



# House of Representatives

General Assembly

**File No. 670**

January Session, 2013

Substitute House Bill No. 6641

*House of Representatives, May 1, 2013*

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING THE SEXUAL ASSAULT OF A PERSON WHO IS PHYSICALLY HELPLESS OR WHOSE ABILITY TO CONSENT IS OTHERWISE IMPAIRED.***

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

1 Section 1. Section 53a-71 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2013*):

3 (a) A person is guilty of sexual assault in the second degree when  
4 such person engages in sexual intercourse with another person and: (1)  
5 Such other person is thirteen years of age or older but under sixteen  
6 years of age and the actor is more than three years older than such  
7 other person; or (2) such other person is [mentally defective] impaired  
8 because of mental disability or disease to the extent that such other  
9 person is unable to consent to such sexual intercourse; or (3) such other  
10 person is physically helpless; or (4) such other person is less than  
11 eighteen years old and the actor is such person's guardian or otherwise  
12 responsible for the general supervision of such person's welfare; or (5)  
13 such other person is in custody of law or detained in a hospital or

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

41 (b) Sexual assault in the second degree is a class C felony or, if the  
42 victim of the offense is under sixteen years of age, a class B felony, and  
43 any person found guilty under this section shall be sentenced to a term  
44 of imprisonment of which nine months of the sentence imposed may  
45 not be suspended or reduced by the court.

46 Sec. 2. Section 53a-73a of the general statutes is repealed and the  
47 following is substituted in lieu thereof (*Effective October 1, 2013*):

48 (a) A person is guilty of sexual assault in the fourth degree when: (1)  
49 Such person intentionally subjects another person to sexual contact  
50 who is (A) under thirteen years of age and the actor is more than two  
51 years older than such other person, or (B) thirteen years of age or older  
52 but under fifteen years of age and the actor is more than three years  
53 older than such other person, or (C) [mentally defective or] mentally  
54 incapacitated or impaired because of mental disability or disease to the  
55 extent that such other person is unable to consent to such sexual  
56 contact, or (D) physically helpless, or (E) less than eighteen years old  
57 and the actor is such other person's guardian or otherwise responsible  
58 for the general supervision of such other person's welfare, or (F) in  
59 custody of law or detained in a hospital or other institution and the  
60 actor has supervisory or disciplinary authority over such other person;  
61 or (2) such person subjects another person to sexual contact without  
62 such other person's consent; or (3) such person engages in sexual  
63 contact with an animal or dead body; or (4) such person is a  
64 psychotherapist and subjects another person to sexual contact who is  
65 (A) a patient of the actor and the sexual contact occurs during the  
66 psychotherapy session, or (B) a patient or former patient of the actor  
67 and such patient or former patient is emotionally dependent upon the  
68 actor, or (C) a patient or former patient of the actor and the sexual  
69 contact occurs by means of therapeutic deception; or (5) such person  
70 subjects another person to sexual contact and accomplishes the sexual  
71 contact by means of false representation that the sexual contact is for a  
72 bona fide medical purpose by a health care professional; or (6) such  
73 person is a school employee and subjects another person to sexual  
74 contact who is a student enrolled in a school in which the actor works  
75 or a school under the jurisdiction of the local or regional board of  
76 education which employs the actor; or (7) such person is a coach in an  
77 athletic activity or a person who provides intensive, ongoing  
78 instruction and subjects another person to sexual contact who is a  
79 recipient of coaching or instruction from the actor and (A) is a  
80 secondary school student and receives such coaching or instruction in  
81 a secondary school setting, or (B) is under eighteen years of age; or (8)  
82 such person subjects another person to sexual contact and (A) the actor

83 is twenty years of age or older and stands in a position of power,  
84 authority or supervision over such other person by virtue of the actor's  
85 professional, legal, occupational or volunteer status and such other  
86 person's participation in a program or activity, and (B) such other  
87 person is under eighteen years of age; or (9) such person subjects  
88 another person to sexual contact who is placed or receiving services  
89 under the direction of the Commissioner of Developmental Services in  
90 any public or private facility or program and the actor has supervisory  
91 or disciplinary authority over such other person.

92 (b) Sexual assault in the fourth degree is a class A misdemeanor or,  
93 if the victim of the offense is under sixteen years of age, a class D  
94 felony.

