



General Assembly

**Substitute Bill No. 315**

February Session, 2010

\* \_\_\_\_\_SB00315JUD\_\_042010\_\_\_\_\_\*

**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 Section 53a-71 of the general statutes is repealed and the  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	<i>October 1, 2010</i>	53a-71
Sec. 2	<i>October 1, 2010</i>	53a-73a
Sec. 3	<i>October 1, 2010</i>	53a-65
Sec. 4	<i>October 1, 2010</i>	53a-67(a)
Sec. 5	<i>October 1, 2010</i>	54-250(2)

**HS**            *Joint Favorable Subst.*

**JUD**           *Joint Favorable*