



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

Testimony of the Division of Criminal Justice

In support of:

S.B. No. 315 (RAISED) An Act Concerning Sexual Assault of a Developmentally Disabled or Severely Physically Disabled Person

*Joint Committee on Human Services
March 2, 2010*

The Division of Criminal Justice respectfully recommends and requests the Committee's Joint Favorable Report for S.B. No. 315, An Act Concerning Sexual Assault of a Developmentally Disabled or Severely Physically Disabled Person. This bill seeks to protect a particularly vulnerable segment of the population - those whose ability to resist a sexual assault or consent to sexual conduct is substantially impaired due to mental or physical disability or advanced age.

In prosecuting sexual assaults against mentally or physically disabled individuals we have encountered claims that, although disabled, the person is not "physically unable to communicate an unwillingness to act", as required by the definition of "physically helpless, C.G. S. § 53a-65 (6); or is not "incapable of appraising the nature of such person's conduct", as required by the definition of "mentally defective" under General Statutes §53a-65 (4).

Two recent examples:

State v. Fourtin, 118 Conn. App. 43 982 A.2d 261 (2009). (Jury convicted defendant of attempted sexual assault in the second and fourth degrees for assaulting a severely disabled woman. The defendant was the victim's mother's boyfriend. The victim suffered from severe cerebral palsy, was mentally retarded, needed total care for the activities of daily living as would an infant, was nonverbal, and communicated with her caregivers by pointing at icons and letters on a communication board. The Connecticut Appellate Court found the evidence the victim was "physically helpless" insufficient because there was testimony she could screech, kick, and bite if she did not want to do something. The state appealed from the Appellate Court decision; that appeal is pending before the Connecticut Supreme Court).

State v. Anonymous - recent prosecution in Fairfield JD which resulted in acquittal where state alleged defendant, again victim's mother's boyfriend, sexually assaulted 20 year old woman with Down Syndrome. Defense argued 1) it did not happen and 2) if it did, state cannot prove victim was "mentally defective" as required by our statute because, among other things, she went to school, had friends and boyfriends, and attended sex education classes.

S.B. No. 315 was drafted by the Division of Criminal Justice to correct this situation. The bill is patterned after two Ohio statutes:

gross sexual imposition, R.C. 2705.05 (A)(5) which is similar to our fourth degree sexual assault, General Statutes § 53a-73a. (Section 53a-73a prohibits nonconsensual sexual contact and sexual contact with certain protected persons, or persons who stand in certain relationships to the actor, such as student/teacher);

and Rape, R.C. 2907.02 (A) (1) (c) which is similar to our second degree sexual assault, General Statutes §53a-71, (Section 53a-71 prohibits sexual intercourse with certain protected persons, and persons who stand in certain relationships to the actor, such as student/teacher).

The types of situations in which these charges would be employed are reflected in the following Ohio decisions:

State v. Brown, 2009 WL3258845 (Oh. App. 3 Dist.) (2009)(finding evidence of substantial impairment where adult victim was mentally disabled, could speak only one to three word sentences, played with stuffed animals, slept with dolls, had mental capacity of five- to seven-year- old);

State v. Dorsey, 5th Dist. No. 2007-CA-091, 2008-Ohio-2515 at 43 (finding sufficient evidence of substantial impairment of 80 year old victim who suffered from dementia, lived independently, but was unable to care for herself without some assistance);

State v. Thomas, 1st Dist. No. C-060318, 2007- Ohio- 1723 (finding sufficient evidence of substantial impairment where victim was mentally handicapped, worked for a company that employed those unable to maintain employment in the regular work force, was unable to live independently, and was unable to find her way home from any point at a significant distance from her house);

State v. Shepherd, 8th Dist. No. 81926, 2003- Ohio- 3356 (finding sufficient evidence of substantial impairment where 33 year old victim, who lived alone, had a mental age of five, and had child-like interests such as coloring, playing hide and seek, and watching cartoons.).

The Division of Criminal Justice believes S.B. No. 315 would address the problem identified in the recent Connecticut cases and afford greater protection to those unable to protect themselves from sexual assault. Given the very serious nature of this situation and the potential threat to vulnerable individuals, the Division believes the General Assembly should proceed immediately with the enactment of this legislation regardless of the pending appeals in the specific cases. We would respectfully request the Committee's Joint Favorable Report for S.B. No. 315.

Respectfully submitted,

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