

(2) For the second offense and subsequent offenses, be imprisoned for not less than two years nor more than ten years.

(b) The sentence of a person convicted of violating this section shall not be suspended, nor shall it be deferred under section 7042 of this title. A person convicted of violating this section shall not be eligible for parole until having served the minimum sentence for the offense as provided herein.—Added 1973, No. 219 (Adj. Sess.), eff. 30 days from April 3, 1974.

Chapter 25. Children and Incompetent Persons

§ 1302. Repealed. 1973, No. 249 (Adj. Sess.), § 111, eff. April 9, 1974.

§ 1307. Repealed. 1973, No. 249 (Adj. Sess.), § 111, eff. April 9, 1974.

Chapter 27. Reports of Physical Abuse of Children

§ 1351. Purpose

The purpose of this chapter is to: protect children whose health and welfare may be adversely affected through abuse or neglect; to strengthen the family and to make the home safe for children whenever possible by enhancing the parental capacity for good child care; to provide a temporary or permanent nurturing and safe environment for children when necessary; and for these purposes to require the reporting of suspected child abuse and neglect, investigation of such reports and provision of services, when needed, to such child and family.—Amended 1973, No. 152 (Adj. Sess.), § 2, eff. 30 days from March 15, 1974; No. 237 (Adj. Sess.), § 1, eff. July 1, 1974.

1973 (Adj. Sess.) amendment. Act No. 152 substituted "department of social and rehabilitation services" for "department of social welfare".
Act No. 237 amended section generally.

§ 1352. Definitions

(a) As used in this chapter:

(1) "Child" means an individual under the age of majority.

(2) "Abuse" means physical injury or injuries inflicted upon a child by a parent or other person responsible for his care by other than accidental, or any other means, treatment which places that child's life, health, development or welfare in jeopardy or which is likely to result in impairment of the child's health.

(3) "Neglect" means the abandonment of a child by his parents, guardian or other custodians;

(b) Nothing in this title shall be construed to mean that the life or health of a child is in jeopardy for the sole reason he is furnished remedial treatment in accordance with the tenets and practices of a recognized church or religious denomination.—Amended 1973, No. 237 (Adj. Sess.), § 2, eff. July 1, 1974.

1973 (Adj. Sess.) amendment. Amended section generally.

1353. Suspected child abuse and neglect; remedial action

(a) Any physician, surgeon, osteopath, chiropractor or physician's assistant licensed or registered under the provisions of Title 18, any resident physician or intern in any hospital in this state, whether or not so registered, and any registered nurse, licensed practical nurse, medical examiner, dentist, or police officer who has reasonable cause to believe that any child has been abused or neglected shall report or cause a report to be made in accordance with the provisions of section 1354 of this title.

(b) Any psychologist, school teacher, day care center worker, school principal, school guidance counselor, mental health professional, social worker, probation officer, or clergyman who has reasonable cause to believe that any child has been abused or neglected shall report or cause a report to be made in accordance with the provisions of section 1354 of this title.

(c) Any person enumerated in subsection (a) or (b) of this section who in good faith makes a report shall be immune from any liability, civil or criminal, which might otherwise be incurred or imposed and shall have the same immunity with respect to any judicial proceeding which results from such report.

(d) Any person who violates subsection (a) of this section shall be fined not more than \$100.00.—Amended 1973, No. 152 (Adj. Sess.), § 3, eff. 30 days from March 15, 1974; No. 237 (Adj. Sess.), § 3, eff. July 1, 1974.

1973 (Adj. Sess.) amendment. Act No. 152 substituted "department of social and rehabilitation services" for "department of social welfare".
Act No. 237 amended section generally.

1354. Nature and content of report; to whom made

(a) A report shall be made orally or in writing to the commissioner of social and rehabilitative services or his designee. If an oral report is made by telephone or otherwise, the commissioner or his designee shall request that it be followed within one week by a

report in writing. Reports shall contain the name of the reporter as well as the names and addresses of the child and his parents or other persons responsible for his care, if known; the age of the child; the nature and extent of the child's injuries together with any evidence of previous abuse and neglect of the child or his siblings; and any other information that the reporter believes might be helpful in establishing the cause of the injury or injuries or reasons for the neglect as well as in protecting the child and assisting the family.

(b) The commissioner of social and rehabilitative services shall maintain a registry of the reports pursuant to this section and shall adopt regulations to permit the use of the registry while preserving the confidentiality of the reports.

(c) Written reports made pursuant to subsection (a) or those maintained in the registry shall only be disclosed to the commissioner or person designated by him to receive such reports, persons assigned by the commissioner to investigate reports, the person reported on, a prosecuting attorney, or other persons expressly designated by order of the human services board who shall have a need to receive the report. Any person who violates this subsection shall be fined not more than \$500.00.

