

OFFICE OF LEGISLATIVE RESEARCH  
PUBLIC ACT SUMMARY



PA 13-47—sHB 6641

*Judiciary Committee*

**AN ACT CONCERNING THE SEXUAL ASSAULT OF A PERSON WHO IS PHYSICALLY HELPLESS OR WHOSE ABILITY TO CONSENT IS OTHERWISE IMPAIRED**

**SUMMARY:** This act adds to and updates certain factors for determining guilt in cases of 2<sup>nd</sup> and 4<sup>th</sup> degree sexual assault involving a person with a physical or mental disability.

Under existing law, it is 2<sup>nd</sup> degree sexual assault to have sexual intercourse, or 4<sup>th</sup> degree sexual assault to have sexual contact, with someone who is physically helpless. The act 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 engage in the act. As recently interpreted by the state Supreme Court, even total physical incapacity does not necessarily render someone physically helpless under that provision (see BACKGROUND).

Under prior law, it was also 2<sup>nd</sup> degree sexual assault to have sexual intercourse, or 4<sup>th</sup> degree sexual assault to have sexual contact, with someone who is “mentally defective” and consequently unable to consent. The act 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 prior definition for “mentally defective,” except for updated terminology. Thus, under the act, 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 act also makes a conforming change.

EFFECTIVE DATE: October 1, 2013

**BACKGROUND**

*Penalties and Affirmative Defense*

Table 1 describes the penalties for 2<sup>nd</sup> and 4<sup>th</sup> degree sexual assault.

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

<i>Crime</i>	<i>Penalty</i>
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2 <sup>nd</sup> degree sexual assault	<u>Victim age 16 or older:</u> class C felony (see Table on Penalties) <u>Victim younger than age 16:</u> class B felony  In either case, the law requires a mandatory minimum of nine months in prison
4 <sup>th</sup> degree sexual assault	<u>Victim age 16 or older:</u> class A misdemeanor <u>Victim younger than age 16:</u> class D felony

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 prior 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 prior law, the term applied 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)).

### *Related Act*

PA 13-28 makes a minor change to the intent requirement for 4<sup>th</sup> degree sexual assault.

OLR Tracking: JO:JKL:PF:RO