



# OLR RESEARCH REPORT

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## **SEXUAL ASSAULT OF A PHYSICALLY HELPLESS PERSON**

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You asked for a history of CGS § [53a-65\(6\)](#) (the definition of “physically helpless” for purposes of sexual assault), including recent bills that would have amended the statute.

### **SUMMARY**

Connecticut’s sexual assault statutes prohibit sexual contact or sexual intercourse with someone who is physically helpless. For this purpose, a person is “physically helpless” if the person is “unconscious or for any other reason is physically unable to communicate unwillingness to an act” (CGS § [53a-65\(6\)](#)).

CGS § [53a-65\(6\)](#) was enacted in 1969 and has not been amended since then. However, a court case involving the interpretation of the statute prompted bills in each of the past three legislative sessions. (The case reached the state Supreme Court in 2012.) In 2010 and 2011, bills were voted out of committee that, among other things, would have deleted provisions in existing law prohibiting sexual intercourse or sexual contact with people who are “physically helpless” or “mentally defective” (i.e., incapable of appraising the nature of their conduct due to a mental disease or defect), and replaced them with provisions prohibiting such actions with people whose ability to communicate lack of consent is substantially impaired due to a mental or physical condition. These bills passed the Senate but were not voted on by the House.

In 2012, a bill was voted out of committee which would have changed the factors for sexual assault in cases of mental disability but not physical disability.

Below, we summarize the (1) law regarding sexual assault of people with physical or mental disability and (2) bills described above. While your question concerned CGS § [53a-65\(6\)](#) (physical helplessness) rather than provisions concerning mental disease, we describe the law regarding both types of conditions because doing so makes it easier to understand these bills.

## **SEXUAL ASSAULT OF SOMEONE UNABLE TO CONSENT DUE TO PHYSICAL OR MENTAL DISABILITY**

### ***Current Law***

In addition to laws prohibiting sexual assault through force, threat of force, or in various other contexts, certain provisions of the sexual assault law apply specifically to people whose physical or mental condition impacts their ability to consent. For example, under Connecticut law, it is 2nd degree sexual assault to have sexual intercourse with someone who is (1) mentally defective to the extent that the person is unable to consent or (2) physically helpless (CGS § [53a-71](#)). It is 4th degree sexual assault to intentionally subject such individuals to sexual contact; this also applies if the victim is mentally incapacitated to the extent that he or she is unable to consent (CGS § [53a-73a](#)). (See the discussion of the 2010 bill below for the statutory definitions of “mentally defective” and “mentally incapacitated.”)

PA 11-113 made it 2nd degree sexual assault to have sexual intercourse, and 4th degree sexual assault to have intentional sexual contact, with someone who is placed or receiving services under the Department of Developmental Services (DDS) commissioner’s direction in a facility or program and over whom the perpetrator has disciplinary or supervisory authority. DDS provides services to people with developmental and intellectual disabilities.

Second-degree sexual assault is a class C felony unless the victim is under age 16, in which case it is a class B felony. In either case, the law requires a mandatory minimum of nine months’ imprisonment for 2nd degree sexual assault. A class C felony is punishable by up to 10 years’ imprisonment, a fine of up to \$10,000, or both. A class B felony is punishable by up to 20 years’ imprisonment, a fine of up to \$15,000, or both.

Fourth-degree sexual assault is a class A misdemeanor unless the victim is under age 16, in which case it is a class D felony. A class A misdemeanor is punishable by up to one year in prison, a fine of up to \$2,000, or both. A class D felony is punishable by up to five years' imprisonment, a fine of up to \$5,000, or both.

In any prosecution for sexual offenses based on the victim's being physically helpless, mentally defective, or mentally incapacitated, it is an affirmative defense that the actor, at the time he or she engaged in the conduct constituting the offense, did not know of the victim's condition (CGS § [53a-67](#)). By law, a defendant has the burden of proving an affirmative defense by the preponderance of the evidence (CGS § [53a-12](#)).

### **Court Case**

A recent state Supreme Court case involved a woman with severe disabilities who alleged that she had been sexually assaulted by her mother's boyfriend (*State v. Fourtin*, 307 Conn. 186 (2012)). The woman was nonverbal but was able to communicate in limited ways. The man was found guilty at trial, but his conviction was overturned on appeal. A majority of the state Supreme Court agreed with the Appellate Court that there had been insufficient evidence at trial to show that the victim was physically helpless within the meaning of CGS § [53a-65\(6\)](#). The court emphasized that "even total physical incapacity does not, by itself, render an individual physically helpless." Rather, the term applies only to someone who, "at the time of the alleged act, was unconscious or for some other reason physically unable to communicate lack of consent to the act."

For a summary of the case, see OLR Report [2012-R-0474](#).

### **BILLS**

In 2010 and 2011, bills that would have changed the standards for sexual assault for both physical and mental disability were voted out of committee and passed by the Senate. In 2012, a bill was voted out of committee that would have changed the standard for mental disability. The 2010 and 2011 bills would delete the current definition of "physically helpless" in the sexual assault statutes.

## 2010

In 2010, the Human Services Committee voted out SB 315. The Senate referred the bill to the Judiciary Committee, which also reported it favorably. The Senate later amended the bill and passed it; the House did not act on it.

The bill would have changed the factors for determining guilt in cases of 2nd- or 4th-degree sexual assault involving a person with a mental or physical disability. Under the bill, a person would be guilty of these crimes if:

1. the victim's ability to communicate lack of consent was substantially impaired because of a mental or physical condition and
2. he or she knew or had reasonable cause to believe that the victim's ability to communicate lack of consent was impaired by that condition.

The bill would thus eliminate references in these statutes to a victim being "physically helpless," "mentally incapacitated," or "mentally defective."

By contrast, under current law, a person is guilty of 2nd 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 4th 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 would have repealed these provisions.

A person is "mentally incapacitated" under current 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. The bill would have removed a victim's mental incapacity from the factors that can be used in deciding guilt in 4th degree sexual assault, but it would remain a factor in 1st degree sexual assault ([CGS § 53a-70](#)).

The amendment passed by the Senate removed a change in the bill to the definition of “mentally incapacitated.”

## **2011**

In 2011, the Judiciary Committee voted out SB 918. The Senate passed the bill without amendment, but it died on the House Calendar. The version of the bill voted out of committee was identical to the 2010 bill as amended by the Senate.

An amendment was called in the Senate, but was later withdrawn (the amendment would have added a section concerning public indecency).

## **2012**

In 2012, the Judiciary Committee voted out SB 247. The Senate referred the bill to the Appropriations Committee, which did not act on it.

The version of SB 247 as voted out of the Judiciary Committee would have changed the law regarding the sexual assault of someone with a mental disability, but did not address the law regarding a “physically helpless” person. The bill also addressed only 2nd degree sexual assault.

This bill would have made a person guilty of 2nd degree sexual assault if he or she (1) had 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.

JO:ro