PA 11-113

HB6314

House	6321-6325	5
Judiciary	308-315, 363-392, 394-400, 418-424, 443-444	54
Senate	6563, 6573-6578	7
		66

H – 1110

CONNECTICUT
GENERAL ASSEMBLY
HOUSE

PROCEEDINGS
2011

VOL.54
PART 19
6188 – 6541

On Page 44, Calendar 350, House Bill Number 6314 AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS PLACED OR TREATED UNDER THE DIRECTION OF THE COMMISSIONER OF DEVELOPMENTAL SERVICES. Favorable Report of the Committee on Public Health.

DEPUTY SPEAKER RYAN:

Representative Holder-Winfield of the 94th.

REP. HOLDER-WINFIELD (94th):

Yes, thank you, Mr. Chair. I move acceptance of the Joint Committee's Favorable Report and passage of the Bill.

DEPUTY SPEAKER RYAN:

The question is acceptance of the Joint Committee's Favorable Report and passage of the Bill. Representative Holder-Winfield, you have the floor.

REP. HOLDER-WINFIELD (94th):

Yes, thank you, Mr. Chair. This Bill comes to us originating in the Judiciary Committee. There has been in the past, opportunities where employees of the Department of Developmental Services have had relationships with persons who are receiving services from the Department, and this Bill seeks to close a loophole, a potential loophole that exists in the law where those who are not in placement in a facility are not captured by the law.

So what it says is that, it makes clear that sexual assault in the second and fourth degrees include sexual intercourse between a client of the Department of Developmental Services with workers who have disciplinary or supervisory authority over the client. It simply closes a loophole that should have been closed in the first place, and I urge this Chamber to pass this Bill.

Thank you, Mr. Chair, Speaker.

DEPUTY SPEAKER RYAN:

Thank you. Will you remark further on the Bill? Will you remark further on the Bill? Representative Rowe of the 123rd.

REP. ROWE (123rd):

Thank you, Mr. Speaker. It was a button malfunction. I yield back the balance of my time.

DEPUTY SPEAKER RYAN:

Thank you, Representative Rowe. Will you remark further on the Bill? Will you remark further on the Bill? If not, will staff and guests please come to the, please come to the Well of the --

Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Yes, thank you, Mr. Speaker. Just briefly. There is an Amendment, which makes a technical change and it's LCO

6410. I ask that the, the Clerk is in possession of the Amendment. I ask that the Clerk call the Amendment and I be granted leave of the Chamber to summarize.

DEPUTY SPEAKER RYAN:

Will the Clerk please call LCO 6410, which will be designated House Amendment Schedule "A".

THE CLERK:

LCO 6410, House "A", offered by Representative Fox et al.

DEPUTY SPEAKER RYAN:

The Representative seeks leave of the Chamber to summarize the Amendment. Is there objection to summarization? Is there objection? Hearing none, Representative Holder-Winfield, will you proceed with summarization.

REP. HOLDER-WINFIELD (94th):

Thank you. Yes, Mr. Speaker. What this Amendment does on line 36 and 86, it strikes the word treated, and puts in place of the word treated, receiving services, which is a broader term. It captures what is actually potentially being done here by those with issues of a mental disorder. I urge passage, Mr. Speaker.

DEPUTY SPEAKER RYAN:

The question before the Chamber is adoption of House Amendment Schedule "A". Will you remark on the Amendment? Will you remark on the Amendment?

If not, I will try your minds. All those in favor of the Amendment signify by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER RYAN:

Opposed, Nay. The Ayes have it. The Amendment is adopted. Will you remark further on the Bill as amended?

Will you remark further on the Bill as amended?

If not, will staff and guests please come to the Well of the House. Will the Members please take your seats. The machine will be opened.

THE CLERK:

The House of Representatives is voting by Roll Call. Members to the Chamber.

The House is taking a Roll Call Vote. Members to the Chamber, please.

DEPUTY SPEAKER GODFREY:

Have all Members voted? Have all Members voted? Will the Members please check the board to determine if your vote is properly cast.

If all Members have voted, the machine will be locked and the Clerk will take a tally. The Clerk will please announce the tally.

THE CLERK:

House Bill 6314 as amended by House "A">

Total Number Voting	147
Necessary for Passage	74
Those voting Yea	147
Those voting Nay	0
Those absent and not voting	4

DEPUTY SPEAKER RYAN:

The Bill as amended is passed.

Are there any announcements or points of personal privilege? The distinguished Majority Leader, Representative Sharkey.

REP. SHARKEY (88th):

Good evening, Mr. Speaker. Good to see you.

DEPUTY SPEAKER RYAN:

Good to see you, too, sir.

REP. SHARKEY (88th):

Mr. Speaker, I would move for the suspension of our Rules for the immediate consideration of House Bill 6564, Calendar Number 386.

DEPUTY SPEAKER RYAN:

JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY
PART 2
303 – 641

2011

CHAIRMEN: Senator Coleman
Representative Fox III

VICE CHAIRMEN: Senator Doyle
Representative Holder-Winfield

MEMBERS PRESENT:
SENATORS: Kissel, Gomes, McLachlan, Roraback,

REPRESENTATIVES: Hetherington, Adinolfi, Baram, Berger, Carpino, Clemons, Dillon, Flexer, Godfrey, Gonzalez, Grogins, Hewett, Hovey, Labriola, Morris, Olson, O'Neill, Roldan, Rowe, Sampson, Serra, Shaban, Simanski, Smith, Taborsak, Welch, Wright

REP. FOX: Good afternoon everybody. We are here to have our public hearing on a number of bills that have been -- Raised Bills that are up for review. The way we're going to conduct our hearings is the first hour will be reserved for the public officials. If we do not complete the public officials during that first hour we will then go to an alternating basis until we get everyone in. My co-chair, Senator Coleman, who will arrive shortly -- but we -- we can commence now with the public hearing.

The first name that I have from the public officials list is Peter O'Meara from the Commissioner of Developmental Services.

And good afternoon.

COMMISSIONER PETER H. O'MEARA: Good afternoon.

Representative Fox and members of the Judiciary Committee, I'm Peter O'Meara, Commissioner of the Department of Developmental Services. Thank you for the opportunity to testify in support of our departments proposal House Bill Number 6314, AN ACT CONCENING THE SEXUAL ASSAULT OF PERSONS PLACED OR TREATED UNDER THE DIRECTION OF THE COMMISSIONE OF DEVELOPMENTAL SERVICES.

This bill clarifies that it6 is a crime, sexual assault in the second degree, for someone for supervisory or disciplinary authority to engage in sexual relations with a consumer, client, of the Department. It also clarifies that it is a crime, sexual assault in the fourth degree, when someone with supervisory or disciplinary authority intentionally subjects a consumer of DDS to sexual contact.

Currently, Section 17a-276 states that all persons admitted to a state training school, regional facility or other facility provided for the care and training of the mentally retarded shall, until discharged there therefrom either by the Commissioner of by operation of law, be under the custody and control of the director of such facility. This legal status has been considered sufficient to establish "in custody of law" for the sexual assault statutes. However the argument could be made that Section 53a-71 and Section 53a-73a, as currently written do not apply to persons who receive supports and services under the direction of the Commissioner when those persons are not in placement in a facility and have a relationship with staff providing such supports and services. House Bill Number 6314 seeks to clarify this ambiguity.

