



General Assembly

Substitute Bill No. 6641

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 Section 53a-71 of the general statutes is repealed and the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

116 [(5)] (4) "Mentally incapacitated" means that a person is rendered
117 temporarily incapable of appraising or controlling such person's

118 conduct owing to the influence of a drug or intoxicating substance
119 administered to such person without such person's consent, or owing
120 to any other act committed upon such person without such person's
121 consent.

122 [(6)] (5) "Physically helpless" means that a person is (A)
123 unconscious, or (B) for any other reason, is physically unable to resist
124 an act of sexual intercourse or sexual contact or to communicate
125 unwillingness to an act of sexual intercourse or sexual contact.

126 [(7)] (6) "Use of force" means: (A) Use of a dangerous instrument; or
127 (B) use of actual physical force or violence or superior physical
128 strength against the victim.

129 [(8)] (7) "Intimate parts" means the genital area or any substance
130 emitted therefrom, groin, anus or any substance emitted therefrom,
131 inner thighs, buttocks or breasts.

132 [(9)] (8) "Psychotherapist" means a physician, psychologist, nurse,
133 substance abuse counselor, social worker, clergyman, marital and
134 family therapist, mental health service provider, hypnotist or other
135 person, whether or not licensed or certified by the state, who performs
136 or purports to perform psychotherapy.

137 [(10)] (9) "Psychotherapy" means the professional treatment,
138 assessment or counseling of a mental or emotional illness, symptom or
139 condition.

140 [(11)] (10) "Emotionally dependent" means that the nature of the
141 patient's or former patient's emotional condition and the nature of the
142 treatment provided by the psychotherapist are such that the
143 psychotherapist knows or has reason to know that the patient or
144 former patient is unable to withhold consent to sexual contact by or
145 sexual intercourse with the psychotherapist.

146 [(12)] (11) "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)] (12) "School employee" means: (A) A teacher, substitute
 150 teacher, school administrator, school superintendent, guidance
 151 counselor, psychologist, social worker, nurse, physician, school
 152 paraprofessional or coach employed by a local or regional board of
 153 education or a private elementary, middle or high school or working in
 154 a public or private elementary, middle or high school; or (B) any other
 155 person who, in the performance of his or her duties, has regular
 156 contact with students and who provides services to or on behalf of
 157 students enrolled in (i) a public elementary, middle or high school,
 158 pursuant to a contract with the local or regional board of education, or
 159 (ii) a private elementary, middle or high school, pursuant to a contract
 160 with the 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

Statement of Legislative Commissioners:

The title of the bill and section 4 (a) were rewritten for consistency.

JUD *Joint Favorable Subst. -LCO*