



# Senate

General Assembly

**File No. 663**

January Session, 2011

Senate Bill No. 918

*Senate, April 28, 2011*

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the 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 Section 53a-71 of the general statutes is repealed and the  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, 2011*):

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, 2011*):

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 general statutes is repealed and the  
96 following is substituted in lieu thereof (*Effective October 1, 2011*):

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

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

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

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

113 [(4) "Mentally defective" means that a person suffers from a mental

114 disease or defect which renders such person incapable of appraising  
115 the nature of such person's conduct.]

116 [(5)] (4) "Mentally incapacitated" means that a person is rendered  
117 temporarily incapable of appraising or controlling such person's  
118 conduct owing to the influence of a drug or intoxicating substance  
119 administered to such person without such person's consent, or owing  
120 to any other act committed upon such person without such person's  
121 consent.

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

125 [(7)] (5) "Use of force" means: (A) Use of a dangerous instrument; or  
126 (B) use of actual physical force or violence or superior physical  
127 strength against the victim.

128 [(8)] (6) "Intimate parts" means the genital area or any substance  
129 emitted therefrom, groin, anus or any substance emitted therefrom,  
130 inner thighs, buttocks or breasts.

131 [(9)] (7) "Psychotherapist" means a physician, psychologist, nurse,  
132 substance abuse counselor, social worker, clergyman, marital and  
133 family therapist, mental health service provider, hypnotist or other  
134 person, whether or not licensed or certified by the state, who performs  
135 or purports to perform psychotherapy.

136 [(10)] (8) "Psychotherapy" means the professional treatment,  
137 assessment or counseling of a mental or emotional illness, symptom or  
138 condition.

139 [(11)] (9) "Emotionally dependent" means that the nature of the  
140 patient's or former patient's emotional condition and the nature of the  
141 treatment provided by the psychotherapist are such that the  
142 psychotherapist knows or has reason to know that the patient or  
143 former patient is unable to withhold consent to sexual contact by or  
144 sexual intercourse with the psychotherapist.

145 [(12)] (10) "Therapeutic deception" means a representation by a  
146 psychotherapist that sexual contact by or sexual intercourse with the  
147 psychotherapist is consistent with or part of the patient's treatment.

148 [(13)] (11) "School employee" means: (A) A teacher, substitute  
149 teacher, school administrator, school superintendent, guidance  
150 counselor, psychologist, social worker, nurse, physician, school  
151 paraprofessional or coach employed by a local or regional board of  
152 education or a private elementary, middle or high school or working in  
153 a public or private elementary, middle or high school; or (B) any other  
154 person who, in the performance of his or her duties, has regular  
155 contact with students and who provides services to or on behalf of  
156 students enrolled in (i) a public elementary, middle or high school,  
157 pursuant to a contract with the local or regional board of education, or  
158 (ii) a private elementary, middle or high school, pursuant to a contract  
159 with the supervisory agent of such private school.

160 Sec. 4. Subsection (a) of section 53a-67 of the general statutes is  
161 repealed and the following is substituted in lieu thereof (*Effective*  
162 *October 1, 2011*):

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

168 Sec. 5. Subdivision (2) of section 54-250 of the general statutes is  
169 repealed and the following is substituted in lieu thereof (*Effective*  
170 *October 1, 2011*):

171 (2) "Criminal offense against a victim who is a minor" means (A) a  
172 violation of subdivision (2) of section 53-21 of the general statutes in  
173 effect prior to October 1, 2000, subdivision (2) of subsection (a) of  
174 section 53-21, subdivision (2) of subsection (a) of section 53a-70,  
175 subdivision (1), [(4), (8) or (10)] (3), (7) or (9) or subparagraph (B) of  
176 subdivision [(9)] (8) of subsection (a) of section 53a-71, as amended by

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2011</i>	53a-71
Sec. 2	<i>October 1, 2011</i>	53a-73a
Sec. 3	<i>October 1, 2011</i>	53a-65
Sec. 4	<i>October 1, 2011</i>	53a-67(a)
Sec. 5	<i>October 1, 2011</i>	54-250(2)

**JUD**      *Joint Favorable*

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:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 12 \$</b>	<b>FY 13 \$</b>
Judicial Dept.	GF - Potential Revenue Gain	18,750	25,000

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill includes sexual contact with a person who is substantially impaired because of a mental or physical condition, or advanced age, as sexual assault in the second or fourth degree, which will result in a potential annual revenue gain of up to \$18,750 in FY 12<sup>1</sup> and \$25,000 in FY 13. The estimate assumes that the establishment of a fine and/or imprisonment for this offense will increase the likelihood that an estimated 15 offenders annually would be prosecuted and receive harsher penalties than under current law.<sup>2</sup>

It is anticipated that the number of additional offenders placed on probation as a result of this change would be less than 15, and would not result in additional resources being required by the Judicial Department. An additional 15 offenders placed on probation would represent a 0.03% increase to the total probation caseload.

**The Out Years**

The annualized revenue from fines would remain constant into the future since fine amounts are set by statute.

<sup>1</sup> This figure reflects an October 1, 2011 effective date.

<sup>2</sup> In 2010, 737 convictions were made for sexual assault in either the second or fourth degree, with \$2,265 in fine revenue collected.

Sources: *Judicial Department Offenses and Revenue Database*

**OLR Bill Analysis****SB 918*****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 2<sup>nd</sup> and 4<sup>th</sup> 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 2<sup>nd</sup> degree) or sexual contact (for 4<sup>th</sup> 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.

This replaces current law, which punishes a person for 2<sup>nd</sup> 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 4<sup>th</sup> 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 removes a victim's mental incapacity from the factors that can be used in deciding guilt in 4<sup>th</sup> degree sexual assault. A person is "mentally incapacitated" under existing 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.

EFFECTIVE DATE: October 1, 2011

## **PENALTIES**

The penalties for 2<sup>nd</sup> and 4<sup>th</sup> degree sexual assault vary with the age of the victim. For 2<sup>nd</sup> degree, if the victim is under age 16, it is a class B felony, punishable by imprisonment for up to 20 years, a fine of up to \$15,000, or both. If the victim is age 16 or older, the crime is a class C felony, punishable by imprisonment for up to 10 years, a fine of up to \$10,000, or both.

In either case, the perpetrator must serve at least nine months in jail.

For 4<sup>th</sup> degree, if the victim is under age 16 it is a class D felony, punishable by imprisonment for up to five years, a fine of up to \$5,000, or both. For older victims, it is a class A misdemeanor, punishable by imprisonment for up to one year, a fine of up to \$2,000, or both.

## **BACKGROUND**

### ***Related Case***

In *State v. Fourtin*, 118 Conn. App. 43 (2009), the state Appeals Court reversed the trial court and acquitted a man charged with 2<sup>nd</sup> and 4<sup>th</sup> degree sexual assault. The victim suffered from cerebral palsy, was developmentally disabled, unable to care for herself, and nonverbal. The appellate court ruled that she was not “physically helpless,” because she could have screeched, bitten, and kicked but did not.

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable  
Yea 45 Nay 0 (04/14/2011)