This issue was raised when a similar situation happened in the DCF system and the prosecutor

was able to apply the statute and seek sexual assault charges against the staff person. It came to light that if this happened in the DDS system the same protections might not exist depending on interpretation of the current statute and the term "in the custody of law". As DDS consumers and their families continue to take charge of their individual budgets and hiring decisions, and with other new modes of providing supports and services under the direction of the DDS Commissioner it becomes more important that penalties be increased for serious misconduct on the part of staff that would prey on individual -- vulnerable individuals in the community.

The language in this bill is the same as was proposed in 2009 in House Bill Number 6645, which passes unopposed in the Judiciary and Public Health Committees and in the House. The intent is to prohibit a person who has disciplinary or supervisory authority over a person placed or treated under the direction of the Commissioner in any public or private facility or program engaging in sexual activity with such person.

This statutory amendment would also be consistent with our commitments to the federal government regarding the state's efforts to protect persons with intellectual disabilities. It is our hope that there will never be the necessity to use the provisions of these statutes, but we believe that it is important to have these prohibitions as criminal sanctions in place.

And thank you for the opportunity to testify in this bill. And just one final comment, clearly the statutes in the past have applied to our traditional settings but more and more of the people we support are living in nontraditional

settings, either at home or in their own apartments, but they are supported by staff for their activities of daily living and many of our individuals and their families are engaging those individuals as employees. But we provide the support and we're still responsible for the individual. So this would extend that coverage to all of those settings and situations.

REP. FOX: Thank you very much for your testimony.

Are there any questions?

Senator Kissel.

SENATOR KISSEL: Thank you very much, Mr. Chairman.

Did you work out this language with the Office of the Chief State's Attorney?

COMMISSIONER PETER H. O'MEARA: I believe we have, yes.

SENATOR KISSEL: Okay. Thank you.

REP. FOX: Representative O'Neill.

REP. O'NEILL: Thank you.

With respect to an individual who's in a -- say an apartment of their own which is a trend that has been going on for a while with the DDS clients, give me an example of the kind of person to whom the new language would apply.

COMMISSIONER PETER H. O'MEARA: It is not uncommon for a person who would be living in that setting -- they would have an individualized budget from the Department based upon their needs, and in many cases that individual would have a support worker coming into the home, maybe in the morning to assist them in getting ready for work

or for programs. They might then have another person come in in the evening that would be providing support for them. So that person would be in a relationship of support and it's quite possible that you might have the opportunity for inappropriate behavior to take place. And this statute would then include all of those arrangements underneath this statute.

REP. O'NEILL: And if they were going to a program, you mentioned if they were going to work or if they were going to some type of a program like a -- a -- well maybe give me an example besides work, what would they be going to?

COMMISSIONER PETER H. O'MEARA: There are some -- what we would call, day opportunity programs that would provide activities for the individual as opposed to a vocational setting. And again there would be staff there that would be engaging with the individual and providing support. In all of those instances all of those support arrangement are funded by -- by the Department.

REP. O'NEILL: Okay. And what you're saying is that in -- so the -- to make it clear, this is not arising from a DDS case. I mean the reason for this language is not something that's happened to DDS that wasn't possible to act upon?

COMMISSIONER PETER H. O'MEARA: It's arising from a situation in DCF and as we looked at that particular case one could make the argument the way the language is written that a person who engaged in inappropriate sexual contact or assault would have been exempted that was in another setting other than one of our traditional licensed settings.

REP. O'NEILL: Uh-huh. Okay. And just -- I mean, do we have cases where there have been sexual

assaults in the traditional settings? That people who've been sexually exploited in some way that --

COMMISSIONER PETER H. O'MEARA: You know, regrettably over the years, yes, that has happened. We -- you know, we support close to 20,000 individuals. We have a public sector work force of around 4,300 care givers; in our private sector we probably have a direct care work force close to 13,000 or 14,000 individuals. So unfortunately the opportunities do present themselves and on occasion situations like this do arise, regrettably.

REP. O'NEILL: Okay.

Thank you, Mr. Chairman.

REP. FOX: Thank you, Representative O'Neill.

Representative Hetherington.

REP. HETHERINGTON: Thank you, Mr. Chairman.

Commissioner.

COMMISSIONER PETER H. O'MEARA: Good afternoon, sir.

REP. HETHERINGTON: The -- the actual crime here is committed by virtue of the fact that the person -- the victim, cannot communicate consent and I guess that means the issue of consent is not relevant. Is that right?

COMMISSIONER PETER H. O'MEARA: Correct. The person, because of their -- of their status and their intellectual capacity is not able to give informed consent.

REP. HETHERINGTON: I see. And that depends -- that would include physical inability to give consent

and it doesn't depend on the state of mind in fact? I mean the person might give consent but not be able to communicate consent.

COMMISSIONER PETER H. O'MEARA: That -- that is also correct.

REP. HETHERINGTON: Right. Okay. Thank you.

Thank you, Mr. Chairman.

REP. FOX: Thank you, Representative Hetherington.

Are there any other questions?

Representative Dillon.

REP. DILLON: Thank you. I -- I just wanted to clarify or -- or understand your response to Representative Hetherington. Does this rest partly on the disability and the physical issues involved or from a disproportion in the amount of power that -- that that individual would have -- which -- which goes to sometimes what we do in existing laws of sexual harassment and so forth?

COMMISSIONER PETER H. O'MEARA: Clearly that's the -- Representative, that's the underpinning and the reason for the statute is that a person that is in a position of authority or has the ability to determine negative consequences for an individual or positive consequences for an individual that given that authority they have, they have inordinate control over that individual and for that reason the penalty should be exacted in -- in terms of the -- of the statute and also the penalty.

REP. DILLON: Thank you very much.

REP. FOX: Thank you, Representative Dillon.

Are there any other questions? I have just one question, you -- your testimony says that this bill did come out of this Committee a couple of years ago as well as Public Health as well as the House. Is that correct?

COMMISSIONER PETER H. O'MEARA: That's correct, sir.

REP. FOX: Okay. It's one of those - one of those bills that happen at times that just ran out of time at the end of the session?

COMMISSIONER PETER H. O'MEARA: I think it was a -- an eleven-fifty-nine -- ran against the clock on the last night and the last hour, sir.

REP. FOX: Okay. All right, well we'll see what we can do. Thank you for your testimony.

COMMISSIONER PETER H. O'MEARA: Okay. Thank you very much.

REP. FOX: Next we have Leo Arnone.

Good afternoon.

COMMISSIONER LEO C. ARNONE: Good afternoon, Representative Fox, members of the Judiciary Committee.

I am Leo Arnone, Commissioner of the Department of Correction. I'm here this afternoon to speak in support of our agency bills and also a bill from the Judicial Branch.

HB6345
HB6346
HB6313

Raised Bill 955, AN ACT CONCERNING INMATE DISCHARGE SAVINGS ACCOUNTS would make changes that are needed to effectively implement the inmate discharge savings legislation passed in 2007 which requires the Department of Correction to set aside 10 percent of money credited to an

language. The Division is in favor of that language on that bill.