(d) If the commissioner or his designee determines after investigation that the reported facts are either unfounded or that no services need to be provided, the report in the registry shall be expunged forthwith. All reports in the registry shall be expunged three years after the date of the report and no record or memoranda concerning it shall be preserved by any agency of government. A person reported on may, at any time, apply to the human services board for an order expunging from the registry a report concerning him on the grounds that it was unfounded or not otherwise expunged in accordance with this section. The board shall hold a fair hearing pursuant to 3 V.S.A. § 3091 on the application at which the burden shall be on the commissioner to establish that the report should not be expunged.—Amended 1973, No. 237 (Adj. Sess.), § 4, eff. July 1, 1974.

1973 (Adj. Sess.) amendment. Amended section generally.

§ 1355. Investigation; remedial action

(a) The commissioner of social and rehabilitative services shall cause reports made pursuant to subsection (a) of section 1354 of this title to be investigated within seventy-two hours. If the in-

Investigation produces evidence that the child has been abused or neglected, the commissioner shall cause assistance to be provided to the child and his family in accordance with a written plan of treatment.

(b) Services may be provided to the child's immediate family whether or not the child remains in the home.—Amended 1973, No. 237 (Adj. Sess.), § 5, eff. July 1, 1974.

1973 (Adj. Sess.) amendment. Amended section generally.

Revision note. Reference to "section 1354" was changed to "section 1354 of this title" to conform to V.S.A. style.

Chapter 31. Discrimination

§ 1451. Public accommodations

(a) An owner or operator of a place of public accommodation or an agent or employee of said owner or operator shall not, because of the race, creed, color or national origin of any person, refuse, withhold from or deny to such person any of the accommodations, advantages, facilities and privileges of such place of public accommodation.

(b) An owner or operator of a place of public accommodation or his employee or agent shall not prohibit a blind person accompanied by a dog guide from entering the public accommodation if the dog guide is properly identified as being from a recognized school for seeing eye or dog guides and if the dog guide is properly harnessed so as to be kept under control nor shall such owner or operator or his employee or agent require a blind person to make any extra payment or pay any additional charge when accompanied by a dog guide.

(c) A place of public accommodation within the meaning of this chapter means any establishment which caters or offers its services or facilities or goods to the general public.—Amended 1973, No. 142 (Adj. Sess.), eff. July 1, 1974.

1973 (Adj. Sess.) amendment. Subsections (b) and (c): Former subsec. (b) renumbered as (c) and new subsec. (b) added.

Chapter 35. Escape

§ 1501. Escapes and attempts to escape

* * *

of this title. A person convicted of violating this section shall not be eligible for parole until having served the minimum sentence for the offense as provided herein.—Added 1973, No. 219 (Adj. Sess.), eff. 30 days from April 3, 1974.

Chapter 25. Children and Incompetent Persons

§ 1302. Repealed. 1973, No. 249 (Adj. Sess.), § 111, eff. April 9, 1974.

§ 1307. Repealed. 1973, No. 249 (Adj. Sess.), § 111, eff. April 9, 1974.

Chapter 27. Reports of Physical Abuse of Children

NEW SECTION

1356. Records of abuse and neglect.

§ 1351. Purpose

The purpose of this chapter is to: protect children whose health and welfare may be adversely affected through abuse or neglect; to strengthen the family and to make the home safe for children whenever possible by enhancing the parental capacity for good child care; to provide a temporary or permanent nurturing and safe environment for children when necessary; and for these purposes to require the reporting of suspected child abuse and neglect, investigation of such reports and provision of services, when needed, to such child and family.—Amended 1973, No. 152 (Adj. Sess.), § 2, eff. 30 days from March 15, 1974; No. 237 (Adj. Sess.), § 1, eff. July 1, 1974.

1973 (Adj. Sess.) amendment. Act No. 152 substituted "department of social and rehabilitation services" for "department of social welfare".

Act No. 237 amended section generally.

§ 1352. Definitions

(a) As used in this chapter:

- (1) "Child" means an individual under the age of majority.
- (2) "Abuse" means physical injury or injuries inflicted upon a child by a parent or other person responsible for his care by other than accidental means, or any other treatment, including sexual abuse, which places that child's life, health, development or welfare in jeopardy or which is likely to result in impairment of the child's health.

(3) "Neglect" means the abandonment of a child by his parents, guardian or other custodians;

(b) Nothing in this title shall be construed to mean that the life or health of a child is in jeopardy for the sole reason he is furnished remedial treatment in accordance with the tenets and practices of a recognized church or religious denomination.—Amended 1973, No. 237 (Adj. Sess.), § 2, eff. July 1, 1974; 1975, No. 200 (Adj. Sess.), § 1, eff. March 24, 1976.

