



**STATE OF CONNECTICUT  
JUDICIAL BRANCH**

**EXTERNAL AFFAIRS DIVISION**

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**REMARKS OF JUDGE ROBERT J. DEVLIN, JR.  
JUDICIARY COMMITTEE INFORMATIONAL HEARING**

**Raised Bill 6571, AAC the Recommendations of the Connecticut Sentencing Commission  
with Respect to Sexual Assault in the Fourth Degree and Kidnapping in the First Degree  
with a Firearm**

Senator Coleman, Representative Fox, Senator Kissel, Representative Rebimbas and members of the Judiciary Committee, thank you for the opportunity to speak in support of Raised Bill 6571. This is one of several bills recommended for passage by the Connecticut Sentencing Commission, of which I am a member.

Raised Bill No. 6571 would make changes to two statutes: Sexual Assault in the Fourth Degree and Kidnapping in the First Degree with a Firearm. Both recommended changes are intended to eliminate inconsistencies in the law and strengthen the application of these two important criminal statutes.

**Sexual Assault in the Fourth Degree: §53a-73a**

This offense prohibits and makes criminal sexual contact in a variety of circumstances. The law in this area is careful to distinguish accidental contact with the intimate parts of another person (as could happen in a crowded train or bus) from sexual contact that is purposeful and deserves to be prosecuted as criminal. The statutory scheme accomplishes this distinction through the definition of "sexual contact." Sexual contact as used in the statute means "any contact with the intimate parts of a person not married to the actor for the purpose of sexual gratification of the actor or the purpose of degrading or humiliating such other person ..." General Statutes §53a-65(3). In other words, to be criminal the defendant must have contact with an intimate part of another person for the purpose of sexual gratification or for the purpose of degrading or humiliating the victim.

At present the statute lists nine ways in which Sexual Assault in the Fourth Degree can be committed, only one of which specifies that the actor must act "intentionally." Since all of these circumstances require that the actor engaged in sexual contact with the intent to obtain sexual gratification or to degrade the victim, under the totality of the statutory scheme, this word is duplicative, confusing and unnecessary.

Eliminating this word from the statute would in no way weaken its application but in fact would clarify and strengthen the law and make it easier for judges to instruct juries on the

meaning of the statute. The Sentencing Commission therefore recommends that the statute be amended to eliminate the word "intentionally" from subsection §53a-73a(a)(1).

## **Kidnapping in the Second Degree with a Firearm: 53a-92a**

### **The Problem**

In 1981, Connecticut converted its criminal sentencing scheme from a system based on indeterminate sentences to one of definite sentences. At the time, the legislature established the penalty for a class A felony (other than murder) to be **at least ten years but not more than twenty-five years** (C.G.S. §53a-35a). This is still the penalty for a class A felony other than murder.

Under this statutory scheme, until 1986 Kidnapping First Degree (§53a-92), a class A felony, carried a mandatory sentence of ten years. However, in 1986 the Connecticut Supreme Court issued a decision in a case that challenged the applicability of the statute to Kidnapping First Degree. This challenge was based on the fact that the Legislature had enacted a statute in 1975 that established a new, more serious, offense of Kidnapping First Degree with a Firearm with a mandatory minimum term of just one year. (Public Act 75-380, codified as §53a-92a). In *State v. Jenkins*, 198 Conn. 671 (1986), our Supreme Court confronted the inconsistency in the statutes. The Court suggested that this apparent inconsistency was likely due to legislative error. *State v. Jenkins*, supra, 198 Conn. 676. The Court described the relationship between the ten year mandatory for Kidnapping First (§53a-92) and the one year mandatory for the more serious crime of Kidnapping First with a Firearm (§53a-92a) as an "irreconcilable conflict." *Id.*, 680.

The Court ultimately resolved the conflict as follows:

"We therefore further hold that, until the legislature takes corrective action, the sentencing provisions of §53a-92a (b) governs all prosecutions for kidnapping first degree." *Id.*

The bottom line is that, as a result of this ruling, for the last twenty-five years Kidnapping First Degree has had an effective minimum sentence of one year. To complicate matters further, in 1993 the legislature added a three year mandatory minimum to Kidnapping Second Degree (§53a-94). P.A. 93-148. Also, in 1992, the legislature increased the mandatory minimum for Kidnapping Second Degree with a Firearm (§53a-94a) from one to three years. P.A. 92-260.

The effect of all this is that our present sentencing scheme for kidnapping looks like this:

Kidnapping 1<sup>st</sup> (§53a-92) – 10 year mandatory minimum per the Penal Code but reduced to one year pursuant to *State v. Jenkins*.

Kidnapping 1<sup>st</sup> with a Firearm (§53a-92a) – one year mandatory

Kidnapping 2<sup>nd</sup> (§53a-94) – three year mandatory

Kidnapping 2<sup>nd</sup> with a Firearm – three year mandatory

## The Remedy

The present proposed amendment to the Kidnapping First Degree with a Firearm would repeal the one year mandatory for that crime. This would fix the *Jenkins* problem and reinstate the original ten year mandatory for Kidnapping First Degree plus, in accordance with §53a-35a, make that same minimum sentence applicable to Kidnapping First Degree with a Firearm.

This change would do two important things. First, it would reinstate a logical progression of penalties to our kidnapping statutes; and second, it would bring our law into line with the original intent of the legislature.

Thank you for your consideration.

