



STATE OF CONNECTICUT
OFFICE OF PROTECTION AND ADVOCACY FOR
PERSONS WITH DISABILITIES
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**Testimony of the Office of Protection and Advocacy for Persons with Disabilities
Before the Judiciary Committee**

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Thank you for this opportunity to comment on one of the bills on your agenda today: **Raised Bill No. 247, An Act Concerning The Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired.** This Bill would amend the sections of the criminal code that define and classify the crimes of second degree and fourth degree sexual assault. In general, those crimes are defined by the status of the victim or by a relationship wherein the perpetrator has responsibility for, or authority over the victim. The proposed changes would address practical problems that have arisen in pursuing prosecution of individuals who sexually assaulted people with disabilities. Our Office supports both these measures

Raised Bill No. 247 would delete obsolete references in current statute to victims who are “mentally defective” or “physically helpless” – terms which both offend and, at the same time have proven inadequate to protect people with disabilities. Instead, the bill would provide that a perpetrator would be guilty of either second or fourth degree sexual assault if the ability of the victim to communicate lack of consent to sexual intercourse or sexual contact is “substantially impaired because of a mental or physical condition and the actor knows or has reasonable cause to believe that the ability of such other person to communicate lack of consent” to sexual intercourse or contact is so impaired.

Recognition that this legislation is needed crystallized following an Appellate Court decision last year that overturned the conviction of a man who had been found guilty of Second Degree Sexual Assault of his girlfriend’s daughter. In addition to having mild intellectual disability, that young woman has very substantial physical disabilities which render communication, or any movement, quite difficult for her. Our Office was called to investigate this matter, and our staff investigator testified at the trial. We also ensured that police authorities were involved as it was apparent that a crime had been committed. The woman testified at the trial using a message board with assistance in the form of an elaborate system of closed circuit TV cameras and monitors so that jurors could directly view her responses to questions – responses which were slow, but clear. Although she could testify for only 15 minutes at a time before becoming too fatigued to continue, and her testimony had to be spread over five days, she never

waivered in her description of what had happened to her or her determination to testify about it. The jury convicted her assailant of Second Degree Sexual Assault.

The Appellate Court's decision overturning the jury's verdict has occasioned considerable concern within the disability community in Connecticut, and is being appealed to the Supreme Court. (Our Office has filed an Amicus brief in support of the State's appeal.) However, because the Appellate Court interpreted the current statutory terms to mean that the victim must be "totally incapable" of communicating, and because the language in current statute is so arcane, the need to clarify this section of the Code has become apparent.

People with disabilities have a lot at stake here. Recent data from the Bureau of Justice Statistics shows that if you have a disability you are twice as likely to be sexually assaulted as someone who does not have a disability. At the same time, we want to be careful not to create any statutory presumptions to the effect that people with significant disabilities are categorically incapable of engaging in truly consensual sexual relations. The bill before you creates no such presumption, and will go a long way toward ensuring just results for victims with disabilities. Its language has been vetted by the various groups and agencies that have an interest. I urge you to act favorably on it.