1975 (Adj. Sess.) amendment. Subsection (a)(2): Rephrased and added reference to sexual abuse.

1973 (Adj. Sess.) amendment. Amended section generally.

§ 1353. Suspected child abuse and neglect; remedial action

(a) Any physician, surgeon, osteopath, chiropractor or physician's assistant licensed or registered under the provisions of Title 26, any resident physician, intern, or any hospital administrator in any hospital in this state, whether or not so registered, and any registered nurse, licensed practical nurse, medical examiner, dentist, or police officer who has reasonable cause to believe that any child has been abused or neglected shall report or cause a report to be made in accordance with the provisions of section 1354 of this title.

(b) Any psychologist, school teacher, day care worker, school principal, school guidance counselor, mental health professional, social worker, probation officer, clergyman or any other concerned person who has reasonable cause to believe that any child has been abused or neglected may report or cause a report to be made in accordance with the provisions of section 1354 of this title.

(c) Any person enumerated in subsection (a) or (b) of this section who in good faith makes a report shall be immune from any liability, civil or criminal, which might otherwise be incurred or imposed and shall have the same immunity with respect to any judicial proceeding which results from such report.

(d) Any person who violates subsection (a) of this section shall be fined not more than \$100.00.—Amended 1973, No. 152 (Adj. Sess.), § 3, eff. 30 days from March 15, 1974; No. 237 (Adj. Sess.), § 3, eff. July 1, 1974; 1975, No. 200 (Adj. Sess.), § 2, eff. March 24, 1976.

1975 (Adj. Sess.) amendment. Subsection (a): Added reference to hospital administrator.

Subsection (b): Substituted "day care worker" for "day care center worker" and added reference to concerned person.

1973 (Adj. Sess.) amendment. Act No. 152 substituted "department of social and rehabilitation services" for "department of social welfare".

Act No. 237 amended section generally.

§ 1354. Nature and content of report; to whom made

A report shall be made orally or in writing to the commissioner of social and rehabilitation services or his designee. If an oral report is made by telephone or otherwise, the commissioner or his designee shall request that it be followed within one week by a report in writing. Reports shall contain the name and address of the reporter as well as the names and addresses of the child and his parents or other persons responsible for his care, if known; the age of the child; the nature and extent of the child's injuries together with any evidence of previous abuse and neglect of the child or his siblings; and any other information that the reporter believes might be helpful in establishing the cause of the injuries or reasons for the neglect as well as in protecting the child and assisting the family. If a report of child abuse or neglect involves the acts or omissions of the commissioner of social and rehabilitation services or employees of that department, then such reports shall be directed to the secretary of the agency of human services who shall cause the report to be investigated by staff of the departments of mental health, corrections or other appropriate staff other than staff of the department of social and rehabilitation services. If the report is substantiated, services shall be offered according to the requirements of section 1355.—Amended 1973, No. 237 (Adj. Sess.), § 4, eff. July 1, 1974; 1975, No. 200 (Adj. Sess.), § 3, eff. March 24, 1976.

1975 (Adj. Sess.) amendment. Amended section generally.

1973 (Adj. Sess.) amendment. Amended section generally.

§ 1355. Investigation; remedial action

(a) The commissioner of social and rehabilitative services shall cause reports made pursuant to subsection (a) of section 1354 of this title to be investigated within seventy-two hours. If the investigation produces evidence that the child has been abused or neglected, the commissioner shall cause assistance to be provided to the child and his family in accordance with a written plan of treatment.

(b) Services may be provided to the child's immediate family whether or not the child remains in the home.—Amended 1973, No. 237 (Adj. Sess.), § 5, eff. July 1, 1974.

1973 (Adj. Sess.) amendment. Amended section generally.

Revision note. Reference to "section 1354" was changed to "section 1354 of this title" to conform to V.S.A. style.

§ 1356. Records of abuse and neglect

(a) The commissioner of social and rehabilitation services shall maintain a registry which shall contain written records of all investigations initiated under section 1355 of this title unless the commissioner or his designee determines after investigation that the reported facts are unfounded, in which case the unsubstantiated report shall be destroyed.

(b) The commissioner shall adopt regulations to permit use of the registry while preserving confidentiality of the records.

(c) Written records maintained in the registry shall only be disclosed to the commissioner or person designated by him to receive such records, persons assigned by the commissioner to investigate reports, the person reported on, or a state's attorney. In no event shall records be made available for employment purposes, for credit purposes, or to a law enforcement agency other than the state's attorney. Any person who violates this subsection shall be fined not more than \$500.00. A person may, at any time, apply to the human services board for relief if he has reasonable cause to believe that contents of the registry are being misused. All registry records relating to an individual child shall be destroyed when the child reaches the age of majority. All registry records relating to a family or siblings within a family shall be destroyed when the youngest sibling reaches the age of majority. All registry records shall be maintained according to the name of the person who has been found to have abused or neglected a child.

