



Senate

General Assembly

File No. 394

February Session, 2010

Substitute Senate Bill No. 315

Senate, April 8, 2010

The Committee on Human Services reported through SEN. DOYLE of the 9th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS
WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS
SUBSTANTIALLY IMPAIRED.***

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 Section 53a-71 of the general statutes is repealed and the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, 2010*):

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 three years older than such
7 other person; or (2) [such other person is mentally defective to the
8 extent that such other person is unable to consent to such sexual
9 intercourse; or (3) such other person is physically helpless] the ability
10 of such other person to communicate lack of consent to such sexual
11 intercourse is substantially impaired because of a mental or physical
12 condition and the actor knows or has reasonable cause to believe that
13 the ability of such other person to communicate lack of consent to such

14 sexual intercourse is so impaired; or [(4)] (3) such other person is less
15 than eighteen years old and the actor is such person's guardian or
16 otherwise responsible for the general supervision of such person's
17 welfare; or [(5)] (4) such other person is in custody of law or detained
18 in a hospital or other institution and the actor has supervisory or
19 disciplinary authority over such other person; or [(6)] (5) the actor is a
20 psychotherapist and such other person is (A) a patient of the actor and
21 the sexual intercourse occurs during the psychotherapy session, (B) a
22 patient or former patient of the actor and such patient or former
23 patient is emotionally dependent upon the actor, or (C) a patient or
24 former patient of the actor and the sexual intercourse occurs by means
25 of therapeutic deception; or [(7)] (6) the actor accomplishes the sexual
26 intercourse by means of false representation that the sexual intercourse
27 is for a bona fide medical purpose by a health care professional; or [(8)]
28 (7) the actor is a school employee and such other person is a student
29 enrolled in a school in which the actor works or a school under the
30 jurisdiction of the local or regional board of education which employs
31 the actor; or [(9)] (8) the actor is a coach in an athletic activity or a
32 person who provides intensive, ongoing instruction and such other
33 person is a recipient of coaching or instruction from the actor and (A)
34 is a secondary school student and receives such coaching or instruction
35 in a secondary school setting, or (B) is under eighteen years of age; or
36 [(10)] (9) the actor is twenty years of age or older and stands in a
37 position of power, authority or supervision over such other person by
38 virtue of the actor's professional, legal, occupational or volunteer
39 status and such other person's participation in a program or activity,
40 and such other person is under eighteen years of age.

41 (b) Sexual assault in the second degree is a class C felony or, if the
42 victim of the offense is under sixteen years of age, a class B felony, and
43 any person found guilty under this section shall be sentenced to a term
44 of imprisonment of which nine months of the sentence imposed may
45 not be suspended or reduced by the court.

46 Sec. 2. Section 53a-73a of the general statutes is repealed and the
47 following is substituted in lieu thereof (*Effective October 1, 2010*):

48 (a) A person is guilty of sexual assault in the fourth degree when: (1)
49 Such person intentionally subjects another person to sexual contact
50 who is (A) under thirteen years of age and the actor is more than two
51 years older than such other person, or (B) thirteen years of age or older
52 but under fifteen years of age and the actor is more than three years
53 older than such other person, or (C) [mentally defective or mentally
54 incapacitated to the extent that such other person is unable to consent
55 to such sexual contact, or (D) physically helpless] a person whose
56 ability to communicate lack of consent to such sexual contact is
57 substantially impaired because of a mental or physical condition and
58 the actor knows or has reasonable cause to believe that the ability of
59 such other person to communicate lack of consent to such sexual
60 contact is so impaired, or [(E)] (D) less than eighteen years old and the
61 actor is such other person's guardian or otherwise responsible for the
62 general supervision of such other person's welfare, or [(F)] (E) in
63 custody of law or detained in a hospital or other institution and the
64 actor has supervisory or disciplinary authority over such other person;
65 or (2) such person subjects another person to sexual contact without
66 such other person's consent; or (3) such person engages in sexual
67 contact with an animal or dead body; or (4) such person is a
68 psychotherapist and subjects another person to sexual contact who is
69 (A) a patient of the actor and the sexual contact occurs during the
70 psychotherapy session, or (B) a patient or former patient of the actor
71 and such patient or former patient is emotionally dependent upon the
72 actor, or (C) a patient or former patient of the actor and the sexual
73 contact occurs by means of therapeutic deception; or (5) such person
74 subjects another person to sexual contact and accomplishes the sexual
75 contact by means of false representation that the sexual contact is for a
76 bona fide medical purpose by a health care professional; or (6) such
77 person is a school employee and subjects another person to sexual
78 contact who is a student enrolled in a school in which the actor works
79 or a school under the jurisdiction of the local or regional board of
80 education which employs the actor; or (7) such person is a coach in an
81 athletic activity or a person who provides intensive, ongoing
82 instruction and subjects another person to sexual contact who is a

83 recipient of coaching or instruction from the actor and (A) is a
84 secondary school student and receives such coaching or instruction in
85 a secondary school setting, or (B) is under eighteen years of age; or (8)
86 such person subjects another person to sexual contact and (A) the actor
87 is twenty years of age or older and stands in a position of power,
88 authority or supervision over such other person by virtue of the actor's
89 professional, legal, occupational or volunteer status and such other
90 person's participation in a program or activity, and (B) such other
91 person is under eighteen years of age.

