



Senate

General Assembly

File No. 521

February Session, 2012

Substitute Senate Bill No. 247

Senate, April 18, 2012

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING THE SEXUAL ASSAULT OF A PERSON
WHOSE ABILITY TO CONSENT IS SUBSTANTIALLY IMPAIRED DUE
TO MENTAL DISABILITY.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 53a-71 of the 2012 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2012*):

4 (a) A person is guilty of sexual assault in the second degree when
5 such person engages in sexual intercourse with another person and: (1)
6 Such other person is thirteen years of age or older but under sixteen
7 years of age and the actor is more than three years older than such
8 other person; or (2) [such other person is mentally defective to the
9 extent that such other person is unable to consent to such sexual
10 intercourse] the ability of such other person to consent or to
11 communicate lack of consent to such sexual intercourse is substantially
12 impaired because of mental disability and the actor knows or has
13 reasonable cause to know that the ability of such other person to

14 consent or to communicate lack of consent to such sexual intercourse is
15 so impaired; or (3) such other person is physically helpless; or (4) such
16 other person is less than eighteen years old and the actor is such
17 person's guardian or otherwise responsible for the general supervision
18 of such person's welfare; or (5) such other person is in custody of law
19 or detained in a hospital or other institution and the actor has
20 supervisory or disciplinary authority over such other person; or (6) the
21 actor is a psychotherapist and such other person is (A) a patient of the
22 actor and the sexual intercourse occurs during the psychotherapy
23 session, (B) a patient or former patient of the actor and such patient or
24 former patient is emotionally dependent upon the actor, or (C) a
25 patient or former patient of the actor and the sexual intercourse occurs
26 by means of therapeutic deception; or (7) the actor accomplishes the
27 sexual intercourse by means of false representation that the sexual
28 intercourse is for a bona fide medical purpose by a health care
29 professional; or (8) the actor is a school employee and such other
30 person is a student enrolled in a school in which the actor works or a
31 school under the jurisdiction of the local or regional board of education
32 which employs the actor; or (9) the actor is a coach in an athletic
33 activity or a person who provides intensive, ongoing instruction and
34 such other person is a recipient of coaching or instruction from the
35 actor and (A) is a secondary school student and receives such coaching
36 or instruction in a secondary school setting, or (B) is under eighteen
37 years of age; or (10) the actor is twenty years of age or older and stands
38 in a position of power, authority or supervision over such other person
39 by virtue of the actor's professional, legal, occupational or volunteer
40 status and such other person's participation in a program or activity,
41 and such other person is under eighteen years of age; or (11) such
42 other person is placed or receiving services under the direction of the
43 Commissioner of Developmental Services in any public or private
44 facility or program and the actor has supervisory or disciplinary
45 authority over such other person.

46 (b) Sexual assault in the second degree is a class C felony or, if the
47 victim of the offense is under sixteen years of age, a class B felony, and
48 any person found guilty under this section shall be sentenced to a term

49 of imprisonment of which nine months of the sentence imposed may
50 not be suspended or reduced by the court.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2012</i>	53a-71

JUD *Joint Favorable Subst.*

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:

Agency Affected	Fund-Effect	FY 13 \$	FY 14 \$
Correction, Dept.	GF - Potential Cost	Up to \$132,000	Up to \$525,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill has the potential to cost the Department of Correction up to \$132,000¹ in FY 13 and up to \$525,000 in FY 14 due to clarification to statutes regarding the sexual assault of a person with mental disability. This could result in additional convictions and plea bargains that result in incarceration and costs to the Department of Correction. On average, six violations of this statute are dismissed or found not guilty by jury annually.² The prison sentences for violation of this statute are historically longer than one year. On average it costs the state \$44,165 to incarcerate an offender annually.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation and the number of convictions that lead to incarceration.

¹ Based on offenses occurring on or after October 1st

² To the extent that previously dismissed offenses are now found guilty, this would result in costs to the Department of Correction

OLR Bill Analysis**sSB 247*****AN ACT CONCERNING THE SEXUAL ASSAULT OF A PERSON WHOSE ABILITY TO CONSENT IS SUBSTANTIALLY IMPAIRED DUE TO MENTAL DISABILITY.*****SUMMARY:**

This bill makes a person guilty of second-degree sexual assault if he or she (1) has sexual intercourse with someone so mentally disabled that he or she cannot consent or communicate a lack of consent to the act and (2) knows or has reasonable cause to know of the disability. Under current law, a person is guilty of the crime if he or she has sexual intercourse with someone too mentally defective to consent to the act.

Second-degree sexual assault is a class C felony if the victim is age 16 or older; otherwise it is a B felony. The punishment for a class (1) C felony is up to 10 years imprisonment, up to a \$10,000 fine, or both and (2) B felony is up to 20 years imprisonment, up to a \$15,000 fine, or both. An offender convicted of second-degree sexual assault must serve at least nine months of the sentence.

EFFECTIVE DATE: October 1, 2012

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 45 Nay 0 (04/02/2012)