



House of Representatives

File No. 787

General Assembly

January Session, 2013

(Reprint of File No. 670)

Substitute House Bill No. 6641
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 9, 2013

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 Section 53a-71 of the general statutes is repealed and the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"] "Impaired because of mental disability or
114 disease" means that a person suffers from a mental disability or disease
115 [or defect] which renders such person incapable of appraising the
116 nature of such person's conduct.

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

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

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

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

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

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

140 (11) "Emotionally dependent" means that the nature of the patient's
141 or former patient's emotional condition and the nature of the treatment
142 provided by the psychotherapist are such that the psychotherapist

143 knows or has reason to know that the patient or former patient is
144 unable to withhold consent to sexual contact by or sexual intercourse
145 with the psychotherapist.

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

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:

Agency Affected	Fund-Effect	FY 14 \$	FY 15 \$
Judicial Dpt (Probation)	GF - Potential Cost	Potential	Potential
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.

House Amendment "A" changes the definition of "impaired because of mental disability or disease" and does not result in a fiscal impact.

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 (as amended by House "A")******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 2nd and 4th degree sexual assault involving a person with a physical or mental disability.

Under current law, it is 2nd degree sexual assault to have sexual intercourse, or 4th 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 "impaired because of mental disability or disease." It defines this term in a similar manner as the current definition for "mentally defective," except for updated terminology. Thus, under the bill, a person is "impaired because of mental disability or disease" if such a condition renders him or her incapable of

appraising the nature of his or her conduct.

The bill also makes a conforming change.

*House Amendment "A" adds a definition for "impaired because of mental disability or disease."

EFFECTIVE DATE: October 1, 2013

BACKGROUND

Penalties and Affirmative Defense

Table 1 describes the penalties for 2nd and 4th degree sexual assault.

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

<i>Crime</i>	<i>Penalty</i>
2 nd 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 younger than 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 th 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 younger than 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. Fournin*, 307 Conn. 186 (2012)).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 44 Nay 0 (04/12/2013)