6313; this was a matter that came before the legislature last session at the end of the session as a budgetary matter, the Intensive Probation Bill. We agreed at the time last spring that it represented a reasonable method to relieve some real budgetary problems and some impossible problems that we were trying to deal with regard to overcrowding in corrections and to provide another vehicle. We said we were in favor of it then, we're still in favor of it today.

With regard to the two other bills here, Neil Kelly on my left is an Assistant -- Senior Assistant State's Attorney from Bridgeport. He's had particular experience trying cases involving victims who are developmentally -- victims of sexual assaults who are developmentally disabled. And Attorney Kelly is here to testify in support of Senate Bill 918. Neil --

NEIL KELLY: Thank you, Mr. Kane.

KEVIN KANE: And this represents the position of the Division, now it's to Attorney Kelly.

NEIL KELLY: Good afternoon, members of the Judiciary Committee, Senator Coleman, Representative Fox. As stated by Mr. Kane my name is Quneillouss Kelly, I've been with the State's Attorney's Office for 20 years, located in Bridgeport, Connecticut.

As mentioned earlier I'm here to speak on behalf of not only Bill -- Senate Bill Number 918 but also House Bill Number 6314, which is AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS PLACED OR TREATED UNDER THE DIRECTION OF THE COMMISSIONER OF DEVELOPMENTAL SERVICES.

SB919

Among adults who are developmentally disabled as many as 83 percent of the females, 32 percent of the males are victims of sexual assaults. 15,000 to 19,000 of people with developmental disabilities are sexually assaulted each year in the United States. Forty-nine percent of people with developmental disabilities who are victims of sexual violence experience approximately ten abusive incidents in their life time. Forty percent of women with physical disabilities report being sexually abused, 88 to 98 percent of sexual abusers are males known by the victim who have disabilities and only three percent of those cases are reported. Thirty-three percent are abused by acquaintances, 33 percent are abused by natural, foster or family members and 25 percent are caregivers who provide services to the disabled.

The purpose of this legislation obviously is to protect in particularly a vulnerable segment of the population, those who's capacity consent to sexual conduct or resist unwanted sexual conduct is substantially impaired due to their mental or physical disability.

Our present statute is incomplete with regard to protecting the mentally or physically disabled. Currently to be considered physically helpless under our statute a victim has to be unconscious or otherwise unable to communicate unwillingness to an act. This provision works well when a victim is unconscious but has proved to be problematic in other context. *State versus Fortin*, which is a case that I tried, which is noted in our written testimony, is a prime example of this.

The Appellate Court held that the victim was not physically helpless because there was testimony she could make her wishes known by screeching,

kicking or biting. The state at this point is appealing that decision and arguing that the Appellate Court applied the definition too narrowly, failed to give deference to the jury and failed to look at the testimony most supportive of the jury's finding. The matter is currently pending at the Supreme Court.

Similar problems arise with the mentally defective statute. Recently I had a case which resulted in an acquittal where the mother's boyfriend sexually assaulted a twenty-year-old young lady with Downs Syndrome.

The defense argued it did not happen and B, if it did happen the state failed to establish beyond a reasonable doubt that the young lady was incapable of appraising the nature of such person's conduct. It was argued by the defense that since she went to school, had friends, had a friend who was a boy and attended sex classes that this showed that the state did not prove its case beyond a reasonable doubt.

The proposed legislation under Senate Bill 918 is patterned after an Ohio statute cited in our written testimony, the (inaudible) to reach the situations that I've encountered in Court in *State versus Anonymous* which is mentioned in the written testimony. In the prosecution in the proposed statutory language the state would be required to prove beyond a reasonable doubt the element of sexual intercourse under the sexual assault in the second degree or sexual contact under the sexual in the fourth degree, that the victim was substantially impaired and that the defendant knew or had reason to know.

Having tried a number of cases and reviewed a number of police investigations involving victims who were mentally/physically disabled this proposed change would provide more

protection to the vulnerable among us from sexual exploitation in a similar fashion as we protect students from teachers and athletes from coaches. The present statutory language does not provide ample protection. As I mentioned earlier it's an under reported crime.

As it states in our written testimony the proposed language provided protection to the 80 year-old woman with dementia who lived alone but needed assistance, it provided protection to the 33 year-old who lived alone but had the mental age of a five-year-old and childlike interests.

It provided protection to a woman mentally disabled, held a job but unable to find her way home on occasions and unable to live independently. It also provided protection to the woman who was mentally disabled, could speak only one to three word sentences, played with stuffed animals and had the mental abilities of a five to seven-year-old.

I understand there was some concern about some of the language in the statute as to whether or not we may be criminalizing consensual sexual conduct between disabled -- or among disabled and others who have ability to consent and is not substantially impaired. The protection afforded is obviously by the legislative history -- this discussion here today makes it clear that this is not our intent to penalize that segment of society. If the actor is also impaired he or she will not be able to appreciate the others impairment thus there would be no criminal liability.

Additionally no interest is on the part of the state or law enforcement to prosecute such conduct. The statutory construction of sexual assault in the second degree or sexual assault in the fourth degree, the legislature is trying

to protect the vulnerable from exploitation by those individuals who do to their status have power, control, authority or the mental capacity over and above -- above and beyond the victims.

As of yesterday I spoke to the director of the Ohio Prosecutors Association, John Murphy, and he has never encountered a situation where there has been a problem where they arrested or prosecuted an individual who is mentally disabled.

At his direction I spoke to a prosecutor in Cleveland, Ohio as well and asked him whether in the 20 years of their statute whether they have ever encountered a situation where they had arrested somebody who is mentally challenged or physically disabled under their particular statute.

Additionally -- I opened up with addressing House Bill Number 6314, which is largely a technical change in nature. It corrects what is essentially a loop hole in the existing statute that first came to light several years ago when an employee of a group home operating under contract with then DMR, which is now the Department of Developmental Services, had sex with a client residing in the group home.

The bill prohibits such activity much in the same fashion as the existing laws as I mentioned earlier protects the teacher -- its illegal for the teacher to have -- be sexually involved with the student or as I indicated as well, coach to engage in sexual activity with a student athlete. The Division respectfully recommends a -- a passage of both legislations, that being Senate Bill 918 as well as House Bill 6314.

And I will gladly answer any questions that any of you may have.

SENATOR COLEMAN: Are there any questions for the panel?

Senator Kissel.

SENATOR KISSEL: I may be off because I was down testifying in front of education. I recognize all the testimony regarding the assault bill but did the Chief State's Attorney talk about the unauthorized practice of law, though?

KEVIN KANE: Were about to, Attorney Froehlich is right here and willing.

SENATOR COLEMAN: Do you have testimony?

KEVIN KANE: Just with regard to this bill, I want to -- with regard to 918, we're not being critical of the Court decisions here. What these decisions do is demonstrate the need to clarify the language in the statutes. The trial Courts -- the trial Judge who has to deal with this statute has an obligation to give instructions to the jury. And then the Appellate Court has the obligation to -- to determine whether or not the terms -- the wording of this statute was -- was proper and supported the conviction.

These decisions clearly demonstrate the need to clarify this language to cover these situations where people don't fall into the express wording of the subsections that are -- presently exist in the statute. And we need to protect those people who need the protection that will be afforded by this amendment.