(d) A person may, at any time, apply to the human services board for an order expunging from the registry a record concerning him on the grounds that it is unfounded or not otherwise expunged in accordance with this section. The board shall hold a fair hearing under section 3091 of Title 3 on the application at which hearing the burden shall be on the commissioner to establish that the record shall not be expunged.—Added 1975, No. 200 (Adj. Sess.), § 4, eff. March 24, 1976.

*Chapter 31. Discrimination***§ 1451. Public accommodations**

(a) An owner or operator of a place of public accommodation or an agent or employee of said owner or operator shall not, because of the race, creed, color or national origin of any person, refuse

of this title. A person convicted of violating this section shall not be eligible for parole until having served the minimum sentence for the offense as provided herein.—Added 1973, No. 219 (Adj. Sess.), eff. 30 days from April 3, 1974.

Chapter 23. Burglary

§ 1201. Burglary in nighttime

6. Evidence. Where defendant was charged with burglary in the nighttime and the state offered no evidence of the nighttime element of the offense, it was error to deny motion for verdict of acquittal on the ground that the evidence was insufficient to sustain a conviction of the offense charged. State v. Boutin (1976) 134 Vt. 151, 352 A.2d 689.

7. Instructions. Where defendant was charged with burglary in the nighttime and there was no evidence of the nighttime element of the offense, the court, absent a grant of motion for acquittal, which would have been proper, should have placed before the jury only the question of whether there was a burglary in the daytime, and instructions that if the jury could not find defendant guilty of burglary in the nighttime it could find him guilty of burglary in the daytime, without any definition of nighttime and daytime, was error, and reversal was required. State v. Boutin (1976) 134 Vt. 151, 352 A.2d 689.

Chapter 25. Children and Incompetent Persons

§ 1302. Repealed. 1973, No. 249 (Adj. Sess.), § 111, eff. April 9, 1974.

§ 1307. Repealed. 1973, No. 249 (Adj. Sess.), § 111, eff. April 9, 1974.

Chapter 27. Reports of Physical Abuse of Children

NEW SECTION

1356. Records of abuse and neglect.

§ 1351. Purpose

The purpose of this chapter is to: protect children whose health and welfare may be adversely affected through abuse or neglect; to strengthen the family and to make the home safe for children whenever possible by enhancing the parental capacity for good child care; to provide a temporary or permanent nurturing and safe environment for children when necessary; and for these purposes to require the reporting of suspected child abuse and neglect, investigation of such reports and provision of services, when needed, to such child and family.—Amended 1973, No. 152 (Adj. Sess.), § 2, eff. 30 days from March 15, 1974; No. 237 (Adj. Sess.), § 1, eff. July 1, 1974.

1973 (Adj. Sess.) amendment. Act No. 152 substituted "department of social and rehabilitation services" for "department of social welfare".
Act No. 237 amended section generally.

§ 1352. Definitions

(a) As used in this chapter:

(1) "Child" means an individual under the age of majority.

(2) "Abuse" means physical injury or injuries inflicted upon a child by a parent or other person responsible for his care by other than accidental means, or any other treatment, including sexual abuse, which places that child's life, health, development or welfare in jeopardy or which is likely to result in impairment of the child's health.

(3) "Neglect" means the abandonment of a child by his parents, guardian or other custodians;

(b) Nothing in this title shall be construed to mean that the life or health of a child is in jeopardy for the sole reason he is furnished remedial treatment in accordance with the tenets and practices of a recognized church or religious denomination.—Amended 1973, No. 237 (Adj. Sess.), § 2, eff. July 1, 1974; 1975, No. 200 (Adj. Sess.), § 1, eff. March 24, 1976.

1975 (Adj. Sess.) amendment. Subsection (a)(2): Rephrased and added reference to sexual abuse.

1973 (Adj. Sess.) amendment. Amended section generally.

§ 1353. Suspected child abuse and neglect; remedial action

(a) Any physician, surgeon, osteopath, chiropractor or physician's assistant licensed or registered under the provisions of Title 26, any resident physician, intern, or any hospital administrator in any hospital in this state, whether or not so registered, and any registered nurse, licensed practical nurse, medical examiner, dentist, or police officer who has reasonable cause to believe that any child has been abused or neglected shall report or cause a report to be made in accordance with the provisions of section 1354 of this title.

(b) Any psychologist, school teacher, day care worker, school principal, school guidance counselor, mental health professional, social worker, probation officer, clergyman or any other concerned person who has reasonable cause to believe that any child has been abused or neglected may report or cause a report to be made in accordance with the provisions of section 1354 of this title.

