



**State of Connecticut**  
**DIVISION OF CRIMINAL JUSTICE**

**TESTIMONY**

*JOINT COMMITTEE ON JUDICIARY*

**In Support of:**

**S.B. No. 918 (RAISED): An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired**

**H.B. No. 6314 (RAISED): An Act Concerning the Sexual Assault of Persons Placed or Treated Under the Direction of the Commissioner of Developmental Services**

*February 23, 2011*

The Division of Criminal Justice respectfully recommends the Committee's Joint Favorable Report for S.B. No. 918, An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired, and H.B. No. 6314, An Act Concerning the Sexual Assault of Persons Placed or Treated Under the Direction of the Commissioner of Developmental Services. These bills amend the sexual assault statutes to protect vulnerable individuals who are unable to protect themselves from sexual assault.

H.B. No. 6314 is largely technical in nature. It corrects what is essentially a loophole in the existing statute that first came to light several years ago when an employee of a group home operating under a contract with what is now the Department of Developmental Services had sex with a client residing in the group home. The bill prohibits such activity much in the same fashion that existing law makes it illegal for a teacher to be sexually involved with a student or a coach to have sexual activity with a student athlete. The Division respectfully recommends a Joint Favorable Report.

S.B. No. 918 clarifies the sexual assault statutes to address recent court rulings in cases involving the sexual assault of individuals whose ability to communicate is substantially impaired due to mental or physical disability or advanced age.

In *State v. Fourtin*, 118 Conn. App. 43 982 A.2d 261 (2009), a jury convicted the defendant of attempted sexual assault in the second and fourth degrees for assaulting a woman who suffered from severe cerebral palsy, was developmentally disabled, 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 defendant was the victim's

mother's boyfriend. Despite the overwhelming nature of the victim's disability, 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 Committee should be aware that the state has appealed the Appellate Court decision but oral argument has yet to be scheduled before the Connecticut Supreme Court.

Even if the state prevails on the appeal, additional cases warrant action by the General Assembly to clarify the language of the statutes and the legislative intent. *State v. Anonymous*, prosecuted in the Judicial District of Fairfield, ended in the acquittal of a defendant - again the boyfriend of the victim's mother - who sexually assaulted a 20-year-old woman with Down Syndrome. The defense argued that the assault did not happen and, if it did, state could not prove the 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. 918 was drafted by the Division of Criminal Justice to correct this situation. Originally introduced in the 2010 Regular Session, the bill was approved initially by the Joint Committee on Human Services and subsequently by the Judiciary Committee. The 2010 version (S.B. No. 315) passed the Senate but was not taken up in the House before adjournment. S.B. No. 918 includes the same language as the 2010 bill, which was 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*, 5<sup>th</sup> 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*, 1<sup>st</sup> 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*, 8<sup>th</sup> 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. 918 addresses the problems identified in the recent Connecticut cases and would afford greater protection to those unable to protect themselves from sexual assault. As demonstrated in the Ohio decisions, the language of this legislation has been tested and affirmed by the courts. Given the very serious nature of the conduct involved and the potential threat to vulnerable individuals, the Division of Criminal Justice believes the General Assembly should proceed immediately with the enactment of this legislation regardless of the pending appeals in the specific cases. Accordingly, we would respectfully request the Committee's Joint Favorable Report for S.B. No. 918.

The Division expresses its appreciation to the Committee for its consideration of these proposals. We would be happy to answer any questions or to provide any additional information the Committee might require.