95 Sec. 3. Section 53a-65 of the general statutes is repealed and the  
96 following is substituted in lieu thereof (*Effective October 1, 2013*):

97 As used in this part, except section 53a-70b, the following terms  
98 have the following meanings:

99 (1) "Actor" means a person accused of sexual assault.

100 (2) "Sexual intercourse" means vaginal intercourse, anal intercourse,  
101 fellatio or cunnilingus between persons regardless of sex. Its meaning  
102 is limited to persons not married to each other. Penetration, however  
103 slight, is sufficient to complete vaginal intercourse, anal intercourse or  
104 fellatio and does not require emission of semen. Penetration may be  
105 committed by an object manipulated by the actor into the genital or  
106 anal opening of the victim's body.

107 (3) "Sexual contact" means any contact with the intimate parts of a  
108 person not married to the actor for the purpose of sexual gratification  
109 of the actor or for the purpose of degrading or humiliating such person  
110 or any contact of the intimate parts of the actor with a person not  
111 married to the actor for the purpose of sexual gratification of the actor  
112 or for the purpose of degrading or humiliating such person.

113 [(4) "Mentally defective" means that a person suffers from a mental

114 disease or defect which renders such person incapable of appraising  
115 the nature of such person's conduct.]

116 [(5)] (4) "Mentally incapacitated" means that a person is rendered  
117 temporarily incapable of appraising or controlling such person's  
118 conduct owing to the influence of a drug or intoxicating substance  
119 administered to such person without such person's consent, or owing  
120 to any other act committed upon such person without such person's  
121 consent.

122 [(6)] (5) "Physically helpless" means that a person is (A)  
123 unconscious, or (B) for any other reason, is physically unable to resist  
124 an act of sexual intercourse or sexual contact or to communicate  
125 unwillingness to an act of sexual intercourse or sexual contact.

126 [(7)] (6) "Use of force" means: (A) Use of a dangerous instrument; or  
127 (B) use of actual physical force or violence or superior physical  
128 strength against the victim.

129 [(8)] (7) "Intimate parts" means the genital area or any substance  
130 emitted therefrom, groin, anus or any substance emitted therefrom,  
131 inner thighs, buttocks or breasts.

132 [(9)] (8) "Psychotherapist" means a physician, psychologist, nurse,  
133 substance abuse counselor, social worker, clergyman, marital and  
134 family therapist, mental health service provider, hypnotist or other  
135 person, whether or not licensed or certified by the state, who performs  
136 or purports to perform psychotherapy.

137 [(10)] (9) "Psychotherapy" means the professional treatment,  
138 assessment or counseling of a mental or emotional illness, symptom or  
139 condition.

140 [(11)] (10) "Emotionally dependent" means that the nature of the  
141 patient's or former patient's emotional condition and the nature of the  
142 treatment provided by the psychotherapist are such that the  
143 psychotherapist knows or has reason to know that the patient or  
144 former patient is unable to withhold consent to sexual contact by or

145 sexual intercourse with the psychotherapist.

146 [(12)] (11) "Therapeutic deception" means a representation by a  
147 psychotherapist that sexual contact by or sexual intercourse with the  
148 psychotherapist is consistent with or part of the patient's treatment.

149 [(13)] (12) "School employee" means: (A) A teacher, substitute  
150 teacher, school administrator, school superintendent, guidance  
151 counselor, psychologist, social worker, nurse, physician, school  
152 paraprofessional or coach employed by a local or regional board of  
153 education or a private elementary, middle or high school or working in  
154 a public or private elementary, middle or high school; or (B) any other  
155 person who, in the performance of his or her duties, has regular  
156 contact with students and who provides services to or on behalf of  
157 students enrolled in (i) a public elementary, middle or high school,  
158 pursuant to a contract with the local or regional board of education, or  
159 (ii) a private elementary, middle or high school, pursuant to a contract  
160 with the supervisory agent of such private school.

161 Sec. 4. Section 53a-67 of the general statutes is repealed and the  
162 following is substituted in lieu thereof (*Effective October 1, 2013*):

163 (a) In any prosecution for an offense under this part based on the  
164 victim's being [mentally defective,] mentally incapacitated, [or]  
165 physically helpless [,] or impaired because of mental disability or  
166 disease, it shall be an affirmative defense that the actor, at the time  
167 such actor engaged in the conduct constituting the offense, did not  
168 know of such condition of the victim.