(c) Any person enumerated in subsection (a) or (b) of this section who in good faith makes a report shall be immune from any

liability, civil or criminal, which might otherwise be incurred or imposed and shall have the same immunity with respect to any judicial proceeding which results from such report.

(d) Any person who violates subsection (a) of this section shall be fined not more than \$100.00.—Amended 1973, No. 152 (Adj. Sess.), § 3, eff. 30 days from March 15, 1974; No. 237 (Adj. Sess.), § 3, eff. July 1, 1974; 1975, No. 200 (Adj. Sess.), § 2, eff. March 24, 1976.

1975 (Adj. Sess.) amendment. Subsection (a): Added reference to hospital administrator.

Subsection (b): Substituted "day care worker" for "day care center worker" and added reference to concerned person.

1973 (Adj. Sess.) amendment. Act No. 152 substituted "department of social and rehabilitation services" for "department of social welfare".

Act No. 237 amended section generally.

§ 1354. Nature and content of report; to whom made

A report shall be made orally or in writing to the commissioner of social and rehabilitation services or his designee. If an oral report is made by telephone or otherwise, the commissioner or his designee shall request that it be followed within one week by a report in writing. Reports shall contain the name and address of the reporter as well as the names and addresses of the child and his parents or other persons responsible for his care, if known; the age of the child; the nature and extent of the child's injuries together with any evidence of previous abuse and neglect of the child or his siblings; and any other information that the reporter believes might be helpful in establishing the cause of the injuries or reasons for the neglect as well as in protecting the child and assisting the family. If a report of child abuse or neglect involves the acts or omissions of the commissioner of social and rehabilitation services or employees of that department, then such reports shall be directed to the secretary of the agency of human services who shall cause the report to be investigated by staff of the departments of mental health, corrections or other appropriate staff other than staff of the department of social and rehabilitation services. If the report is substantiated, services shall be offered according to the requirements of section 1355.—Amended 1973, No. 237 (Adj. Sess.), § 4, eff. July 1, 1974; 1975, No. 200 (Adj. Sess.), § 3, eff. March 24, 1976.

1975 (Adj. Sess.) amendment. Amended section generally.

1973 (Adj. Sess.) amendment. Amended section generally.

§ 1355. Investigation; remedial action

(a) The commissioner of social and rehabilitative services shall cause reports made pursuant to subsection (a) of section 1354 of this title to be investigated within seventy-two hours. If the investigation produces evidence that the child has been abused or neglected, the commissioner shall cause assistance to be provided to the child and his family in accordance with a written plan of treatment.

(b) Services may be provided to the child's immediate family whether or not the child remains in the home.—Amended 1973, No. 237 (Adj. Sess.), § 5, eff. July 1, 1974.

1973 (Adj. Sess.) amendment. Amended section generally.

Revision note. Reference to "section 1354" was changed to "section 1354 of this title" to conform to V.S.A. style.

§ 1356. Records of abuse and neglect

(a) The commissioner of social and rehabilitation services shall maintain a registry which shall contain written records of all investigations initiated under section 1355 of this title unless the commissioner or his designee determines after investigation that the reported facts are unfounded, in which case the unsubstantiated report shall be destroyed.

(b) The commissioner shall adopt regulations to permit use of the registry while preserving confidentiality of the records.

(c) Written records maintained in the registry shall only be disclosed to the commissioner or person designated by him to receive such records, persons assigned by the commissioner to investigate reports, the person reported on, or a state's attorney. In no event shall records be made available for employment purposes, for credit purposes, or to a law enforcement agency other than the state's attorney. Any person who violates this subsection shall be fined not more than \$500.00. A person may, at any time, apply to the human services board for relief if he has reasonable cause to believe that contents of the registry are being misused. All registry records relating to an individual child shall be destroyed when the child reaches the age of majority. All registry records relating to a family or siblings within a family shall be destroyed when the youngest sibling reaches the age of majority. All registry records shall be maintained according to the name of the person who has been found to have abused or neglected a child.

(d) A person may, at any time, apply to the human services board for an order expunging from the registry a record concerning him on the grounds that it is unfounded or not otherwise expunged in accordance with this section. The board shall hold a fair hearing under section 3091 of Title 3 on the application at which hearing the burden shall be on the commissioner to establish that the record shall not be expunged.—Added 1975, No. 200 (Adj. Sess.), § 4, eff. March 24, 1976.

Chapter 31. Discrimination

§ 1451. Public accommodations

(a) An owner or operator of a place of public accommodation or an agent or employee of said owner or operator shall not, because of the race, creed, color or national origin of any person, refuse, withhold from or deny to such person any of the accommodations, advantages, facilities and privileges of such place of public accommodation.

