

(4) The actor has previously been convicted in this State of sexual assault under subsection 3252(a) or (b) of this title, aggravated sexual assault under section 3253 of this title, or aggravated sexual assault of a child under this section, (or has been convicted in any other jurisdiction of an offense which would constitute one of these offenses)

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

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

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

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

(b) A person who commits the crime of aggravated sexual assault of a child shall be imprisoned for not less than 25 years with a maximum term of life, and, in addition, may be fined not more than \$50,000.00. The 25-year term of imprisonment required by this subsection shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the 25-year term of imprisonment.