



State of Connecticut  
DIVISION OF CRIMINAL JUSTICE

**TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE**

IN SUPPORT OF:

**H.B. NO. 6641: AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPAIRED**

JOINT COMMITTEE ON JUDICIARY  
March 25, 2013

The Division of Criminal Justice respectfully recommends the Committee's **JOINT FAVORABLE REPORT** for **H.B. No. 6641, An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired.**

This legislation addresses concerns brought before the Judiciary Committee for several years and articulated in the decisions of the Connecticut Appellate Court (118 CA 43 (2009)) and the Connecticut Supreme Court (307 C 186 (2012)) with regard to the matter of *State of Connecticut v. Richard Fourtin* and *State v. Anonymous*, a case prosecuted in the Judicial District of Fairfield.

For several years, the Division of Criminal Justice has recommended legislation to address the issues raised in these cases, and most notably the *Fourtin* case. One concern in the past has been the fact that a final decision in the case was still forthcoming. Now that the Supreme Court has rendered its decision, it is appropriate – and necessary – for the General Assembly to act.

H.B. No. 6641 is the product of extensive discussions involving the Division of Criminal Justice, advocacy groups for individuals with disabilities and representatives of the criminal defense bar. The legislation itself originated to large extent from a footnote in the Supreme Court's dissenting opinion authored by Justice Norcott in the *Fourtin* case and builds upon statutory language already in place in other states.

In *State v. Fourtin* a jury convicted the defendant of attempted sexual assault in the second and fourth degrees for assaulting a woman who suffered from severe cerebral palsy, was developmentally disabled, needed total care for the activities of daily living as would an infant, was nonverbal, and communicated with her caregivers by pointing at icons and letters on a communication board. The defendant was the victim's mother's boyfriend. Despite the overwhelming nature of the victim's disability, the Appellate Court, initially, and the Supreme Court, ultimately, found the evidence the victim was "physically helpless" insufficient because there was testimony she could screech, kick, and bite if she did not want to do something.

*State v. Anonymous*, prosecuted in the Judicial District of Fairfield, ended in the acquittal of a defendant – again the boyfriend of the victim’s mother – who sexually assaulted a 20-year-old woman with Down Syndrome. The defense argued that the assault did not happen and, if it did, state could not prove the victim was “mentally defective” as required by our statute because, among other things, she went to school, had friends and boyfriends, and attended sex education classes.

In conclusion, H.B. No. 6641 is the carefully crafted product of much discussion and deliberation by the Division of Criminal Justice, advocates for individuals with disabilities and other interested parties. The Division wishes to extend its appreciation to all who have contributed to this process and to the Judiciary Committee for your consideration again this year of this important issue. We would respectfully request the Committee’s JOINT FAVORABLE REPORT and would be happy to answer any questions or provide any additional information the Committee might require. Thank you.