



House of Representatives

File No. 641

General Assembly

February Session, 2002

(Reprint of File Nos. 415 and 566)

Substitute House Bill No. 5722
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
May 4, 2002

**AN ACT CONCERNING SEXUAL ASSAULT BY A COACH OR
INSTRUCTOR, MANDATED REPORTING OF CHILD ABUSE OR
NEGLECT AND ISSUANCE AND REVOCATION OF EDUCATOR
CERTIFICATES.**

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

1 Section 1. Section 53a-71 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2002*):

3 (a) A person is guilty of sexual assault in the second degree when
4 such person engages in sexual intercourse with another person and: (1)
5 Such other person is thirteen years of age or older but under sixteen
6 years of age and the actor is more than two years older than such
7 person; or (2) such other person is mentally defective to the extent that
8 such other person is unable to consent to such sexual intercourse; or (3)
9 such other person is physically helpless; or (4) such other person is less
10 than eighteen years old and the actor is such person's guardian or
11 otherwise responsible for the general supervision of such person's
12 welfare; or (5) such other person is in custody of law or detained in a
13 hospital or other institution and the actor has supervisory or

14 disciplinary authority over such other person; or (6) the actor is a
15 psychotherapist and such other person is (A) a patient of the actor and
16 the sexual intercourse occurs during the psychotherapy session, (B) a
17 patient or former patient of the actor and such patient or former
18 patient is emotionally dependent upon the actor, or (C) a patient or
19 former patient of the actor and the sexual intercourse occurs by means
20 of therapeutic deception; or (7) the actor accomplishes the sexual
21 intercourse by means of false representation that the sexual intercourse
22 is for a bona fide medical purpose by a health care professional; or (8)
23 the actor is a school employee and such other person is a student
24 enrolled in a school in which the actor works or a school under the
25 jurisdiction of the local or regional board of education which employs
26 the actor; or (9) the actor is a coach in an athletic activity or a person
27 who provides intensive, ongoing instruction and such other person is a
28 recipient of coaching or instruction from the actor and (A) is a
29 secondary school student and receives such coaching or instruction in
30 a secondary school setting, or (B) is under eighteen years of age.

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

34 Sec. 2. Section 53a-73a of the general statutes is repealed and the
35 following is substituted in lieu thereof (*Effective October 1, 2002*):

36 (a) A person is guilty of sexual assault in the fourth degree when: (1)
37 Such person intentionally subjects another person to sexual contact
38 who is (A) under fifteen years of age, or (B) mentally defective or
39 mentally incapacitated to the extent that [he] such other person is
40 unable to consent to such sexual contact, or (C) physically helpless, or
41 (D) less than eighteen years old and the actor is such person's guardian
42 or otherwise responsible for the general supervision of such person's
43 welfare, or (E) in custody of law or detained in a hospital or other
44 institution and the actor has supervisory or disciplinary authority over
45 such other person; or (2) such person subjects another person to sexual
46 contact without such other person's consent; or (3) such person

47 engages in sexual contact with an animal or dead body; or (4) such
48 person is a psychotherapist and subjects another person to sexual
49 contact who is (A) a patient of the actor and the sexual contact occurs
50 during the psychotherapy session, or (B) a patient or former patient of
51 the actor and such patient or former patient is emotionally dependent
52 upon the actor, or (C) a patient or former patient of the actor and the
53 sexual contact occurs by means of therapeutic deception; or (5) such
54 person subjects another person to sexual contact and accomplishes the
55 sexual contact by means of false representation that the sexual contact
56 is for a bona fide medical purpose by a health care professional; or (6)
57 such person is a school employee and subjects another person to sexual
58 contact who is a student enrolled in a school in which the actor works
59 or a school under the jurisdiction of the local or regional board of
60 education which employs the actor; or (7) such person is a coach in an
61 athletic activity or a person who provides intensive, ongoing
62 instruction and subjects another person to sexual contact who is a
63 recipient of coaching or instruction from the actor and (A) is a
64 secondary school student and receives such coaching or instruction in
65 a secondary school setting, or (B) is under eighteen years of age.