(b) An owner or operator of a place of public accommodation or his employee or agent shall not prohibit a blind person accompanied by a dog guide from entering the public accommodation if the dog guide is properly identified as being from a recognized school for seeing eye or dog guides and if the dog guide is properly harnessed so as to be kept under control nor shall such owner or operator or his employee or agent require a blind person to make any extra payment or pay any additional charge when accompanied by a dog guide.

(c) A place of public accommodation within the meaning of this chapter means any school, restaurant, store or any other establishment which caters or offers its services or facilities or goods to the general public.—Amended 1973, No. 142 (Adj. Sess.), eff. July 1, 1974; 1977, No. 36, § 1, eff. April 11, 1977.

1977 amendment. Subsection (c): Added school, restaurant and store within meaning of a place of public accommodation.

1973 (Adj. Sess.) amendment. Subsections (b) and (c): Former subsec. (b) renumbered as (c) and new subsec. (b) added.

Chapter 35. Escape

§ 1501. Escapes and attempts to escape

8. **Burden of proof.** Where defendant charged with perjury had stated his military discharge was due to medical complications resulting from an appendectomy and he was actually discharged for character unsuitability, behavior disorders and apathy as a soldier, defendant had burden of proving that the character and behavior disorders were medical complications resulting from the appendectomy and state did not have to prove they were not. *State v. Lawrence* (1976) 134 Vt. 373, 360 A.2d 55.

Chapter 71. Rape

§§ 3201, 3202. Repealed. 1977, No. 51, § 2, eff. date, see note set out below.

Effective date. For effective date of this section, see note set out under § 3251 of this title.

Prior acts or offenses. 1977, No. 51, § 2, provided, in part: "Acts committed prior to July 1, 1977, are subject to prosecution pursuant to 13 V.S.A. Chapter 71".

ANNOTATIONS UNDER FORMER § 3201

13. **Penetration.** Jury could find that penetration, an essential element of rape, existed on the evidence before it. *State v. Eaton* (1976) 134 Vt. 205, 356 A.2d 504.

Chapter 72. Sexual Assault

SECTION

- 3251. Definitions.
- 3252. Sexual assault.
- 3253. Aggravated sexual assault.
- 3254. Trial procedure.
- 3255. Evidence.

§ 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

by false token or other means to avoid payment for the service shall if the services exceed \$500.00 in value be imprisoned for not more than ten years or fined not more than \$5,000.00 or both. Otherwise, a person who violates a provision of this subsection shall be imprisoned for not more than one year or fined not more than \$1,000.00 or both. Where compensation for service is ordinarily paid immediately, upon the rendering of such service, as in the case of hotels, restaurants and transportation, refusal to pay or absconding without payment or offer to pay gives rise to a rebuttable presumption that the service was obtained by deception as to intention to pay.

(b) A person who, having control over the disposition of services of others, to which he is not entitled, knowingly diverts such services to his own benefit or to the benefit of another not entitled thereto shall if the services exceed \$500.00 in value be imprisoned for not more than ten years or fined not more than \$5,000.00 or both. Otherwise a person who violates a provision of this subsection shall be imprisoned for not more than one year or fined not more than \$1,000.00 or both.—Amended 1973, No. 199 (Adj. Sess.), § 2.

1973 (Adj. Sess.) amendment. Amended generally.

§§ 2583, 2584. Repealed. 1973, No. 199 (Adj. Sess.), § 3.

Chapter 59. Lewdness and Prostitution

Subchapter 1. Lewd and Indecent Conduct

§ 2602. Lewd or lascivious conduct with child

3. Review. Since all constitutional guarantees associated with traditional prosecutions apply to juvenile delinquency proceedings, supreme court will not search the record or accept conclusionary findings which merely repeat the definition of the statute, and where, though it was stipulated that a lewd and lascivious act was performed upon the complaining witness, no other facts were stipulated, the only finding was that the alleged delinquent committed a lewd act, and the lower court judge failed to state the facts bringing the case within the ambit of this section, a delinquent child being defined as one who has committed a delinquent act and such an act being defined as an act designated a crime under the laws of the state, the ultimate conclusion of delinquency could not stand; and argument that the act had been stipulated to was to no avail where the ultimate finding of delinquency and who had committed the act were disputed. In re R. B. (1976) 134 Vt. 368, 360 A.2d 77.

§ 2603. Repealed. 1977, No. 51, § 2, eff. date, see note set out below.

Effective date. For effective date of this section, see note set out under § 3251 of this title.

Prior acts or offenses. 1977, No. 51, § 2, provided, in part: "Acts committed prior to July 1, 1977, are subject to prosecution pursuant to 18 V.S.A. Chapter 71".