SB919

With regard to the unauthorized practice of law Your Honor, Attorney Froehlich is here. Attorney David Cohen and -- who's the State's Attorney in Stamford Judicial District had some particular experience with this case -- with

this statute too. We've all consulted each other in submitting the written testimony in support of these bills and I know the Committee will read that but Attorney Froehlich is here to testify and answer any questions also.

PATRICIA FROEHLICH: Thanks, Kevin.

Good afternoon, Senator Coleman, Representative Fox, members of the Committee and thank you for once again allowing me to appear before you. I am here to testify in support of AN ACT CONCERNING THE UNAUTHORIZED PRACTICE OF LAW because I first became interested in section 51-88 back in the spring of 2006, when I was advised that an attorney who was a resident in our judicial district -- the Judicial District of Wyndham had been suspended from the practice of law as of December of 2005, but that he continued to engage in the practice of law. SB919

This -- it's important to note this was not an attorney who was suspended for failure to pay either the client security fund fee or the occupational tax or any administrative fee. He was suspended because there were at least 12 grievances pending against him.

The Chief Disciplinary Counsel and Statewide Grievance Committee had conducted hearings in five of them and referred five to the Superior Court. And in December 2005, Judge Vanessa Bryant had ordered this person's license suspended. Seven cases were pending at that time. This person clearly know his license to practice law had been suspended not just because he had the Court order but because he filed an appeal from the order.

However when a woman sought his assistance on immigration issues he met with her, he gave her a fee schedule, he had her sign an agreement and

that agreement was on letter head announcing that he was an attorney. I sought an arrest warrant and charged him with -- among other things, violation of 51-88. I thought that was the correct statute, I couldn't find a statute that specifically addressed the continued practice of law by an attorney who's license had been suspended or who had been disbarred. I was wrong and he filed a motion to dismiss on that count and the Court correctly granted that motion to dismiss.

So here is the case of an individual who had been suspended, took advantage of a person who needed the assistance of an attorney and I could not prosecute him and there was no penalty. So the proposed language does two things, it changes 51-88 to add -- or to separate -- to acknowledge the difference between two classes of people, those people who have never gone to law school and taken and passed the bar and those people who have been admitted to the practice of law but suspended or disbarred.

We also seek to raise the penalty. And I listened to the earlier testimony and we should make it clear that we seek to raise the penalty in cases not involving out of state attorneys but specifically in cases in which people who have never been admitted to practice or whose license has been suspended or disbarred for reasons other than failure to pay administrative fees.

We as attorneys are a self-policing professional. We should hold ourselves to a higher standard and those who violate that standard should be treated seriously and prosecuted vigorously and there should be a serious penalty.

Thank you for your time.

SENATOR COLEMAN: Are there questions? Senator Kissel.

SENATOR KISSEL: So when you said you were wrong in charging under 51-88 you were wrong in that that was the closest statute that was colorable but that the Courts ultimately determined that that wasn't the appropriate grounds and -- or appropriate statute and that -- see I -- you were tough on yourself, I wouldn't say necessarily wrong, it's like you reach for whatever was there but there wasn't -- what you're really saying is there was nothing there.

PATRICIA FROEHLICH: Correct, but I am always my worst critic; always tough on myself.

SENATOR KISSEL: Join the club.

PATRICIA FROEHLICH: There was nothing --

SENATOR KISSEL: I'm tough on myself too.

Now is there opposition from folks that are concerned -- maybe they have -- you know, they're qualified in New York or Rhode Island, they may be cooperate counsel, something -- I mean is there a group out there that's concerned about the statute that -- that we're going to hear from or --

PATRICIA FROEHLICH: The first that I heard of opposition was the earlier testimony today. When we first proposed this a few years ago -- and I think it was the 2009 session, we met with members of the Connecticut Bar Association to address the issue of out of state attorneys and business law.

And having been a prosecutor just about since graduation of law school in 1989, business law

is not my area of expertise but we did work with -- in proposing this legislation both the first time and this time, the Connecticut Bar Association and the Judicial Branch, each of which supports it.

SENATOR KISSEL: Thank you.

Thank you, Mr. Chair.

SENATOR COLEMAN: Representative Fox.

REP. FOX: Thank you.

Thank you, Mr. Chairman.

I have a question on Raised Bill 918, the -- and I just want to make sure I'm clear on a couple of -- because I understand the intent behind what's proposed here and the support has been very strong and I just want to -- but I want to make sure of a couple of things in terms of how the Courts are going to interpret the terms. For example, is there a definition for a mental condition or a physical condition that would enable the Court to determine that someone is substantially impaired by --

NEIL KELLY: Is there a definition, at the present time no, there is not a definition.

REP. FOX: Okay.

NEIL KELLY: Obviously that would be a situation depending on the evidence that had been presented in the case would dictate whether or not a mental condition or a physical condition existed at the time.

REP. FOX: Okay. Because I'm just -- I looked to the -- the definitions that follow in the proposed

bill and there's one that I see -- mentally incapacitated

NEIL KELLY: Correct.

REP. FOX: Is that what is meant here in mental condition?

NEIL KELLY: No, that's -- that's something -- that's something --

REP. FOX: I think that's something different. I just want to make sure I'm clear.

NEIL KELLY: The bill itself -- the way it is written will remove subsection 4 under the definition section of 53-65, mentally defective as well as physically helpless yet keep in mentally incapacitated.

That's a situation where someone -- as it indicates in the definitions, rendered temporarily incapable of reprising or controlling such persons owing to the influence of drug, intoxicating substances admitted to such person without their consent or other acts committed upon a person -- so that would not necessarily be the definition that would be applied to -- to the language mental or physical condition.

I would -- I would point out that in the six or seven cases that I tried where the -- the state -- where I had to prove physical -- physically helpless or mentally defective, the Court had struggled with coming up with law -- or at least instructions to give to the jury. I know previously some Courts that I have appeared before have said that the definition as it sits at the present time for the mentally defective is a very, very high standard that the state has to prove beyond a reasonable doubt.

And the Court has struggled and as a matter of fact as I indicated in the six or seven cases that I've tried I think the Court has given different instructions with respect to the definition of physically helpless and mentally defective at that point to the jury's in those six or seven cases. So as of right now there is not a definition as to the mental or physical condition that is spoken of in the proposed bill right here.

REP. FOX: Okay. And I'm just --

NEIL KELLY: I know that could be troublesome --

REP. FOX: Yeah, and I'm just trying to make -- because I understand -- I think everyone has the same idea in their mind when they -- when they see the need for the proposed legislation. I just -- I'm hoping that it could be interpreted by the Courts with that same intention. I could understand how the Courts could struggle with it in some way. What do you envision when you -- when you think of a mental condition, what -- what --

NEIL KELLY: Well the situations that were described earlier, someone who is -- Downs Syndrome, someone who is mentally retarded, physically helpless is the case that I mentioned earlier, *State versus Fortin*, the young lady in that particular case, other situations perhaps where it's unrelated to a physical disability, perhaps somebody is unconscious or something to that extent. Those would be the situations that would fit within physical or mental condition that's laid out in the statute in the new proposed legislation at this point in time.

REP. FOX: Okay. Thank you very much.

Thank you, Mr. Chairman.

SENATOR COLEMAN: Representative Hetherington.

REP. HETHERINGTON: Thank you, Mr. Chairman.