92 (b) Sexual assault in the fourth degree is a class A misdemeanor or,
93 if the victim of the offense is under sixteen years of age, a class D
94 felony.

95 Sec. 3. Section 53a-65 of the 2010 supplement to the general statutes
96 is repealed and the following is substituted in lieu thereof (*Effective*
97 *October 1, 2010*):

98 As used in this part, except section 53a-70b, the following terms
99 have the following meanings:

100 (1) "Actor" means a person accused of sexual assault.

101 (2) "Sexual intercourse" means vaginal intercourse, anal intercourse,
102 fellatio or cunnilingus between persons regardless of sex. Its meaning
103 is limited to persons not married to each other. Penetration, however
104 slight, is sufficient to complete vaginal intercourse, anal intercourse or
105 fellatio and does not require emission of semen. Penetration may be
106 committed by an object manipulated by the actor into the genital or
107 anal opening of the victim's body.

108 (3) "Sexual contact" means any contact with the intimate parts of a
109 person not married to the actor for the purpose of sexual gratification
110 of the actor or for the purpose of degrading or humiliating such person
111 or any contact of the intimate parts of the actor with a person not
112 married to the actor for the purpose of sexual gratification of the actor
113 or for the purpose of degrading or humiliating such person.

114 [(4) "Mentally defective" means that a person suffers from a mental
115 disease or defect which renders such person incapable of appraising
116 the nature of such person's conduct.]

117 [(5)] (4) "Mentally incapacitated" means that a person is rendered
118 temporarily or permanently incapable of appraising or controlling
119 such person's conduct owing to the influence of a drug or intoxicating
120 substance administered to such person without such person's consent,
121 or owing to any other act committed upon such person without such
122 person's consent.

123 [(6) "Physically helpless" means that a person is unconscious or for
124 any other reason is physically unable to communicate unwillingness to
125 an act.]

126 [(7)] (5) "Use of force" means: (A) Use of a dangerous instrument; or
127 (B) use of actual physical force or violence or superior physical
128 strength against the victim.

129 [(8)] (6) "Intimate parts" means the genital area or any substance
130 emitted therefrom, groin, anus or any substance emitted therefrom,
131 inner thighs, buttocks or breasts.

132 [(9)] (7) "Psychotherapist" means a physician, psychologist, nurse,
133 substance abuse counselor, social worker, clergyman, marital and
134 family therapist, mental health service provider, hypnotist or other
135 person, whether or not licensed or certified by the state, who performs
136 or purports to perform psychotherapy.

137 [(10)] (8) "Psychotherapy" means the professional treatment,
138 assessment or counseling of a mental or emotional illness, symptom or
139 condition.

140 [(11)] (9) "Emotionally dependent" means that the nature of the
141 patient's or former patient's emotional condition and the nature of the
142 treatment provided by the psychotherapist are such that the
143 psychotherapist knows or has reason to know that the patient or
144 former patient is unable to withhold consent to sexual contact by or

145 sexual intercourse with the psychotherapist.

146 [(12)] (10) "Therapeutic deception" means a representation by a
147 psychotherapist that sexual contact by or sexual intercourse with the
148 psychotherapist is consistent with or part of the patient's treatment.

149 [(13)] (11) "School employee" means: (A) A teacher, substitute
150 teacher, school administrator, school superintendent, guidance
151 counselor, psychologist, social worker, nurse, physician, school
152 paraprofessional or coach employed by a local or regional board of
153 education or a private elementary, middle or high school or working in
154 a public or private elementary, middle or high school; or (B) any other
155 person who, in the performance of his or her duties, has regular
156 contact with students and who provides services to or on behalf of
157 students enrolled in (i) a public elementary, middle or high school,
158 pursuant to a contract with the local or regional board of education, or
159 (ii) a private elementary, middle or high school, pursuant to a contract
160 with the supervisory agent of such private school.

161 Sec. 4. Subsection (a) of section 53a-67 of the general statutes is
162 repealed and the following is substituted in lieu thereof (*Effective*
163 *October 1, 2010*):

164 (a) In any prosecution for an offense under this part based on the
165 victim's being [mentally defective,] mentally incapacitated, [or
166 physically helpless,] it shall be an affirmative defense that the actor, at
167 the time such actor engaged in the conduct constituting the offense,
168 did not know of such condition of the victim.

