



House of Representatives

General Assembly

File No. 633

January Session, 2013

House Bill No. 6571

House of Representatives, April 24, 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 bill ought to pass.

AN ACT CONCERNING 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.

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

1 Section 1. Section 53a-73a of the general statutes is repealed and the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 fourth degree when: (1)
4 Such person [intentionally] subjects another person to sexual contact
5 who is (A) under thirteen years of age and the actor is more than two
6 years older than such other person, or (B) thirteen years of age or older
7 but under fifteen years of age and the actor is more than three years
8 older than such other person, or (C) mentally defective or mentally
9 incapacitated to the extent that such other person is unable to consent
10 to such sexual contact, or (D) physically helpless, or (E) less than
11 eighteen years old and the actor is such other person's guardian or
12 otherwise responsible for the general supervision of such other

13 person's welfare, or (F) 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 (2) such person subjects another
16 person to sexual contact without such other person's consent; or (3)
17 such person engages in sexual contact with an animal or dead body; or
18 (4) such person is a psychotherapist and subjects another person to
19 sexual contact who is (A) a patient of the actor and the sexual contact
20 occurs during the psychotherapy session, or (B) a patient or former
21 patient of the actor and such patient or former patient is emotionally
22 dependent upon the actor, or (C) a patient or former patient of the
23 actor and the sexual contact occurs by means of therapeutic deception;
24 or (5) such person subjects another person to sexual contact and
25 accomplishes the sexual contact by means of false representation that
26 the sexual contact is for a bona fide medical purpose by a health care
27 professional; or (6) such person is a school employee and subjects
28 another person to sexual contact who is a student enrolled in a school
29 in which the actor works or a school under the jurisdiction of the local
30 or regional board of education which employs the actor; or (7) such
31 person is a coach in an athletic activity or a person who provides
32 intensive, ongoing instruction and subjects another person to sexual
33 contact who is a recipient of coaching or instruction from the actor and
34 (A) is a secondary school student and receives such coaching or
35 instruction in a secondary school setting, or (B) is under eighteen years
36 of age; or (8) such person subjects another person to sexual contact and
37 (A) the actor is twenty years of age or older and stands in a position of
38 power, authority or supervision over such other person by virtue of
39 the actor's professional, legal, occupational or volunteer status and
40 such other person's participation in a program or activity, and (B) such
41 other person is under eighteen years of age; or (9) such person subjects
42 another person to sexual contact who is placed or receiving services
43 under the direction of the Commissioner of Developmental Services in
44 any public or private facility or program and the actor has supervisory
45 or disciplinary authority over such other person.

46 (b) Sexual assault in the fourth degree is a class A misdemeanor or,
47 if the victim of the offense is under sixteen years of age, a class D

48 felony.

49 Sec. 2. Section 53a-92a of the general statutes is repealed and the
50 following is substituted in lieu thereof (*Effective October 1, 2013*):

51 (a) A person is guilty of kidnapping in the first degree with a
52 firearm when [he] such person commits kidnapping in the first degree
53 as provided in section 53a-92, and in the commission of said crime [he]
54 such person uses or is armed with and threatens the use of or displays
55 or represents by [his] such person's words or conduct that [he] such
56 person possesses a pistol, revolver, machine gun, shotgun, rifle or
57 other firearm. No person shall be convicted of kidnapping in the first
58 degree and kidnapping in the first degree with a firearm upon the
59 same transaction but such person may be charged and prosecuted for
60 both such offenses upon the same information.

61 (b) Kidnapping in the first degree with a firearm is a class A felony.
62 [for which one year of the sentence imposed may not be suspended or
63 reduced by the court.]

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	53a-73a
Sec. 2	<i>October 1, 2013</i>	53a-92a

JUD *Joint Favorable*

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.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill proposes two changes to criminal statutes that do not result in a fiscal impact to the state. The bill makes a conforming change by removing the word "intentional" from statutes pertaining to sexual assault in the fourth degree. In addition, the bill changes the minimum mandatory sentence for kidnapping in the first degree with a firearm to conform to first degree kidnapping. Currently the minimum mandatory sentence for first degree kidnapping conflicts with the statutory minimum mandatory sentence for first degree kidnapping with a firearm. By removing the one year minimum mandatory sentence from kidnapping in the first degree with a firearm, it changes the minimum to 10 years and resolves the statutory conflict. The change does not result in a fiscal impact because sentences for this crime are significantly longer than the 10 year minimum mandatory.

The Out Years

State Impact: None

Municipal Impact: None

Sources: Department of Correction Average Length of Sentence by Controlling Crime

OLR Bill Analysis**HB 6571****AN ACT CONCERNING 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.****SUMMARY:**

This bill increases the mandatory minimum sentence for 1st degree kidnapping with a firearm from one to 10 years. By doing so, it reinstates the 10-year mandatory minimum sentence for 1st degree kidnapping (see below).

It also makes a change to the crime of 4th degree sexual assault. Currently, one way a person commits this crime is to intentionally subject certain victims to sexual contact. The bill no longer requires that this contact be intentional but leaves in place the requirement that the offender intend to (1) derive sexual gratification from the act or (2) degrade or humiliate the victim.

EFFECTIVE DATE: October 1, 2013

KIDNAPPING AND MANDATORY MINIMUM SENTENCES

By statute, 1st degree kidnapping is a class A felony and 10 years of a sentence for a class A felony cannot be suspended. However, in *State v. Jenkins*, the Connecticut Supreme Court ruled that it was unconstitutional to subject a person convicted of 1st degree kidnapping to a higher mandatory minimum sentence than a person convicted of kidnapping with a firearm, which is punishable as a class A felony with only a one-year mandatory minimum sentence (198 Conn. 671 (1986)). The Court ruled that the one-year mandatory minimum sentence would apply to both crimes.

By eliminating the one-year mandatory minimum for 1st degree

kidnapping with a firearm, the bill makes both 1st degree kidnapping and 1st degree kidnapping with a firearm class A felonies subject to a 10-year mandatory minimum sentence.

SEXUAL ASSAULT 4TH DEGREE

Under current law, one way to commit 4th degree sexual assault is to intentionally subject to sexual contact a victim who is:

1. under age 13 and the offender is more than two years older,
2. age 13 or 14 and the offender is more than three years older,
3. mentally defective or incapacitated to the extent that he or she is unable to consent to sexual contact,
4. physically helpless,
5. under age 18 and the offender is his or her guardian or otherwise responsible for his or her welfare, or
6. in custody or detained in a hospital or other institution and the offender has supervisory or disciplinary authority over him or her.

The bill no longer requires intentional contact but retains the requirement that the offender intend to (1) derive sexual gratification from the act or (2) degrade or humiliate the victim. Other acts constituting 4th degree sexual assault, such as sexual contact without the victim's consent or with a student enrolled in a school where the offender works, do not require that they be committed intentionally but require that they be done for the actor's sexual gratification or to degrade or humiliate the victim.

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

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 44 Nay 0 (04/12/2013)