



Testimony to the Judiciary Committee
March 25th, 2013
By Leslie Simoes, Executive Director, Arc Connecticut

Testimony in support of:

H.B. No. 6641 (RAISED) AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPAIRED.

The Arc Connecticut is a 60-year old advocacy organization committed to protecting the rights of people with intellectual and developmental disabilities and to promoting opportunities for their full inclusion in the life of their communities.

Just as any human being does, a person with a disability who can not traditionally communicate has the right to decide who and who does not have permission to put their hands on his or her body. H.B. No. 6641 (RAISED) AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPAIRED will reinforce that right, strengthen protections and increase the likelihood of a second degree sexual assault conviction for people who victimize persons with disabilities.

Section 1 of Section 53a-71of The Connecticut State Statute details the different degrees sexual assault offences and felonies, adding language that people with disabilities will be included in this statute would be a huge step forward in the disability community and prevent miscarriages of justice such as that in the Fourtin Case. An article from 2011 regarding that case is attached for the Committee's reference.

People with disabilities have been ridiculed, abused, assaulted, bullied and misunderstood for many, many years. Sexual assault against ANY person is despicable, but even more

offensive which committed against individuals with disabilities. For three years, Arc Connecticut has worked in coalition with other organizations to make this legislation possible. To provide that sexual intercourse or sexual contact with a person, whose ability to resist or communicate consent is substantially impaired because of such person's mental or physical condition, constitutes the offense of sexual assault is not only the ethical and moral thing to do, it is supported by many in the disability rights community not only in Connecticut but across the country.

The Arc Connecticut commends this committee for raising this bill again and urges the members of this committee to not only vote favorably, but to become champions of the bill and help the advocates move it through the process.

Please do not hesitate to contact me with questions, for clarification or to arrange a visit with a private provider of community based services for individuals with intellectual and developmental disabilities in you area. Thank you for your time and consideration.

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October 14, 2011, By Arielle Levin Becker, The CT Mirror

“Case on assault of woman with disabilities goes to high court”

In a case being closely watched by advocates for people with disabilities, the state Supreme Court will hear arguments Monday over whether a woman who had cerebral palsy and mental retardation and who could not speak or walk met the legal definition of "physically helpless" when she allegedly was sexually assaulted.

A jury convicted Richard Fourtin of sexual assault for having sexual contact with the woman, but an Appellate Court panel reversed the conviction, ruling that prosecutors had failed to prove that the woman was helpless.

Advocates for sexual assault victims and people with disabilities say the outcome will have significant implications.

"In this particular case, the appellate court decision literally says this woman isn't physically helpless because we know for a fact that she can kick and she can bite and she can scratch," and she would have done so if she did not consent, said Anna Doroghazi, director of public policy and communication for Connecticut Sexual Assault Crisis Services. "If you applied that to a typical able-bodied person, we would never say, 'You weren't raped because you didn't bite this guy.' We don't require anyone else in the population to take every single measure to say no."

The alleged assault took place in 2006, when the woman was 25. Fourtin, of Bridgeport, had helped to care for her.

A staff member at an adult day care program the woman attended noticed that she looked aggravated and scared, and the woman used gestures and a communication board--a board with letters that a person can point to, to spell words--to tell him Fourtin had sexually assaulted her at her home. A medical exam found symptoms consistent with sexual assault.

A jury in 2008 convicted Fourtin of attempted second-degree sexual assault and fourth-degree sexual assault under a statute that prohibits sexual contact with a person who is physically helpless. He was sentenced to 11

years in prison, to be suspended after serving six.

Fourtin did not contest the evidence that he had sexual contact with the woman, but argued that the state did not prove that she met the legal definition of physically helpless. State statute defines physically helpless as when a person is "unconscious or for any other reason is physically unable to communicate unwillingness to an act."

The appellate judges agreed with Fourtin, noting in the 2009 ruling that while the woman was nonverbal, she could communicate by gesturing, vocalizing and using a communication board.

"To manifest her displeasure, she can kick, bite and scratch," the ruling said. "The complainant can also vocalize her feelings by groaning or screeching."

Former Supreme Court Justice Ellen Ash Peters served on the panel and wrote the unanimous opinion.

"The state has not alleged that, at the time when the defendant assaulted the complainant, she was unconscious, intoxicated, asleep or for some other reason unable to communicate nonverbally, such as by kicking, scratching and screeching," Peters wrote.

Peters noted that the state did not charge Fourtin under a separate statutory provision that outlaws sexual intercourse with a person who is "mentally defective to the extent that such other person is unable to consent."

In the ruling, Peters also cited a 1987 Connecticut Supreme Court case, *State v. Hufford*, in which a woman was alleged inappropriately touched by a paramedic while she was being transported to a hospital and physically restrained. The state argued that the woman was physically helpless because she could not move away from the paramedic, but the court ruled that she should not be considered physically helpless because she had repeatedly told the defendant to stop.

In the Fourtin case, Peters noted that witnesses testified that the woman was able to make herself understood, sometimes through the use of a communication board, and sometimes through gestures. And, Peters wrote, the alleged assault only came to light because the woman was able to communicate with the day care center staff member.

"[The staff member's] testimony squarely contradicts the state's assertion that the complainant was unable to transmit a message to the intended recipient with sufficient clarity to be called 'communication,'" Peters wrote.

Advocates for sexual assault victims and people with disabilities said the ruling sets a higher standard in proving sexual assault against a people with disabilities, who are already at higher risk of sexual assault.

Doroghazi noted that the sexual assault charges Fourtin faced apply to situations in which a person can be taken advantage of, such those involving a minor, a therapist and patient, or a teacher and a student. In giving a detailed opinion about what a person would have to do to be considered physically helpless, she said, the ruling invalidated the protection.

"People with disabilities face such extremely high, devastatingly high rates of sexual abuse to begin with that if there's any community that really deserves the protection of the law and who really relies on this law to be effective, it's this community," she said.

James D. McGaughey, executive director of the state Office of Protection and Advocacy for Persons with Disabilities, said that if the ruling's standard for a person with a disability to give or deny consent stands, people with disabilities that affect their communication would effectively be required to physically resist.

In addition, he said, people with disabilities might not feel that their safety is being protected, and prosecutors would be less likely to pursue cases in which victims have disabilities. Such cases are already difficult to prosecute, he noted.

"Effectively, they will have less protection," he said.

Leslie Simoes, assistant executive director of The Arc of Connecticut, attended Fourtin's trial. She said the woman testified by tapping on a communication board that had the alphabet and the words "yes" and "no" on it.

"It was just such a visual display of how this woman was not able to communicate effectively to her assailant, 'Stop,'" she said.

McGaughey said that if the Supreme Court upholds the appellate court decision, "it becomes imperative at that point that the legislature do something to address this problem."

Advocates have sought to clarify the law. A bill before legislators this year would have changed the language in the sexual assault statutes, eliminating the references to physical helplessness and "mentally defective," and making a person guilty of sexual assault if he or she subjected a person to sexual contact whose ability to communicate lack of consent is "substantially impaired because of a mental or physical condition." Under the proposed changes, the accused person would have to have reasonable cause to believe the person's ability to communicate a lack of consent was impaired.