66 (b) Sexual assault in the fourth degree is a class A misdemeanor.

67 Sec. 3. Subsection (b) of section 17a-101 of the general statutes is
68 repealed and the following is substituted in lieu thereof (*Effective*
69 *October 1, 2002*):

70 (b) The following persons shall be mandated reporters: Any
71 physician or surgeon licensed under the provisions of chapter 370, any
72 resident physician or intern in any hospital in this state, whether or not
73 so licensed, any registered nurse, licensed practical nurse, medical
74 examiner, dentist, dental hygienist, psychologist, coach of intramural
75 or interscholastic athletics, school teacher, school principal, school
76 guidance counselor, school paraprofessional, social worker, police
77 officer, clergyman, pharmacist, physical therapist, optometrist,
78 chiropractor, podiatrist, mental health professional or physician
79 assistant, any person who is a licensed substance abuse counselor, any

80 person who is a licensed marital and family therapist, any person who
81 is a sexual assault counselor or a battered women's counselor as
82 defined in section 52-146k, any person paid to care for a child in any
83 public or private facility, day care center or family day care home
84 licensed by the state, the Child Advocate and any employee of the
85 Office of Child Advocate.

86 Sec. 4. Section 17a-101a of the general statutes is repealed and the
87 following is substituted in lieu thereof (*Effective October 1, 2002*):

88 Any mandated reporter, as defined in section 17a-101, as amended
89 by this act, who in [his] such person's professional capacity has
90 reasonable cause to suspect or believe that any child under the age of
91 eighteen years has been abused, as defined in section 46b-120, or has
92 had nonaccidental physical injury, or injury which is at variance with
93 the history given of such injury, inflicted upon [him] such child by a
94 person responsible for such child's health, welfare or care or by a
95 person given access to such child by such responsible person, or is
96 placed at imminent risk of serious harm by an act or failure to act on
97 the part of such responsible person, or has been neglected, as defined
98 in section 46b-120, shall report or cause a report to be made in
99 accordance with the provisions of sections 17a-101b to 17a-101d,
100 inclusive. Any person required to report under the provisions of this
101 section who fails to make such report shall be fined not less than five
102 hundred dollars nor more than [five hundred] two thousand five
103 hundred dollars.

104 Sec. 5. Subsection (g) of section 10-145b of the general statutes is
105 repealed and the following is substituted in lieu thereof (*Effective July*
106 *1, 2002*):

107 (g) On and after July 1, 1989, the State Board of Education, upon
108 receipt of a proper application, shall issue a provisional educator
109 certificate to any person who (1) has successfully completed a
110 beginning educator program and one school year of successful
111 teaching as attested to by the superintendent, or the superintendent's

112 designee, in whose local or regional school district such person was
113 employed, (2) has completed at least three years of successful teaching
114 in a public or nonpublic school approved by the State Board of
115 Education or appropriate governing body in another state within ten
116 years prior to application for such provisional educator certificate, as
117 attested to by the superintendent, or the superintendent's designee, in
118 whose school district such person was employed, or by the supervising
119 agent of the nonpublic school in which such person was employed,
120 and has met preparation and eligibility requirements for an initial
121 educator certificate, (3) has taught successfully in public schools in this
122 state for the 1988-1989 school year under a temporary emergency
123 permit and has met the preparation and eligibility requirements for an
124 initial educator certificate, or (4) has successfully taught with a
125 provisional teaching certificate for the year immediately preceding an
126 application for a provisional educator certificate as an employee of a
127 local or regional board of education or facility approved for special
128 education by the State Board of Education.

