

BACKGROUND

House Judiciary is considering H.694, which intends to amend "**sexual act**" to "**sexual conduct**" as defined in section 2821" in two sections under Title 13:

- in 13 VSA § 3257 (sexual exploitation of a person under the supervision of the department of corrections) and,
- 13 VSA § 3258 (sexual exploitation of a minor).

TITLE 13 DEFINITIONS OF SEXUAL ACT, ACTIVITY, CONDUCT, AND CONTACT

- "Sexual **Act**" under 13 V.S.A. § 1375 is defined as 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.
- "Sexual **Activity**" under 13 V.S.A. § 1375 is defined as a sexual act, other than appropriate health care or personal hygiene, or lewd and lascivious conduct.
- "Sexual **Act**" under 13 V.S.A. § 3251, akin to § 1375, is defined as 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.
- "Sexual **Conduct**" under 13 V.S.A. § 2821 is defined to include: (A) any conduct involving contact between the penis and the vulva, the penis and the penis, the penis and the anus, the mouth and the penis, the mouth and the anus, the vulva and the vulva, or the mouth and the vulva; (B) any intrusion, however slight, by any part of a person's body or any object into the genital or anal opening of another with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desire of any person; (C) any intentional touching, not through the clothing, of the genitals, anus, or breasts of another with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desire of any person; (D) masturbation; (E) bestiality; (F) sadomasochistic abuse for sexual purposes; or (G) any simulation of the conduct described in subdivisions (2)(A)-(F) of this section.
- "Sexual **Contact**." There is no formal statutory definition of "sexual contact" in any of the three relevant chapters of Title 13 – rather, the common law understanding of lewd and lascivious conduct is generally applied or understood to constitute "sexual contact."

MODEL JURY INSTRUCTIONS

CR27-521. Sexual Exploitation of a Minor (misdemeanor), 13 V.S.A. § 3258(a), (01/08/21)

CR27-521 01/08/21

SEXUAL EXPLOITATION OF A MINOR (MISDEMEANOR) – 13 V.S.A. § 3258(a)

The State has charged (Def) _____ with sexual exploitation of a minor, as follows:

[Read the charge.]

Every crime is made up of essential elements. Before (Def) _____ can be found guilty of the charge, the State must have proven each of the essential elements beyond a reasonable doubt. Here, the essential elements are that on the date and at the place alleged,

- (1) (Def) _____;
- (2) engaged in a **sexual act** with (victim) _____;
- (3) at the time, (victim) _____ was under the age of eighteen;
- (4) (Def) _____ is at least 48 months older than (victim) _____; and
- (5) (Def) _____ was in a position of power, authority, or supervision over (victim) _____ by virtue of [his][her] undertaking the responsibility, professionally or voluntarily, to provide for the [health or welfare of minors] [guidance, leadership, instruction, or organized recreational activities for minors].

The first essential element is that (Def) _____ is the person who committed the alleged acts.

The second essential element is that (Def) _____ engaged in a **sexual act** with (victim) _____. 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. The word contact, as used in this charge, means mere touching, however slight. [The word vulva means the external genital organs of the female, including the labia majora, labia minora, clitoris, and the entrance to the vagina.]

CR27-526. Sexual Exploitation of a Minor (felony), 13 V.S.A. § 3258(c), (01/08/21)

CR27-526 01/08/21

SEXUAL EXPLOITATION OF A MINOR (FELONY) – 13 V.S.A. § 3258(c)

The State has charged (Def) _____ with sexual exploitation of a minor, as follows:

[Read the charge.]

Every crime is made up of essential elements. Before (Def) _____ can be found guilty of the charge, the State must have proven each of the essential elements beyond a reasonable doubt. Here, the essential elements are that on the date and at the place alleged,

- (1) (Def) _____;
- (2) engaged in a **sexual act** with (victim) _____;
- (3) at the time, (victim) _____ was under the age of eighteen;
- (4) (Def) _____ is at least 48 months older than (victim) _____;
- (5) (Def) _____ was in a position of power, authority, or supervision over (victim) _____ by virtue of [his] [her] undertaking the responsibility, professionally or voluntarily, to provide for the [health or welfare of minors] [guidance, leadership, instruction, or organized recreational activities for minors]; and
- (6) (Def) _____ abuse[d] that position in order to engage in the **sexual act**.

The first essential element is that (Def) _____ is the person who committed the alleged acts.

The second essential element is that (Def) _____ engaged in a **sexual act** with (victim) _____. 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. The word contact, as used in this charge, means mere touching, however slight. [The word vulva means the external genital organs of the female, including the labia majora, labia minora, clitoris, and the entrance to the vagina.]

CR27-501. Sexual Exploitation of an Inmate, 13 V.S.A. § 3257(a)(1) (07/11/18)

CR27-501 07/11/18

SEXUAL EXPLOITATION OF AN INMATE – 13 V.S.A. § 3257(a)(1)

The State has charged (Def) _____ with sexual exploitation of an inmate, as follows:

[Read the charge.]

Every crime is made up of essential elements. Before (Def) _____ can be found guilty of the charge, the State must have proven each of the essential elements beyond a reasonable doubt. Here, the essential elements are that on the date and at the place alleged,

- (1) (Def) _____;
- (2) while [he] [she] was [employed by the department of corrections] [a contractor for the department of corrections] [a person providing services to offenders [on behalf of the department of corrections] [pursuant to a court order]];
- (3) engaged in a **sexual act** with (victim) _____;
- (4) at the time, (victim) _____ was confined to (correctional facility) _____; and
- (5) (Def) _____ knew that (victim) _____ was confined to (correctional facility) _____.

The first essential element is that (Def) _____ is the person who committed the alleged acts.

The second essential element is that (Def) _____ was [employed by the department of corrections] [a contractor for the department of corrections] [a person providing services to offenders [on behalf of the department of corrections] [pursuant to a court order]] at the time the **sexual act** took place.

The third essential element is that (Def) _____ engaged in a **sexual act** with (victim) _____. 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. The word contact, as used in this charge, means mere touching, however slight. [The word vulva means the external genital organs of the female, including the labia majora, labia minora, clitoris, and the entrance to the vagina.]

The fourth essential element is that (victim) _____ [was confined at (correctional facility)][was being supervised by the department of corrections while on parole, probation, supervised community sentence, or furlough, where the employee, contractor, or other service provider is currently engaged in a direct supervisory relationship with the person being supervised] _____ at the time the **sexual act** took place.

The fifth essential element is that (Def) _____ knew that (victim) _____ [was confined at (correctional facility)][was being supervised by the department of corrections while on parole, probation, supervised community sentence, or furlough, where the employee, contractor, or other service provider is currently engaged in a direct supervisory relationship with the person being supervised] _____ at the time the **sexual act** took place.

[The State need not have proven that (victim) _____ did not consent to the **sexual act**. It does not matter whether (victim) _____ was a willing participant. By law, a person [confined to a correctional facility] [under direct supervision by an employee, contractor or other service provider of the department of corrections] is not capable of consenting to a **sexual act** with [a corrections officer][contractor for the department of corrections][a person providing services to offenders on behalf of the department of corrections/pursuant to a court order].

All of the elements of the offense must have been present at the same time. If the State has not proven each of the essential elements of the charge beyond a reasonable doubt, then you must find (Def) _____ not guilty. However, if the State has proven all of the essential elements beyond a reasonable doubt, you must return a verdict of guilty.