169 (b) In any prosecution for an offense under this part, except an  
170 offense under section 53a-70, 53a-70a, 53a-70b, 53a-71, as amended by  
171 this act, 53a-72a or 53a-72b, it shall be an affirmative defense that the  
172 defendant and the alleged victim were, at the time of the alleged  
173 offense, living together by mutual consent in a relationship of  
174 cohabitation, regardless of the legal status of their relationship.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	53a-71
Sec. 2	<i>October 1, 2013</i>	53a-73a
Sec. 3	<i>October 1, 2013</i>	53a-65
Sec. 4	<i>October 1, 2013</i>	53a-67

**Statement of Legislative Commissioners:**

The title of the bill and section 4 (a) were rewritten for consistency.

**JUD**      *Joint Favorable Subst. -LCO*

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.

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## **OFA Fiscal Note**

### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 14 \$</b>	<b>FY 15 \$</b>
Correction, Dept.	GF - Potential Cost	Potential	Potential

**Municipal Impact:** None

### **Explanation**

The bill expands the factors that determine guilt and adds clarification to statutes that pertain to the sexual assault of a person with mental disability, which may result in a cost to the Department of Correction. The bill will cost the Department of Correction to the extent that the changes result in additional convictions and plea bargains that result in incarceration. On an annual basis, there are approximately six violations of the statutes changes in this bill that result in incarceration. The prison sentences for violation of this statute are historically longer than one year. On average it costs the state \$50,375 (including fringe benefits) 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.

*Sources: Judicial Department Offenses and Revenue Database*

**OLR Bill Analysis****sHB 6641*****AN ACT CONCERNING THE SEXUAL ASSAULT OF A PERSON WHO IS PHYSICALLY HELPLESS OR WHOSE ABILITY TO CONSENT IS OTHERWISE IMPAIRED.*****SUMMARY:**

This bill adds to and updates certain factors for determining guilt in cases of 2<sup>nd</sup> and 4<sup>th</sup> degree sexual assault involving a person with a physical or mental disability.

Under current law, it is 2<sup>nd</sup> degree sexual assault to have sexual intercourse, or 4<sup>th</sup> degree sexual assault to have intentional sexual contact, with someone who is (1) physically helpless or (2) “mentally defective” and consequently unable to consent. The bill expands the definition of physically helpless for these purposes to include someone who is physically unable to resist an act of sexual intercourse or sexual contact.

Existing law also includes within the definition of “physically helpless” someone who is unconscious or otherwise physically unable to communicate unwillingness to the act. As recently interpreted by the state Supreme Court, under the current definition, even total physical incapacity does not necessarily render someone physically helpless (see BACKGROUND).

The bill also eliminates references to “mentally defective” in these statutes and instead refers to someone who is impaired because of mental disability or disease. Under current law, 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 also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2013

## BACKGROUND

### *Penalties and Affirmative Defense*

Table 1 describes the penalties for 2<sup>nd</sup> and 4<sup>th</sup> degree sexual assault.

**Table 1: Penalties for 2nd and 4th Degree Sexual Assault**

<b>Crime</b>	<b>Penalty</b>
2 <sup>nd</sup> degree sexual assault	<p><u>Victim age 16 or older</u>: class C felony (up to 10 years in prison, a fine of up to \$10,000, or both)</p> <p><u>Victim under age 16</u>: class B felony (up to 20 years in prison, a fine of up to \$15,000, or both)</p> <p>In either case, the law requires a mandatory minimum of nine months in prison</p>
4 <sup>th</sup> degree sexual assault	<p><u>Victim age 16 or older</u>: class A misdemeanor (up to one year in prison, a fine of up to \$2,000, or both)</p> <p><u>Victim under age 16</u>: class D felony (up to five years in prison, a fine of up to \$5,000, or both)</p>

For sexual assault prosecutions based on the victim's mental or physical condition as described above, it is an affirmative defense that the defendant did not know of the victim's condition at the time of the offense. A defendant has the burden of proving an affirmative defense by the preponderance of the evidence.

### ***Related Case***

In a recent case, a woman with severe disabilities alleged that she had been sexually assaulted by her mother's boyfriend. 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 was insufficient evidence to show that the victim was "physically helpless" within the meaning of the current definition of that term in the sexual assault statutes. The court noted that "even total physical incapacity does not, by itself, render an individual physically helpless." Rather, under the current statutes, 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" (*State v. Fourtin*, 307 Conn. 186 (2012)).

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 44    Nay 0    (04/12/2013)