I would like to address a question to Senate -- excuse me, Raised Bill 919. What is the current state of the law with regard to the practice -- with regard to out of state attorneys collaborating with Connecticut attorneys for the purpose of -- or -- or who represent an out of state defendant -- a corporation for example, coming into the state?

PATRICIA FROEHLICH: I don't have an answer because I don't engage in the private practice of law. I know there are certain exceptions in the existing statute but I apologize I don't have the (inaudible).

KEVIN KANE: This -- that's a good question Representative Hetherington and that's what got into the -- the -- the disagreement between two segments of I think whether they're members of the Connecticut Bar Association or what, there were two groups that I remember engaging in -- in -- in a serious disagreement and it centered around that. This bill that we've submitted however doesn't change at all the present definition of the practice of law.

The statute provides that unless a person is providing legal services pursuant to statute or rule of court then this penalty would apply. I think an appropriate place for that discussion is not with regard to this bill but with -- it's in a separate form on a separate bill and I don't know what the proper balance is between those two groups.

I do recognize it as a problem. We recognize it as a problem. And that's certainly something that we don't have the -- we as prosecutors don't understand. I don't understand it, I tried to understand it thinking we could maybe broker some kind of an agreement and -- and -- and it was probably beyond my ability to understand it and -- and at the time not having the background. But this doesn't change that, it doesn't effect that, it still leaves that for -- to be resolved either by rule of Court, which is probably the most appropriate form to do it. This provides a method though to deal with the serious situations that exist for the unauthorized practice of law without changing what that definition is.

REP. HETHERINGTON: I -- I understand the goal and I certainly support it but having been an attorney for a corporation -- an out of state corporation, although I was admitted here, it always troubled me that when an attorney retained or employed by the corporation from another state would come in to consult on a matter. That -- that involved practicing law, we were really abetting the violation of the law. I -- I -- I certainly support this -- this measure however it seems to me there's an opportunity wouldn't you agree, to clarify the practice of law for the purposes of undergoing the penalty -- or risking the penalty.

KEVIN KANE: That's what I thought last year. Yes, you're right there is an opportunity to do it, there was an opportunity to do it last year and neither side could get together an agreement that would get passed by the legislature. And because of that this bill died last year because we tried to use that as an opportunity to do that and it certainly didn't work. I don't know that it will work again.

I just want to make it clear, we as the prosecutors are not intending to prosecute lawyers who do what you've described. A, we wouldn't understand it -- we wouldn't know whether it was proper or not. B, there are -- more importantly there are other remedies which exist. People can make a complaint to the Grievance Committee or -- or hearing the testimony of -- prior testimony there's an opportunity to go for an injunction to try to prevent that thing. And there's another remedy that we wouldn't get in the middle of on those cases, we wouldn't use the statute for that purpose.

But you're right, it's an opportunity but I wouldn't want this bill to -- to -- to go down again because it couldn't pass when people tried to use it as an opportunity.

REP. HETHERINGTON: Thank you. And if I may go quickly to 918, which is the sexual assault on person under disability, wouldn't it be a lot cleaner and simpler, simply to remove the defense of consent for persons in certain classes, that is under age of 13 or under the disabilities that are listed here? I mean I'm just -- I support the goal here. I just wonder if it wouldn't be -- if there isn't a more simple way to do it.

KEVIN KANE: I don't think there is. The trick is defining those classes, I mean under a certain age is easy. The other one where -- where it's a client of the Commissioner of Developmental Disabilities -- and it's a group home, or like a student or -- or -- or somebody on a team where there's a coach involved, those classes are easy to define, much easier to define and with clarity.

Our problem is trying to define those classes when it's a question of degree, developmentally disabled or physically helpless. It first sounded good when the legislature tried to do it years ago but when we put it into -- into practical effects and we see the difference in degrees it made it impossible. We've worked hard, we discussed this with -- with various groups of people in an effort to try to do this and this was the best that we could come up with and it seems to be the only workable solution and it did work and does work very well in Ohio.

REP. HETHERINGTON: Similar -- Ohio has a similar statute?

KEVIN KANE: Yes -- yes, same language. Thank you, thank you very much.

SENATOR COLEMAN: Representative Holder-Winfield.

REP. HOLDER-WINFIELD: Thank you, Mr. Chairman.

I recognize you said it works well in Ohio, but I'm still a little concerned because the question was asked by Representative Fox about how do we define what's in this bill. And in the bill we talk about having -- the potential perpetrator having reasonable understanding of the inability based upon those very things that Representative Fox asked about.

And so it seems to me that if we are having trouble defining it, that person -- what's reasonable I'm not sure is easy -- I'm not sure that the person who's committing whatever egregious act it is actually knows more than we know sitting in this room, you guys having worked with advocates for victims and others, to bring this language to us. So it's a little bit troubling to me.

So I guess my question is, I understand what -- that Ohio has what you consider a workable statute, I wonder if there's anywhere else that has a statute along this line that actually does some more defining than what we do within this bill.

NEIL KELLY: I've looked at the statues -- various statutes throughout the country and I have not found anything that was above and beyond of what we have right here as far as providing definitions and some guidance.

And I can see the Committee's concern and your concern here as to whether or not that individual who is the actor in this case how is he to know -- or she to know the mental of physical condition that the person suffered with. All I can mention is in most of the situations that I've encountered as well as the research, in terms of addressing the actor, as you indicated a moment ago, it seems to be it's always the person that knows the victim in this case.

It's always -- as I indicated earlier, the statics show it's either an acquaintance or a friend or a caretaker, so they are well aware of the physical or mental limitations that this particular individual has at that point in time. So in terms of trying to prove that beyond a reasonable doubt the state would have to show that person's familiarity with the individual who is the complainant in this case or the victim in this case and that's how we would establish that.

With respect to your concern about a definition of mental or physical condition, it's -- it's -- and as I indicated a moment ago, I checked throughout the country, I was not able to find something that had definitions for that because

as I indicated Ohio is the statute that we went off of and they don't clearly define that. So I wish I could be more helpful to you in answering that but --

KEVIN KANE: You know your question highlighted something I should have thought of in response to Representative Hetherington's questions. We don't want to -- to prohibit people who are developmentally disabled from being able to consent to sexual activity. That was one of the great concerns about the representatives of those people, that we shouldn't take away their ability to consent as the legislature might wisely do it regard to somebody in a certain age group to consent. I -- I didn't really answer your -- I might have answered Representative Hetherington's question through your question. I don't think I did it -- try again.

REP. HOLDER-WINFIELD: No -- no I don't want to.

KEVIN KANE: I'm sorry.

REP. HOLDER-WINFIELD: I actually don't want to try again. I just -- if this bill comes up in this form I will vote for this bill. I'm just concerned about things that we potentially did not thinking about. And so the only reason why I voice these concerns is that in the process if there's a way to think about it and maybe make it better we -- we would wind up doing that. That's all.

KEVIN KANE: Thank you.

SENATOR COLEMAN: Other questions?

Representative Fox.

REP. FOX: Thank you, Mr. Chairman.

I just wanted to follow up on Representative Holder-Winfield who was following up on my questions. You indicated you've had about six or seven of these cases and there's been six or seven different instructions with -- jury instructions with different definitions -- or somewhat slightly --

NEIL KELLY: A lot of it depended on some of the facts and circumstances of the given case.