Subchapter 2. Prostitution

§ 2633. Repealed. 1973, No. 201 (Adj. Sess.), § 12.

Chapter 63. Obscenity

NEW SECTION

- 2804a. Publicly displaying sex or nudity for advertising purposes.
- 2804b. Displaying obscene materials to minors.
- 2808. Uniformity.
- 2809. Civil action prerequisite for criminal prosecution.
- 2810. Commencement of civil action.
- 2811. Procedure.
- 2812. Judgment.
- 2813. Injunctions.

§ 2801. Definitions

As used in this act:

* * *

(B) Is patently offensive to prevailing standards in the adult community in the state of Vermont as a whole with respect to what is suitable material for minors; and

(C) Is taken as a whole, lacks serious literary, artistic, political, or scientific value, for minors.

(7) "Advertising purposes" means purposes of propagandizing in connection with the commercial sale of a product or type of product, the commercial offering of a service, or the commercial exhibition of an entertainment.

(8) "Displays publicly" means the exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a street, highway, sidewalk, or lobby of a building which has unrestricted access by the public.—Amended 1973, No. 204 (Adj. Sess.), §§ 1, 2, eff. July 1, 1974.

Revision note. The word "It" was omitted in subdiv. (6)(B) and the word "Is" was inserted in clause (C) for purposes of clarity.

1973 (Adj. Sess.) amendment. Subdivision (6)(B): Inserted reference to state of Vermont.

Subdivision (6)(C): Amended generally.

Subdivisions (7) and (8): Added.

bodily member or organ.—Added 1977, No. 51, § 1, eff. date, see note set out below.

Effective date. 1977, No. 51, § 3, provided: "This act [which added this chapter and repealed section 2603 and chapter 71 of this title] shall take effect July 1, 1977 and shall apply only to acts committed on or after that date".

§ 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.—Added 1977, No. 51, § 1, eff. date, see note set out below.

Effective date. For effective date of this section, see note set out under § 3251 of this title.

§ 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.—Added 1977, No. 51, § 1, eff. date, see note set out below.

Effective date. For effective date of this section, see note set out under § 3251 of this title.

§ 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

(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.—Added 1977, No. 51, § 1, eff. date, see note set out below.

Effective date. For effective date of this section, see note set out under § 3251 of this title.

§ 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.—Added 1977, No. 51, § 1, eff. date, see note set out below.

Effective date. For effective date of this section, see note set out under § 3251 of this title.

Chapter 73. Sabbath Breaking

§§ 3301-3308. Repealed. 1975, No. 207 (Adj. Sess.), § 2, eff. March 27, 1976.

Former section 3307. Prior to repeal of this chapter former section 3307 was repealed by 1973, No. 249 (Adj. Sess.), § 111, eff. April 9, 1974.

Similar provisions are contained in chapter 74 of this title.

Chapter 74. A Common Day of Rest

SECTION

- 3351. Title.
- 3352. Purpose.
- 3353. Prohibition of Sunday business and labor.
- 3354. Exemptions.
- 3355. Definitions.
- 3356. Criminal penalties.

§ 3351. Title

This chapter shall be known, and may be cited, as the Common Day of Rest Act.—Added 1975, No. 207 (Adj. Sess.), § 1, eff. March 27, 1976.

§ 3352. Purpose

The purpose of this chapter is to establish a common day of rest by means of the general cessation of work, which will create an atmosphere of repose and tranquility in which individuals can relax and families, friends, and relatives can gather together for social occasions and recreation.—Added 1975, No. 207 (Adj. Sess.), § 1, eff. March 27, 1976.

§ 3353. Prohibition of Sunday business and labor

It shall be unlawful on Sunday for any person, firm or corporation:

(1) to engage in or conduct business or labor for profit in the usual manner and location, or to operate a place of business open to the public; or

(2) to cause, direct, or authorize any employee or agent to engage in or conduct business or labor for profit in the usual manner and location, or to operate a place of business open to the public.

—Added 1975, No. 207 (Adj. Sess.), § 1, eff. March 27, 1976.

§ 3354. Exemptions

Nothing in section 3353 of this title shall apply to:

(1) any natural person who in good faith observes a day other than Sunday as the Sabbath, if he:

Appendix 12

St. Joseph's Restorative Inquiry September Newsletter



St. Joseph's Orphanage, Circa 1950

Overview:

This is the first of a monthly newsletter from the [St. Joseph's Restorative Inquiry](#) (SJRI). SJRI seeks to understand and document the events of the orphanage through the voices, experiences, and stories of those most impacted (former residents); and then facilitates inclusive processes of accountability, amends-making, learning, and change. Restorative Inquiry staff are committed to facilitate and respond to the stated priorities and requests of the former children of St. Joseph's Orphanage.

