



House of Representatives

General Assembly

File No. 448

February Session, 2000

House Bill No. 5882

House of Representatives, April 5, 2000

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

An Act Concerning Sexual Assault.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 53a-70 of the general statutes, as amended by
2 section 49 of public act 99-2 of the June special session, is repealed and
3 the following is substituted in lieu thereof:

4 (a) A person is guilty of sexual assault in the first degree when such
5 person (1) compels another person to engage in sexual intercourse by
6 the use of force against such other person or a third person, or by the
7 threat of use of force against such other person or against a third
8 person which reasonably causes such person to fear physical injury to
9 such person or a third person, or (2) engages in sexual intercourse with
10 another person and such other person is under thirteen years of age
11 and the actor is more than two years older than such person, or (3)
12 commits sexual assault in the second degree as provided in section
13 53a-71 and in the commission of such offense is aided by two or more
14 other persons actually present, or (4) engages in sexual intercourse

15 with another person and such other person is mentally incapacitated to
16 the extent that such other person is unable to consent to such sexual
17 intercourse.

18 (b) Sexual assault in the first degree is a class B felony for which two
19 years of the sentence imposed may not be suspended or reduced by
20 the court or, if the victim of the offense is under ten years of age, for
21 which ten years of the sentence imposed may not be suspended or
22 reduced by the court, and any person found guilty under this section
23 shall be sentenced to a term of imprisonment and a period of special
24 parole pursuant to subsection (b) of section 53a-28 which together
25 constitute a sentence of at least ten years.

26 Sec. 2. Section 53a-71 of the general statutes is repealed and the
27 following is substituted in lieu thereof:

28 (a) A person is guilty of sexual assault in the second degree when
29 such person engages in sexual intercourse with another person and: (1)
30 Such other person is thirteen years of age or older but under sixteen
31 years of age and the actor is more than two years older than such
32 person; or (2) such other person is mentally defective [or mentally
33 incapacitated] to the extent that [he] such other person is unable to
34 consent to such sexual intercourse; or (3) such other person is
35 physically helpless; or (4) such other person is less than eighteen years
36 old and the actor is such person's guardian or otherwise responsible
37 for the general supervision of such person's welfare; or (5) such other
38 person is in custody of law or detained in a hospital or other institution
39 and the actor has supervisory or disciplinary authority over such other
40 person; or (6) the actor is a psychotherapist and such other person is
41 (A) a patient of the actor and the sexual intercourse occurs during the
42 psychotherapy session, (B) a patient or former patient of the actor and
43 such patient or former patient is emotionally dependent upon the
44 actor, or (C) a patient or former patient of the actor and the sexual
45 intercourse occurs by means of therapeutic deception; or (7) the actor

46 accomplishes the sexual intercourse by means of false representation
47 that the sexual intercourse is for a bona fide medical purpose by a
48 health care professional; or (8) the actor is a school employee and such
49 other person is a student enrolled in a school in which the actor works
50 or a school under the jurisdiction of the local or regional board of
51 education which employs the actor.

52 (b) Sexual assault in the second degree is a class C felony for which
53 nine months of the sentence imposed may not be suspended or
54 reduced by the court.

JUD Committee Vote: Yea 40 Nay 0 JF

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Potential Cost

Affected Agencies: Various Criminal Justice Agencies

Municipal Impact: None

Explanation

State Impact:

This bill could result in a cost to the state. The bill adds the provision that a person who engages in sexual intercourse with another person who is temporarily mentally incapacitated can be charged with sexual assault in the first degree, which carries a penalty of 1-20 years in prison and up to a \$15,000 fine. Under current law, sexual assault with a person who is temporarily mentally incapacitated is considered sexual assault in the second degree, which carries a penalty of 1-10 years in prison and up to a \$10,000 fine. The bill could result in a shift in cases of second degree sexual assault to first degree sexual assault. The extent to which this may occur is unknown.

The primary criminal justice cost of the bill relates to the Department of Correction (DOC). Currently, DOC has an inmate population of about 17,500. This is more than 500 inmates above the department's projection for FY 00. The department estimates that the population will increase to about 18,500 inmates by the end of FY 01. This growth is primarily attributed to mandatory sentences and truth

in sentencing requirements. To accommodate this, the Governor's FY 01 proposed budget adjustments include \$8.4 million for expansion of in-state prison beds and \$11.9 million to annualize funding for inmates being housed out-of-state. Although it is not anticipated that the bill would result in a significant increase in the correctional inmate population, it should be noted that the establishment of new crimes, particularly those with mandatory sentences, will eventually result in the need for additional criminal justice resources.

In 1999, according to Judicial Department reports, there were 421 offenses of sexual assault in the first degree (C.G.S. Sec. 53a-70) and 397 offenses of sexual assault in the second degree (C.G.S. Sec. 53a-71). In 1999, according to Department of Correction reports, there were approximately 526 people incarcerated with sexual assault in the first degree as their primary offense and 228 people incarcerated with sexual assault in the second degree as their primary charge. No revenue was collected in criminal fines during this time frame. Therefore, increasing the upper limit of the criminal fine in these cases is not anticipated to result in a revenue gain.

OLR Bill Analysis

HB 5882

AN ACT CONCERNING SEXUAL ASSAULT.**SUMMARY:**

This bill increases the penalty for having sexual intercourse with someone who is mentally incapacitated to the extent that they cannot consent to the intercourse. Currently, this crime is second-degree sexual assault (a class C felony) punishable by up to 10 years imprisonment, up to a \$10,000 fine, or both. Nine months of the prison term cannot be suspended or reduced. Under the bill, it becomes first-degree sexual assault (a class B felony) punishable by up to 20 years imprisonment, up to a \$15,000 fine, or both. The offender must serve a minimum of two years in prison (10 years if the victim is under age 10) and a combination of imprisonment and special parole that together constitute 10 years.

EFFECTIVE DATE: October 1, 2000

BACKGROUND***Special Parole***

The court may sentence people convicted of offenses committed after September 30, 1998 to a term of imprisonment and a period of special parole. People sentenced to special parole must be supervised by the Board of Parole after release from prison and may be returned to prison for violating parole. The Board of Parole and its chairman can set rules and conditions for special parole.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Report

Yea 40 Nay 0