REP. FOX: Yean.

NEIL KELLY: But we can't go to the jury -- you know, the criminal instruction book, there is no definition that expands it beyond what it said previously as far as what -- the definition is physically helpless and mentally defective and so based upon being that the state submitted as a proposed charged as well as perhaps defense counsel, the Court would put together somewhat of a -- a charge that balanced -- a balanced charge but as I said it varied from case to case.

REP. FOX: And I recognize every case is different and that there are facts and circumstances. So I'm not advocating necessarily for one charge fits all, I understand, but at the same time if there is an opportunity for us to provide some guidance as to what -- what we mean when we say this, this might be our opportunity to do so with this bill.

So that's essentially what I'm getting at. I think everyone understands the underlying goal and the situations that have been described here. We just want to make sure that we're clear in terms of what the public policy should be.

Okay. Thank you.

Thank you, Mr. Chairman.

SENATOR COLEMAN: You're welcome.

Attorney Froehlich, on Senate Bill 919, in your comments you said that the bill seeks to -- I think this is what you said, seeks to make changes to Section 51-88 by acknowledging the significant difference between those who have never gone to law school and those who have gone to law school and have been suspended or disbarred.

Does the bill adequately address the situation of the persons gone to law school and never passed the bar but attempt to engage in the practice of law?

PATRICIA FROEHLICH: It currently does not separate at all between those who've never been lawyers and those who are lawyers but who have been suspended or disbarred for nonadministrative reasons. So the person who went to law school and didn't pass the bar is addressed because that person has never been a lawyer.

SENATOR COLEMAN: Okay. And do I assume correctly that the penalty for someone who's suspended or disbarred and continues to engage in the practice of law is more harsh than the penalty for someone who's not gone to law school?

PATRICIA FROEHLICH: No. Currently the penalty is an unclassified misdemeanor, it's a fine I think of $250.

SENATOR COLEMAN: But under the bill that you're supporting today would that bill provide a penalty more harsh for the person who blatantly disregarded a suspension order of disbarment?

PATRICIA FROEHLICH: No, our proposal is that it be a D felony for each of the two classifications.

SENATOR COLEMAN: Okay.

PATRICIA FROEHLICH: The situation in Stamford/Norwalk that State's Attorney Cohen had, in two situations actually where people who had never gone to law school, have never been admitted to practice -- they held themselves out as lawyers and then my situation.

SENATOR COLEMAN: Okay.

KEVIN KANE: This is a maximum penalty that would apply across the board to anybody who is not authorized to practice law, except somebody who is suspended for failure to pay the IOCA fee which -- which is not uncommon for people to forget. We -- we exempted that -- that out. But these are -- this is a penalty for people who are not authorized to practice law.

SENATOR COLEMAN: I got you.

KEVIN KANE: And the gap that we had before is somebody who is suspended that Attorney Froehlich tried to prosecute. Somebody who is -- who is clearly suspended for disciplinary reasons and it didn't fit, it should fit.

SENATOR COLEMAN: Thank you.

Are there any other question? Seeing none -- oh, Representative Smith.

REP. SMITH: Thank you, Mr. Chairman.

Just -- I'm just wondering why we jumped to a D felony for this type of transaction where before it was a fine of $250 which I -- I would think would be too low and now we're going to a D

felony which is obviously quite serious now. You know, having been a lawyer I'm anxious to make sure that people who are not authorized to practice law are not practicing law but it does seem severe. I'm just wondering how you came to that conclusion.

PATRICIA FROEHLICH: It was in 2008, that we met with members of the Bar Association and members of the Judicial Branch.

And we talked about the various situations and the fact that as it (inaudible) profession -- specifically with respect to my situation, the attorney who disregarded the disciplinary order, violations of that type should be treated seriously and as opposed to an A misdemeanor, give the Court the possibility of a penalty up to five years, up to $5,000. It doesn't mean obviously that everybody would get the maximum but clearly it's a serious offense.

Specifically State's Attorney Cohen's situation, I spoke with him, he had a person who had never been admitted to practice who actually tried a case -- operating under the influence, and then as set forth in our written testimony, tried to get the client to give him $15,000 additional in order to bribe the prosecutor and the judge. That's a serious offense; I don't think it should be a misdemeanor.

REP. SMITH: And if I may, Mr. Chairman, this -- you know, I deal a lot with the real estate area of the law and you have now many real estate agents who in my mind are engaging in practice of law because they're providing contracts, having -- going over contracts with a potential home buyer at the time that they're -- you know, signing up to buy the home -- you know, it's standard form contracts and this would concern me because I don't think it's their intent to practice law

but I think it's really just a practice that's evolved over the years and I'm just wondering if this type of language would apply to someone in that situation?

PATRICIA FROEHLICH: That's not our intent but that is -- as Chief State's Attorney Kane mentioned, that was part of the discussion back in 2008. And I had actually drafted language -- I shouldn't say drafted, borrowed language from other states which clearly defined the practice of law and we couldn't come to an agreement on what defined the practice of law.

REP. SMITH: I think we -- but I think we might run into that problem unless it's defined because this is a common practice where realtors are giving contracts to potential buyers and explaining -- you know, the essential terms of the contract and that's -- in my mind, the practice of law and they could be looking at a D felony if somebody really wanted to pursue it.

So I do think it needs to be tightened up a little bit just so we're clear as -- as to what this bill is intended -- who this bill is intended to effect and you know, I agree 100 percent with you that if we have lawyers trying to -- or people trying cases who are not lawyers, people who are disciplined and nonauthorized to practice -- you know, there should be consequences.

I don't think we want to necessarily reach out to those and give them a D felony, slap or crime -- or charge when in fact that's not the intent of the bill but yet they could be subject to that so -- I don't know how we -- whether we can clean that up or not but I -- I -- it is a concern certainly to me.

KEVIN KANE: Part of that -- and I'm not aware of any real estate agents being -- I know that potential exists and it has existed for many years, real estate agents do advise people or -- or provide contracts to people and I'm sure do the kinds of things that you say that are appropriate. I'm not aware of any of them who've ever been prosecuted even when the maximum penalty was just a misdemeanor. The fact that something is a misdemeanor or the fact that something is an offense or the fact that it is something -- is a violation might cause people to say, well why not prosecute them the penalty's not bad.

The -- when a person is going to be prosecuted for a felony it should take serious consideration from prosecutors and others who make complaints as to whether or not that should be imposed. And as I said we're not prosecuting real estate agent, we're not prosecuting people like that.

There are people who do serious harm to the public by holding themselves out as lawyers, by holding themselves out as being people who are authorized practice -- to practice law and they do very, very serious harm not only to members of the bar who may be -- they may be competing with, that's not the problem at all that we're trying to address. The problem is the harm that they do to their clients and the examples of the cases we've had, the penalty certainly ought to be a felony.

These are people who've been suspended for serious disciplinary reasons, these are people who've never been authorized to practice law but are trying cases in Court who are giving people advice and -- and -- as to how to handle immigration matters causing them to be maybe deported because they're not getting proper

counsel and they think they are. There's serious harm being done by these people and the felony is appropriate.

