



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

**Testimony of the Division of Criminal Justice
Joint Committee on Judiciary
March 12, 2012**

In Support of:

S.B. No. 247: An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired

The Division of Criminal Justice respectfully recommends and requests the Committee's JOINT FAVORABLE SUBSTITUTE Report for S.B. No. 247, An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired. The Division would further request the Committee's indulgence and assistance in crafting final language of the bill.

The Division of Criminal Justice requested this bill as part of our 2012 Legislative Recommendations to address court rulings issued in recent years in cases involving the sexual assault of individuals whose ability to communicate is substantially impaired due to mental or physical disability or advanced age. These cases include:

- *State v. Fourtin*, 118 Conn. App. 43 982 A.2d 261 (2009), where 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 case is currently on appeal to the Connecticut Supreme Court.
- *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. 247 was drafted by the Division of Criminal Justice to address the problems identified in the recent Connecticut cases and would afford greater protection to those unable to protect themselves from sexual assault. As stated at the outset of this testimony, the Division continues to work to address questions that have arisen since this concept was first introduced as legislation in 2010. We have worked with advocates for individuals with disabilities and with other interested parties in an effort to address all concerns. We believe that we are near agreement on language addressing the questions and concerns that have arisen. As such we would respectfully request the Committee's Joint Favorable Substitute Report to incorporate such language.

In conclusion, 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.