

H.694, as passed by the House, would amend: **13 VSA § 3257** (Sexual Exploitation of a Person Under the Supervision of the Department of Corrections), **13 VSA § 3258** (Sexual Exploitation of a Minor), **13 VSA § 3259** (Sexual Exploitation of a Person who is being Investigated, Detained, Arrested, or is in the Custody of a Law Enforcement Officer).

Under current law there is a discrepancy. 13 VSA § 3259 provides for a prohibition concerning “sexual conduct” but not a “sexual act” / “sexual acts,” while 13 VSA § 3257 and 13 VSA § 3258 only provide for a prohibition of a “sexual act” / “sexual acts,” but not “sexual conduct.”

H.694 would provide for consistency as to the scope of prohibited sexual behavior in the context of the aforementioned criminal codes.

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.”

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2 An act relating to sexual exploitation

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

4 Sec. 1. 13 V.S.A. § 3257 is amended to read:

5 § 3257. SEXUAL EXPLOITATION OF A PERSON UNDER THE
6 SUPERVISION OF THE DEPARTMENT OF CORRECTIONS

7 (a) A correctional employee, contractor, or other person providing services
8 to offenders on behalf of the Department of Corrections or pursuant to a court
9 order or in accordance with a condition of parole, probation, supervised
10 community sentence, or furlough shall not engage in a sexual act as defined in
11 section 3251 of this title or sexual conduct as defined in section 2821 of this
12 title with:

CR27-501. [Sexual Exploitation of an Inmate](#), 13 V.S.A. § 3257(a)(1) (07/11/18) (current jury instruction below) (current law, below, only mentions a "sexual act")

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) _____.

<p>AS PASSED BY HOUSE 2024</p> <p>1 at the time of sentencing for the offense for which the offender is being</p> <p>2 supervised by the Department.</p> <p>3 (b) A person who violates subsection (a) of this section shall be imprisoned</p> <p>4 for not more than five years or fined not more than \$10,000.00, or both.</p> <p>5 Sec. 2. 13 V.S.A. § 3258 is amended to read:</p> <p>6 § 3258. SEXUAL EXPLOITATION OF A MINOR</p> <p>7 (a) No person shall engage in a sexual act as defined in section 3251 of this</p> <p>8 title or sexual conduct as defined in section 2821 of this title with a minor if:</p>	<p>H.694 Page 2 of 4</p>
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CR27-521. Sexual Exploitation of a Minor (misdemeanor), 13 V.S.A. § 3258(a), (01/08/21) (current jury instruction below) (current law, below, only mentions a “sexual act”)

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].

CR27-526. Sexual Exploitation of a Minor (felony), 13 V.S.A. § 3258(c), (01/08/21) (current jury instruction below) (current law, below, only mentions a “sexual act”)

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.

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1 Sec. 3. 13 V.S.A. § 3259 is amended to read:

2 § 3259. SEXUAL EXPLOITATION OF A PERSON WHO IS BEING
3 INVESTIGATED, DETAINED, ARRESTED, OR IS IN THE
4 CUSTODY OF A LAW ENFORCEMENT OFFICER

5 (a) No law enforcement officer shall engage in a sexual act as defined in
6 section 3251 of this title or sexual conduct as defined in section 2821 of this

Sexual Exploitation of a Person who is being Investigated, Detained, Arrested, or is in the Custody of a Law Enforcement Officer (amended, 2023) (current law, below, only mentions “sexual conduct”)

§ 3259. Sexual exploitation of a person who is being investigated, detained, arrested, or is in the custody of a law enforcement officer

(a) No law enforcement officer shall engage in sexual **conduct** as defined in section 2821 of this title with a person whom the officer is detaining, arresting, or otherwise holding in custody or who the officer knows is being detained, arrested, or otherwise held in custody by another law enforcement officer. For purposes of this section, “detaining” and “detained” include a traffic stop or questioning pursuant to an investigation of a crime.

(b)(1) No law enforcement officer shall engage in sexual **conduct** as defined in section 2821 of this title with a person whom the officer:

- (A) is investigating pursuant to an open investigation;
- (B) knows is being investigated by another law enforcement officer pursuant to an open investigation; or
- (C) knows is a victim or confidential informant in any open investigation.

(2) This subsection shall not apply if the law enforcement officer was engaged in a consensual sexual relationship with the person prior to the officer’s knowledge that the person was a suspect, victim, or confidential informant in an open investigation.

(c) A person who violates subsection (a) or (b) of this section shall be imprisoned for not more than five years or fined not more than \$10,000.00, or both. (Added 2019, No. 8, § 2, eff. April 23, 2019; amended 2023, No. 46, § 29, eff. June 5, 2023.)