

**Memorandum Pursuant to Act 68 - An Act Relating to Sexual Violence**  
**Research and Statutory Protections Recommendations by the Intercollegiate Sexual Harm Prevention Council**  
**Prepared by the Vermont Network Against Domestic and Sexual Violence - October 20, 2021**

**Background and Purpose:**

In 2021, the General Assembly passed Act 68 which reformed several areas of law pertaining to sexual violence. Included in this Act was the creation of an Intercollegiate Sexual Harm Prevention Council. The Council has met two times to date and is permitted by statute to meet four times annually. In enumerating the duties and powers of the Council, the General Assembly asked the Council to “recommend statutory protections to the General Assembly not later than November 1, 2021 to ensure that survivors of sexual harm are not punished for reporting an incident of sexual violence due to alcohol, drug use, or other minor conduct violations occurring at or around the time of an assault.” This memorandum outlines the research conducted by the Council and three potential policy options.

**Findings:**

The Intercollegiate Sexual Harm Prevention Council, with staffing support from the Vermont Network Against Domestic and Sexual Violence, consolidated information about related institutional and statutory protections. The Vermont Network conducted outreach to every institution of higher education in Vermont to document written policies and institutional practices related to immunity for reporting incidents of sexual violence. In addition, the Vermont Network conducted a survey of New England states to gather statutory language establishing immunity protections in state law.

Institutional Immunity Policies in Vermont

Of the sixteen institutions of higher education operating in Vermont, information was gathered from all but one. The majority of higher education institutions have some form of limited and case-specific immunity related to minor conduct violations for individuals reporting sexual assault incidents. For example, the Vermont State Colleges sexual misconduct policy governing practices at four institutions in Vermont provides for limited discretionary immunity:

*“A person (whether a complainant or another reporting person) should not be deterred from reporting a violation of this policy because alcohol, drugs, or other violations of VSC’s policies were involved in the incident. VSC officials may, in their discretion and on a case-by-case basis, decide not to pursue relatively minor drug, alcohol or other policy violations related to incidents of misconduct under this policy or, if they do pursue such violations, to handle them separately from complaints brought under this policy.”<sup>1</sup>*

The remaining institutions of higher education in Vermont have immunity or amnesty policies in effect which are limited to drug and alcohol violations only.

Regional Statutory Responses

Several states have pursued statutory responses to ensure consistent statewide practice related to immunity for reporting sexual violence. Massachusetts, Connecticut and New Hampshire have all recently passed immunity provisions. Massachusetts and New Hampshire recently passed the following (identical) language:

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<sup>1</sup> <https://www.vsc.edu/wp-content/uploads/2020/08/Policy-311-A-08-12-20-1-1.pdf>

*“A reporting party or a witness that causes an investigation of sexual misconduct, or drug or alcohol use, shall not be subject to a disciplinary proceeding or sanction for a violation of the institution of higher education's student conduct policy related to the incident unless the institution determine that the report was not made in good faith or that the violation was egregious. An egregious violation shall include, but not be limited to, taking an action that places the health and safety of another person at risk.”<sup>23</sup>*

The State of Connecticut has instituted the following language:

*“A student or employee who reports or discloses the alleged assault, stalking or violence shall not be subject to disciplinary action by the institution of higher education for violation of a policy of such institution concerning the use of drugs or alcohol if (i) the report or disclosure was made in good faith, and (ii) the violation of such policy did not place the health or safety of another person at risk.”<sup>4</sup>*

In Vermont, immunity provisions (also sometimes referred to as so-called Good Samaritan protections) have also been pursued related to other public health issues. 18 V.S.A. 4254 provides immunity for individuals who report drug overdoses and 13 V.S.A. 2821 provides protections to individuals who report being victim or witness to crime while engaged in human trafficking or prostitution.

## **Policy Options**

The Intercollegiate Higher Education Sexual Harm Prevention Council has held two meetings to date. Given the limited number of sessions to meet, the Council has not reached a decision about a recommended policy option. The Council is expected to meet again in January and will entertain the three following potential policy options at that meeting:

1. Status quo. Do not recommend any statutory or statewide policy changes and permit institutions of higher education to determine individual policies related to immunity for reporting sexual violence incidents;
2. Statutory solution modeled on current Vermont immunity statutes or those of a neighboring state. If the General Assembly would like to introduce language based on consensus language of the Council, the timing of meetings may necessitate this option be taken up in the 2023 legislative session;
3. Development of a model immunity policy by the Council which would be distributed to institutions of higher education with a recommendation they adopt model language.

Thank you for your continued interest in this issue.

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<sup>2</sup> <http://www.gencourt.state.nh.us/rsa/html/XV/188-H/188-H-13.htm>

<sup>3</sup> <https://malegislature.gov/Laws/SessionLaws/Acts/2020/Chapter337>

<sup>4</sup> <https://www.cga.ct.gov/2021/ACT/PA/pdf/2021PA-00081-R00HB-06374-PA.pdf>