



Kara Casey, Director of Economic Empowerment
S.278 Contributory negligence in a civil action involving sexual assault
Senate Judiciary Committee
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The Vermont Network strongly supports S.278. Defendants should be prohibited from attributing any blame to victims of sexual assault in civil actions.

As a matter of **criminal law**, a sexual assault defendant cannot introduce evidence that seeks to blame the alleged victim, thereby saying it is the alleged victim's fault. Under the criminal "Rape Shield Statute" (13 V.S.A. § 3255), criminal defendants may not, for instance, introduce evidence of an alleged victim's prior sexual history (with some narrow exceptions).

In the **civil justice** context, where a victim of sexual assault seeks damages from the assailant and other culpable parties, **current Vermont civil justice law allows a defendant to blame the victim for their own sexual assault**. Vermont's Civil Rape Shield law (12 VSA § 1646) bars the introduction of certain *evidence* about a survivor's past sexual conduct. However, the comparative negligence statute (12 VSA § 1036), allows a defendant to argue that the survivor is partially at fault for their own sexual assault.

This leaves the door wide open to a defendant being able to urge a jury to blame the survivor and reduce the survivor's damages award in proportion to how much responsibility the jury determines that the victim bears for their own sexual assault. For instance, a jury might determine that a victim should be awarded \$100,000 in damages for their sexual assault. However, because the victim chose to wear revealing clothing and drink alcohol on the night of the sexual assault, a jury could reduce the victim's damages award to \$60,000.

Victims of sexual assault should not be held responsible **in any way** for the violence inflicted upon them.