169 Sec. 5. Subdivision (2) of section 54-250 of the general statutes is
170 repealed and the following is substituted in lieu thereof (*Effective*
171 *October 1, 2010*):

172 (2) "Criminal offense against a victim who is a minor" means (A) a
173 violation of subdivision (2) of section 53-21 of the general statutes in
174 effect prior to October 1, 2000, subdivision (2) of subsection (a) of
175 section 53-21, subdivision (2) of subsection (a) of section 53a-70,

176 subdivision (1), [(4), (8) or (10)] (3), (7) or (9) or subparagraph (B) of
 177 subdivision [(9)] (8) of subsection (a) of section 53a-71, subdivision (2)
 178 of subsection (a) of section 53a-72a, subdivision (2) of subsection (a) of
 179 section 53a-86, subdivision (2) of subsection (a) of section 53a-87,
 180 section 53a-90a, 53a-196a, 53a-196b, 53a-196c, 53a-196d, 53a-196e or
 181 53a-196f, (B) a violation of subparagraph (A) of subdivision [(9)] (8) of
 182 subsection (a) of section 53a-71 or section 53a-92, 53a-92a, 53a-94,
 183 53a-94a, 53a-95, 53a-96 or 53a-186, provided the court makes a finding
 184 that, at the time of the offense, the victim was under eighteen years of
 185 age, (C) a violation of any of the offenses specified in subparagraph (A)
 186 or (B) of this subdivision for which a person is criminally liable under
 187 section 53a-8, 53a-48 or 53a-49, or (D) a violation of any predecessor
 188 statute to any offense specified in subparagraph (A), (B) or (C) of this
 189 subdivision the essential elements of which are substantially the same
 190 as said offense.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2010	53a-71
Sec. 2	October 1, 2010	53a-73a
Sec. 3	October 1, 2010	53a-65
Sec. 4	October 1, 2010	53a-67(a)
Sec. 5	October 1, 2010	54-250(2)

Statement of Legislative Commissioners:

Section 5 was added to the bill to renumber the internal references in conformity with the changes made in section 1 of the bill.

HS *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 11 \$	FY 12 \$
Judicial Dept.	GF - Revenue Gain	Potential Minimal	Potential Minimal
Judicial Dept. (Probation); Correction, Dept.	GF - Cost	Potential	Potential

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill includes sexual intercourse or sexual contact with a person who is substantially impaired because of a mental physical condition or advanced age as Sexual Assault in the second or fourth degree. Sexual Assault to the second degree is classified as either a Class B Felony, punishable by a fine of up to \$15,000 and/or imprisonment for up to 20 years, or a Class C Felony, punishable by a fine of up to \$10,000 and/or imprisonment for up to 10 years. Sexual Assault to the fourth degree is classified as a Class A Misdemeanor, punishable by up to 1 years' imprisonment and/or a fine of up to \$2,000. In 2008, 302 people were convicted of Sexual Assault to the second degree, while 208 people were convicted of Sexual Assault to the fourth degree, with \$453 and \$2,408 collected in fine revenue respectively.

To the extent that this change increases the likelihood that offenders would be prosecuted or receive harsher penalties, a potential revenue gain from criminal fines and potential cost for incarceration and/or probation supervision in the community exist. On average, it costs the state \$3,736 to supervise an offender on probation in the community as compared to \$47,425 to incarcerate the offender.

The Out Years

The annualized potential ongoing costs identified above would continue into the future subject to inflation; the annualized potential revenue gain would remain constant since fine amounts are set by statute.

Sources: Quarterly Reports of the Judicial Department

OLR Bill Analysis**sSB 315*****AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPAIRED.*****SUMMARY:**

This bill changes the factors for determining guilt in cases of second and fourth degree sexual assault involving a person with a mental or physical disability. Under the bill, a person is guilty of these crimes if:

1. the assault victim's ability to communicate his or her lack of consent to sexual intercourse (for 2nd degree) or sexual contact (for 4th degree) is substantially impaired because of a mental or physical condition and
2. the person accused of the assault knew or had reasonable cause to believe the victim's ability to communicate lack of consent was impaired by that condition.

Under current law, a person is guilty of 2nd degree sexual assault if the victim is (1) "mentally defective" and consequently unable to consent to sexual intercourse or (2) physically helpless. A person is guilty of 4th degree sexual assault if the victim is (1) "mentally defective" or "mentally incapacitated" and consequently unable to consent to sexual contact or (2) physically helpless. A person is "mentally defective" if a mental disease or defect renders him or her incapable of appraising the nature of his or her conduct. The bill repeals this factor's use in 2nd and 4th degree sexual assault cases.

A person is "mentally incapacitated" under current law if he or she becomes temporarily incapable of appraising or controlling his or her conduct because, without consent, (1) another person administered

drugs or intoxicants to him or her or (2) some other act was committed on the person. The bill expands this definition to include people who become permanently incapable of judging or controlling their conduct in these ways. It removes a victim's mental incapacity from the factors that can be used in deciding guilt in 4th degree sexual assault, but it remains a factor in 1st degree sexual assault (CGS § 53a-70).

EFFECTIVE DATE: October 1, 2010

COMMITTEE ACTION

Human Services Committee

Joint Favorable Substitute

Yea 19 Nay 0 (03/23/2010)