The Restorative Inquiry is a project of the [Burlington Community Justice Center](#). The project was launched in May of 2019 with funding and support from the Vermont Center for Crime Victim Services and is guided by an Advisory Team comprised of community stakeholders, restorative justice practitioners, and former St. Joseph's Orphanage residents. Project staff began with individual outreach to former residents of the Orphanage. Staff transitioned to group meetings in October of 2019. With the advent of COVID-19 in March, the project moved to weekly online group meetings. Currently, Restorative Inquiry participants meet every Friday from 11:00-1:00.

The weekly meetings allow participants to connect with each other and share perspectives and experiences. Beginning in July, the group decided to alternate between formal and informal weekly meetings. The weekly formal meetings are facilitated by Restorative Inquiry staff and frequently include project questions for the group to consider and decide upon. Group decisions are made by consensus, or when not feasible, through a vote.

Current Initiatives:

In addition to the weekly meetings, the Restorative Inquiry is facilitating a series of initiatives that reflect the expressed interests and requests of the former residents. The following is a summary of current initiatives:

- **Participant-Informed Historical Research Project:** The Restorative Inquiry established a collaboration with Bennington College in the spring of 2020 in order to conduct a participant-informed historical research project. Bennington College students India Carter-Bolick and Gabriela Yadegari initially met with the former residents to explore what Orphanage-related questions that the group wanted answered. India and Gabriela then conducted research into these questions, connecting with a variety of sources (including former residents); compiling documentation; and preparing both interim and final reports. They shared their research with the participants in June and August. A summary of their research will be published on the St. Joseph's Restorative Inquiry [website](#) by the end of this month.
- **Access to Department of Children and Families Family Files:** Several participants of the Restorative Inquiry were placed at the Orphanage by the State of Vermont. These participants requested the opportunity to view all state information (without redaction) related to their time at the St. Joseph's Orphanage. In order to respond to this request, the Department of Children and Families (DCF) has collaborated with the Secretary of State's Office to search the state archives for all available files. DCF is committed to facilitating opportunities for the Restorative Inquiry participants to view their family information in group and individual sessions. The Inquiry held the first viewing session in August and future sessions are being planned.
- **Medical Records:** Restorative Inquiry staff are working with UVM Medical Center to provide any available medical records of participants from their time at the Orphanage. UVM Medical Center is currently conducting a search and will send the records upon request.
- **Writer's Group:** In May, a group of Restorative Inquiry participants requested the opportunity to work together in a facilitated writers' workshop. The Restorative Inquiry contracted the services of Carol Adinolfi to coordinate a 10-week writers' group. Six former residents participated in the group and are now preparing to share their work with the select members of the public.
- **Orphanage Memorial:** Participants of the Restorative Inquiry have requested a public memorial to recognize the countless children who passed through and were impacted by the Orphanage. The group recently selected three representatives to a subcommittee to represent their interests in this initiative. In the coming weeks, staff of the Restorative Inquiry will be organizing meetings for the committee and relevant stakeholders.

Upcoming Initiatives:

- **Meeting with Public Policy Makers:** Participants of the Restorative Inquiry have a core request: that no child or vulnerable person ever again experience the harm that they experienced. This fall, the group will meet with a group of Vermont state legislators and other public policy makers to share their experiences, knowledge, and aspirations; and then collaboratively work together to better protect all vulnerable people.
- **Oral History Collaboration with the Vermont Folklife Center:** Later this fall, interested Restorative Inquiry participants will begin recording oral histories of their experiences with the Orphanage. Each participant will decide how and whether their recording is shared with others and potentially, the general public. With participants' permission and guidance, some of the recordings may form part of a multimedia exhibition.

Other Items:

- [REDACTED] is gathering a package of letters from former residents of St. Joseph's Orphanage who want to send a letter to the Pope. If you would like to have a letter included in this packet, you can send it to: [REDACTED]
[REDACTED]
- In the next month, we will be posting historical photographs from the Orphanage on our website. If you have photographs from the St. Joseph's Orphanage that you would like to share with Restorative Inquiry participants and/or the general public, please contact Marc Wennberg at marc@communityreentry.net.

How to get involved:

- If you are a former resident of St. Joseph's Orphanage and would like to participate in the restorative inquiry, please contact Marc Wennberg at: marc@communityreentry.net or by calling 802-522-7394.
- If you are a former resident of St. Joseph's Orphanage and in need of support, you can connect with Amy Farr, Victim Advocate at the Vermont Attorney General's Office at amy.farr@vermont.gov or at 802-279-1027.
- All other requests and questions can be directed to Marc Wennberg at: marc@communityreentry.net.