129 Sec. 6. Subsection (k) of section 10-145b of the general statutes is
130 repealed and the following is substituted in lieu thereof (*Effective July*
131 *1, 2002*):

132 (k) Unless otherwise provided in regulations adopted under section
133 10-145d, in not less than three years nor more than eight years after the
134 issuance of a provisional educator certificate pursuant to subsection (g)
135 of this section, as amended by this act, and upon the statement of the
136 superintendent in whose school district such certificate holder was
137 employed, or the [superintendent] supervisory agent of a nonpublic
138 school approved by the State Board of Education, in whose school such
139 certificate holder was employed, that the provisional educator
140 certificate holder and such superintendent or supervisory agent have
141 mutually determined or approved an individual program pursuant to
142 subdivision (2) of subsection (j) of this section and upon the statement
143 of such superintendent or supervisory agent that such certificate
144 holder has a record of competency in the discharge of [his] such
145 certificate holder's duties during such provisional period, the state

146 board upon receipt of a proper application shall issue such certificate
147 holder a professional educator certificate. A signed recommendation
148 from the superintendent of schools, or the superintendent's designee,
149 for the local or regional board of education or from the
150 [superintendent] supervisory agent of a nonpublic school approved by
151 the State Board of Education shall be evidence of competency. Such
152 recommendation shall state that the person who holds or has held a
153 provisional educator certificate has successfully completed at least
154 three school years of satisfactory teaching for one or more local or
155 regional boards of education or such nonpublic schools. Each applicant
156 for a certificate pursuant to this subsection shall provide to the
157 Department of Education, in such manner and form as prescribed by
158 the commissioner, evidence that the applicant has successfully
159 completed coursework pursuant to subsection (h) or (j) of this section,
160 as appropriate.

161 Sec. 7. (NEW) (*Effective July 1, 2002*) If a person holding a certificate,
162 authorization or permit issued by the State Board of Education under
163 the provisions of sections 10-144o to 10-149, inclusive, of the general
164 statutes, as amended by this act, is convicted of a felony or fined
165 pursuant to section 17a-101a of the general statutes, as amended by
166 this act, the state's attorney or assistant state's attorney for the judicial
167 district in which the conviction or fine occurred shall notify, in writing,
168 the Commissioner of Education of such conviction or fine.

169 Sec. 8. Subsection (m) of section 10-145b of the general statutes, as
170 amended by section 53 of public act 01-173, is repealed and the
171 following is substituted in lieu thereof (*Effective October 1, 2002*):

172 (m) (1) The State Board of Education may revoke any certificate,
173 authorization or permit issued pursuant to sections 10-144o to 10-149,
174 inclusive, as amended by this act, for any of the following reasons: (A)
175 The holder of the certificate, authorization or permit obtained such
176 certificate, authorization or permit through fraud or misrepresentation
177 of a material fact; (B) the holder has persistently neglected to perform
178 the duties for which the certificate, authorization or permit was

179 granted; (C) the holder is professionally unfit to perform the duties for
180 which the certificate, authorization or permit was granted; (D) the
181 holder is convicted in a court of law of a crime involving moral
182 turpitude or of any other crime of such nature that in the opinion of
183 the board continued holding of a certificate, authorization or permit by
184 the person would impair the standing of certificates, authorizations or
185 permits issued by the board; or (E) other due and sufficient cause. The
186 State Board of Education shall revoke any certificate, authorization or
187 permit issued pursuant to said sections if the holder is found to have
188 intentionally disclosed specific questions or answers to students or
189 otherwise improperly breached the security of any administration of a
190 state-wide examination pursuant to section 10-14n. In any revocation
191 proceeding pursuant to this section, the State Board of Education shall
192 have the burden of establishing the reason for such revocation by a
193 preponderance of the evidence. Revocation shall be in accordance with
194 procedures established by the State Board of Education pursuant to
195 chapter 54.