Now if the people with various interests in commercial transactions or business practices can somehow get the Bar Association to agree on changing the definition of -- of practice of law, that would be a good idea and we're certainly 100 percent in favor of it. But -- but I don't think we can tinker -- right now who's authorized to practice is a creature of both statute and Court rule. I don't know that -- I think the Legislature and the Judicial Branch have recognized the difficulty of defining that and that's why it's fallen into both camps to try to define.

I don't know how you can define it in the proper way but it is very clear that the -- the penalties that ought to apply to the types of cases we've been describing certainly should be much higher than the present penalties are.

REP. SMITH: Well I could agree with you on that. And again my concern is for the breath in reaching people that it's not intended to reach and all of a sudden we have -- for vindictive reasons or whatever reason there may be somebody who well you know, not with any intention engage in the practice of law because they were doing something they were not aware was a violation, or was actually considered the practice of law.

One other question I have for you is -- is -- and if you know, you know, obviously lawyers are licensed, they're trained, they go to a lot of schooling and physicians are similar in terms of their training, is there a similar type statute for unauthorized practice of medicine and is that a D felony?

KEVIN KANE: I was just thinking of that a couple of minutes ago when you asked the first question -- I wonder what the penalty is for unauthorized practice of medicine. Is it a felony? It ought to be.

PATRICIA FROEHLICH: I don't recall.

KEVIN KANE: It ought to be.

REP. SMITH: Think of the harm they can do. So --

KEVIN KANE: I think they --I -- it ought to be and I think it is but that's easy to find out.

REP. SMITH: -- my point is maybe there should be some consistency in -- across the board and -- because they're similar type professions -- you know, professionals -- whether it's an engineer, whether it's a lawyer, whether it's a doctor, a certain level of training is required and you know, I can think of a lot of harm in a lot of different ways if a doctor who is not really a doctor is practicing medicine, if an engineer who is not really an engineer is giving advice as to how to put up a building -- you know, you can imagine.

So, thank you.

SENATOR COLEMAN: Any further questions?

If not, thank you attorney's for your testimony.

KEVIN KANE: Thank you.

PATRICIA FROEHLICH: Thank you very much.

SENATOR COLEMAN: Lynn Warner is next.

REP. FOX: Hi, good afternoon.

LYNN WARNER: Good afternoon. Representative Fox and members of the Judiciary Committee; I am Lynn Warner, the Executive Director of the Arc of Connecticut, a 59 year-old advocacy organization for individuals with intellectual disabilities and their families. We have 23 local chapters that provide supports, services and advocacy for individuals of all ages throughout Connecticut.

I am here today to testify in strong support of both Senate Bill 918, AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPAIRED and House Bill 6314, AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS PLACED OR TREATED UNDER THE DIRECTION OF THE COMMISSION OF DEVELOPMENTAL SERVICES, as both these raised bills will go a long way in protecting some of the most vulnerable people who receive services and supports from the Department of Developmental Services in Connecticut.

Among adults with intellectual disabilities, it is estimated that 83 percent of females and 32 percent of males are victims of sexual assault. People who live in institutional settings and people who have multiple or significant disabilities including the inability to communicate to speak in a manner that is considered typical or normal are considered to be the most vulnerable to abuse because they are most dependent on a larger number of people for their personal care, such as mobility, toileting, eating, bathing, etcetera.

This dependence requires rather intimate relationships with a wide variety of people including caregivers, health professionals, transportation providers and other family members. Dependence on a large network of relationships increases the chances that a

person with a disability will experience abuse. They also have a less of an ability to get away.

And while a disability can make it more difficult for a person to escape or report abuse the way society perceives persons with disabilities is probably a more significant factor in an increased vulnerability to violence. In many ways these people are -- tend to be viewed and treated as children are lacking enough intelligence to know what has actually happened to their own bodies.

Just as any other human being a person with disabilities has the right to decide who does and who does not have permission to put their hands on his or her body whether they are supported by DDS or not. Both Senate Bill 918 and House Bill 6314 will reinforce this right, strengthen protections and increase the likelihood of a criminal conviction for people who victimize vulnerable individuals.

I strongly urge this committee to vote favorably on both Raised Bills. Thank you for the opportunity to testify before you today. I'll take any questions if you have them.

REP. FOX: Thank you very much; any questions from members of the Committee? Senator Kissel.

SENATOR KISSEL: Thank you very much, Mr. Chair.

Do you have any concerns about sort of the notion that perhaps folks that are consenting would be sort of dragged in under these -- these proposals; that somehow there'd be misinterpretations?

LYNN WARNER: I certainly hope that people who are consenting adults will not be dragged in. I hope that by working with the Council -- Mary

Ann Langton will be testifying later, and I will hopefully maybe produce or offer some suggestions for language.

We know that that's been a concern as we've been listening to testimony today and we'd like to work on that and maybe help the Committee to do so. So we certainly do not want to take away people who have intellectual disabilities right to be sexually active. That would be going against what the purpose of this bill is, it's to help folks to not be victimized. That's what our goal is.

SENATOR KISSEL: I appreciate that answer and I think that -- at least from my perspective, any additional safeguards as far as changing the language a little bit would be really helpful.

Thank you, Mr. Chairman.

REP. FOX: Thank you, Senator Kissel.

And thank you for that comment because I think we can -- we all have the same objective.

LYNN WARNER: Right.

REP. FOX: And just have to figure the fairest way to get there.

LYNN WARNER: Right. And if while we're in -- you know, suggesting language, if we can get rid of the term, mental defect -- or defective, it's very offensive and we'd like to work on it. If we're going to be in there changing some language anyway let's remove the offensive terms while we're at it.

REP. FOX: Okay. Well, thank you.

LYNN WARNER: Thank you.

REP. FOX: It will be -- part of working on this together.

LYNN WARNER: Thank you.

REP. FOX: Any other questions from members of the committee?

No. Thank you.

LYNNE WARNER: Thank you.

REP. FOX: Next is Jim McGaughey.

Good afternoon.

JIM MCGAUGHEY: Good afternoon, Representative Fox, members of the Committee; my name is Jim McGaughey, I'm the Director of the Office of Protection and Advocacy for Persons with Disabilities, and I wanted to speak in favor of both Raised Bill 918 and Raised Bill 6314. You've heard a great deal of testimony on both of these bills today already and I have submitted written testimony so I won't read it.

But I just wanted to address some of the questions that have come up a little bit. The history behind 918, actually this bill came forward last year and there was a good deal of discussion amongst advocacy groups and state agencies about the language regarding the lack of consent and if the ability of the victim to communicate lack of consent to sexual intercourse and then the quotation, substantially impaired because of a mental or physical condition. So there were concerns of consensus. There were a lot of concerns about the very issues that have been discussed here.

Or we take the relationships between them and their caregivers into consideration. You still have to look at whether or not an element of that crime can be established in Court as to whether or not they were capable as individuals or not. And that's some of what's -- what's going on here I think and it's just something that adds to the difficulty.

With respect to Raised Bill 6314, which is the ACT CONCERNING SEXUAL ASSAULT FOR PERSONS PLACED OR TREATED UNDER THE DIRECTION OF THE COMMISSIONER OF DEVELOPMENTAL SERVICES, there was a question earlier as to whether or not there had been actual cases where this came up.