196 (2) When the Commissioner of Education is notified, pursuant to
197 section 17a-101i, as amended, or section 7 of this act that a person
198 holding a certificate, authorization or permit issued by the State Board
199 of Education under the provisions of sections 10-144o to 10-149,
200 inclusive, as amended by this act, has been convicted of (A) a capital
201 felony, pursuant to section 53a-54b, as amended, (B) arson murder,
202 pursuant to section 53a-54d, (C) a class A felony, (D) a class B felony,
203 except a violation of section 53a-122, 53a-252 or 53a-291, (E) a crime
204 involving an act of child abuse or neglect as described in section 46b-
205 120, or (F) a violation of section 53-21, 53-37a, 53a-60b, as amended,
206 53a-60c, 53a-71, 53a-72a, 53a-72b, 53a-73a, 53a-88, 53a-99, 53a-103a, 53a-
207 181c, 53a-191, 53a-196, 53a-196c, 53a-216, 53a-217b, as amended, or 21a-
208 278, as amended, or subsection (a) of section 21a-277, any certificate,
209 permit or authorization issued by the State Board of Education and
210 held by such person shall be deemed revoked and the commissioner
211 shall notify such person of such revocation, provided such person may
212 request reconsideration pursuant to regulations adopted by the State

213 Board of Education, in accordance with the provisions of chapter 54.

214 (3) The State Board of Education may deny an application for a
215 certificate, authorization or permit for any of the following reasons: (A)
216 The applicant seeks to obtain a certificate, authorization or permit
217 through fraud or misrepresentation of a material fact; (B) the applicant
218 has been convicted in a court of law of a crime involving moral
219 turpitude or of any other crime of such nature that in the opinion of
220 the board issuance of a certificate, authorization or permit would
221 impair the standing of certificates, authorizations or permits issued by
222 the board; or (C) other due and sufficient cause. Any applicant denied
223 a certificate, authorization or permit shall be notified in writing of the
224 reasons for denial. Any applicant denied a certificate, authorization or
225 permit may request a review of such denial by the State Board of
226 Education.

This act shall take effect as follows:	
Section 1	<i>October 1, 2002</i>
Sec. 2	<i>October 1, 2002</i>
Sec. 3	<i>October 1, 2002</i>
Sec. 4	<i>October 1, 2002</i>
Sec. 5	<i>July 1, 2002</i>
Sec. 6	<i>July 1, 2002</i>
Sec. 7	<i>July 1, 2002</i>
Sec. 8	<i>October 1, 2002</i>

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:

Fund-Type	Agency Affected	Current FY \$	FY 03 \$	FY 04 \$
GF - Cost	Various Criminal Justice Agencies	-	Potential	Potential
GF - Revenue Gain	Judicial Dept.	-	Potential Minimal	Potential Minimal
GF - Cost	Criminal Justice, Div.	-	Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill broadens the crimes of 2nd degree sexual assault and 4th degree sexual assault and will likely result in additional costs for criminal justice agencies related to adjudication and punishment. The extent to which offenses under the bill would occur is unknown. However, it should be noted that 2nd degree sexual assault carries a mandatory minimum sentence of nine months and a maximum of ten years imprisonment. Typically, sexual assault crimes yield little or no revenue to the state from fines. Since offenses under the bill may involve atypical offenders, the state could experience an increase in revenue.

The bill raises the maximum fine for a mandated reporter’s failing to report child abuse. This change results in a potential revenue gain from fines. In FY 01, there were no offenses under CGS Section 17a-101a (which provides penalties for failure to report by someone mandated to do so). Consequently, any revenue gain would be minimal.

The bill requires the Division of Criminal Justice (DCJ) to notify the Commissioner of Education in writing of any person holding an educator certificate who is convicted of a felony or fined for being a mandated reporter who fails to report. There is a minimal, absorbable cost for mailing these notifications.¹

House Amendment "A" changed the amount of fines for mandatory reporters who fail to report. It also eliminated the bill's requirement that the Department of Education revoke the educator's certificate of any mandated reporter who fails to report child abuse. These changes had a minimal fiscal impact.

¹ The DCJ would identify an individual holding an educator certificate from the pre-sentence report compiled by the Judicial Department, which lists the occupation of the defendant.

OLR Amended Bill Analysis

sHB 5722 (as amended by House "A")*

AN ACT CONCERNING SEXUAL ASSAULT BY A COACH OR INSTRUCTOR, CONCERNING MANDATED REPORTING OF ABUSE OR NEGLECT AND CONCERNING EDUCATOR CERTIFICATES**SUMMARY:**

This bill creates separate forms of sexual assault based on the relationship between the actor and the victim. It makes it a crime for a person who provides intensive, ongoing instruction or a coach of an athletic activity to engage in sexual intercourse or have sexual contact with someone receiving that coaching or instruction who is either (1) a secondary school student and receiving coaching or instruction in a secondary school setting or (2) under age 18.

The bill makes sexual intercourse with a person under these circumstances second-degree sexual assault, punishable by one to 10 years in prison (with a nine-month mandatory minimum), a fine of up to \$10,000, or both. It makes sexual contact with a person under these circumstances fourth-degree sexual assault, punishable by up to one year in prison, a fine of up to \$2,000, or both.

The bill makes coaches of intramural or interscholastic athletics mandated child abuse reporters. Among those who are currently mandated reporters are school teachers, principals, guidance counselors, and school paraprofessionals. A mandated reporter must report to the Department of Children and Families when, acting in his professional capacity, he has reasonable cause to suspect that a child under age 18 has been abused, neglected, or is at risk of abuse or neglect. The bill raises the penalty for any mandated reporter who fails to report from up to \$500 to between \$500 and \$2,500.

The bill requires the state's attorney or assistant state's attorney to notify the education commissioner in writing if a person holding a State Board of Education certificate, authorization, or permit is

convicted of a felony or fined for being a mandated reporter who fails to report.

The bill also allows a school superintendent's designee to (1) attest that a person successfully completed one year of teaching, for purposes of an application for a provisional educator certificate and (2) sign a recommendation as evidence of competency, for purposes of an application for a professional educator certificate. If a person bases his eligibility for a provisional certificate on completing three years of successful teaching in a public or private school within the previous 10 years, the bill requires that it be attested by the (1) superintendent or his designee in the school district where the person was employed or (2) supervising agent of the nonpublic school where the person was employed.

The bill also makes technical changes.

*House Amendment "A" (1) reduces the fine in the bill as reported by the Education Committee for a mandated reporter who fails to report from between \$1,000 and \$5,000 to between \$500 and \$2,500 and (2) eliminates the provision requiring the State Board of Education to revoke any applicable certificate, authorization, or permit for a school employee who is fined for failing to report child abuse or neglect.

EFFECTIVE DATE: October 1, 2002, except for the provisions on notice to the education commissioner and provisional and professional educator certificates, which are effective July 1, 2002.

BACKGROUND

Mandated Reporters

Under current law, mandated reporters are:

1. licensed physicians and surgeons and medical residents (whether licensed or not);
2. registered nurses and licensed practical nurses;
3. medical examiners;
4. dentists and dental hygienists;
5. psychologists, social workers, and licensed marital and family therapists;
6. school teachers, principals, guidance counselors, and

- paraprofessionals;
- 7. police officers;
- 8. clergy;
- 9. pharmacists;
- 10. physical therapists;
- 11. optometrists, chiropractors, and podiatrists;
- 12. mental health professionals and physician assistants;
- 13. licensed substance abuse counselors;
- 14. sexual assault and battered women’s counselors;
- 15. child care providers in licensed facilities; and
- 16. the Child Advocate and Office of Child Advocate employees.

Related Bill

Among other provisions, sHB 5680 (1) increases the classification and maximum penalty for sex crimes involving minors under age 16; (2) makes changes to the mandated reporter statutes, including adding to the list of such reporters and requiring those who fail to report to attend a training program; and (3) makes a teacher’s personal misconduct records public and subject to disclosure under the Freedom of Information Act without the teacher’s consent.

Legislative History

On April 12, the House referred the bill to the Education Committee. On April 17, that committee reported the substitute bill adding the provisions on mandated reporters, notification to the education commissioner, and provisional and professional educator certificates.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
 Yea 41 Nay 0

Education Committee

Joint Favorable Substitute
 Yea 30 Nay 0