And our office is aware of at least one such case, I think that Attorney Kelly indicated that he had attempted to prosecute one similar to that. So there are some actual cases on this and that also in an important bill to see go forward. They -- it modifies the same sections of the general statutes so I mean at some point you probably need to combine them in some way. But they reflect two different concepts.

So those are my comments. If you have any questions I'll try and answer them.

REP. FOX: Thank you.

Are there any questions? Senator Kissel.

SENATOR KISSEL: Thank you, Mr. Chairman.

So is it my understanding that there's really no opposition to these proposals but -- and that they're the product of some compromise but perhaps going forward we could even modify the language to make it even a little more clear but that there really is not concern on your part or

any other groups that you're aware of regarding this bill moving forward?

JIM MCGAUGHEY: This -- this language was arrived at after considerable discussion. The original draft that was proposed by the Chief State's Attorney's Office last year was not stated in the negative where there is -- you know, manifesting a lack of consent. It was stated in the affirmative. There was a lot of concern about that because we don't want to create a statutory presumption that people -- by virtue of a disability label are incapable of consenting to sexual relations.

But -- that's just another form of prejudice, but this language was worked out. I'm not aware of opposition to it. I don't think -- you know, it's like any other compromise, there are probably people who would like it to be a little more this way or a little more that way, but it got sort of a sign-off of a number of groups.

Which isn't to say it couldn't be done better or that somebody -- you know, given a year to think about it hasn't come up with a better idea but it's -- it's just -- I know -- I know that there was a lot of thought given to that and that was -- that was presented. It actually passed this Committee, it passed the Human Service Committee and it passed the Senate but it -- and it got jammed up in the final days of the legislative session on the House calendar and it didn't go. So --

SENATOR KISSEL: Thank you, I appreciate that.

JIM MCGAUGHEY: Yeah.

REP. FOX: Thank you, Senator Kissel.

Representative Smith.

REP. SMITH: Thank you again, Mr. Chairman.

Just -- you know, this may have been discussed when I had to step out of the room but -- so if it has I apologize. Some of the definitions have been deleted, for instance "mentally defective" has been deleted and "physically helpless" has been deleted from the definition section. I was just wondering why those were taken out.

JIM MCGAUGHEY: Well in part because the terms themselves were offensive but also because they had proven ineffective at protecting the very people that were intended to be protected by the -- the ambit of the statute.

The term "physically helpless" had been interpreted ultimately by the Appellate Court I guess, and probably using precedent that had applied in a different context, not necessarily a disability context but somebody who I believe had been given a date-rape drug or something like that, to mean that you had to be totally unable to -- to move basically -- totally.

And that was -- that is -- they looked at the record in the case that had come before them and they saw that there had been testimony from -- actually the defendant's girlfriend who was the mother of the victim, who didn't want her boyfriend to go to jail by the way, to the effect that the daughter could screech, kick, bite and so forth and therefore manifest some level of opposition to being sexually assaulted.

I might say that the disability community's reaction to that analysis was to be outraged because no one else has to manifest an objection physically in that manner. But those terms are removed in part because they're considered

arcane and offensive but also because they just weren't effective. And so this is -- you know, the language was -- was crafted the way you see it before you in the bill.

REP. SMITH: So it sounds like they were used more as a sword as opposed to a shield to help the victim.

JIM MCGAUGHEY: Yeah.

REP. SMITH: Is that fair?

JIM MCGAUGHEY: It turned -- it turned out that they were not more useful in being elements of the crime or being charges -- you know, in finding their way into charge to a jury than -- the -- you know, they really weren't. They were not capable of precise definition. And I think Attorney Kelly had testified to the effect that in the number of cases he had -- he had brought, he had seen different charges going to juries from judges based on different interpretations just at the trial Court level as to what those terms meant.

REP. FOX: Representative Sampson.

REP. SAMPSON: Thank you, Mr. Chairman.

I don't want to beat a dead horse going back and forth over the same issue about the removed definitions. Let me just say, I mean like many of my colleagues I -- I'm very supportive of the -- the purported intent of this bill as well. I guess my concern is that I'm fearful that we're kind of raising the bar so to speak, of what is now going to be required under the new section 3 where it says, "the actor knows or has reasonable cause to believe" to me that's a higher threshold than it was before. So it almost seems like we're going backwards.

JIM MCGAUGHEY: Well, yeah, but I think it reflects the realities of both the -- the criminal procedure that is implemented but also the --you know, just the reality that you can not necessarily tell that by looking at a person that they have a disability. So it's -- the -- the realities in the sexual assault world are that an awful lot of the people who are perpetrators know their victims very well. They are -- and so that's -- that's really the situation I'm trying to get at, know them well and in fact in many cases have power over them in some way. So that's the -- that's some of what this is about.

REP. SAMPSON: Wouldn't the expansion of the definition of physically helpless to include maybe the cases that we've had brought to our attention be a better idea to get at the problem as being described?

JIM MCGAUGHEY: I guess you could go down that route. The -- the -- the victim in the Fortin Case, which is the -- the case that gave rise to this -- this legislation -- this proposal was a young woman who -- she has a mild intellectual disability but a very significant physical disability. She is able to move -- she communicates with a communication board moving her hand to different letters to spell put works and so forth.

REP. SAMPSON: Right.

JIM MCGAUGHEY: When she testified in Court they put up a movie camera -- a TV camera and then had monitors in the courtroom so that the jury could actually see her responses to the questions. She could testify for no more than 15 minutes at a time.

She became too tired to move her arm. She had to -- so they had to bring her back for five days of testimony to do this. And -- but on appellate review it was determined that she didn't meet the definitions of physically -- you know, being totally unable, which is the term that I guess the Courts have applied to define physically helpless. What it was like for this woman who has CP -- Cerebral Palsy, to be in a situation, she was sitting in her wheelchair and her mother's boyfriend assaulted her, to expect that she was somehow going to react to -- you know, in a defensive way in the situation she -- you know, this was somebody she trusted, somebody who had been part of her life for a while -- you know, it just -- people tense up.

A lot of times there's situations where if you have trouble moving, under stress it becomes exaggerated. But the Court couldn't see that somehow and so -- but the jury could see it. The jury was there seeing that.

And that's some of the -- the outrage that the disability community had over the Appellate Court decision, was -- you know, they could identify with this person and understand what she was going through but somehow on review the Appellate Court -- you know, reading the record couldn't see it I guess. So I -- I don't know it's a little bit like you know it when you see it but at the same time these are things that can be as elements of the crime, my understanding, I don't -- I've never practiced in the law.

You could even have expert testimony on some of this as to whether or not the person's mental status was such that they could not give consent or their physical status was -- and I -- so I think if it's something that does have to be proved as an element of the crime, beyond a

reasonable doubt then you know, both sides have a fair shot at you know, determining whether that's a real thing.

REP. SAMPSON: I agree. I guess my problem with this is that the threshold of proving that someone was physically unable to communicate to me is an easier situation when we're dealing with a situation like this rather than the threshold of the perpetrator actually knowing or having a reasonable cause to believe. And substituting one for the other doesn't seem to me like advancement in protecting -- you know, individuals like this.

JIM MCGAUGHEY: Well bearing in mind that a lot of the perpetrator's, in fact, know the victims very well and work with them. I think it's -- I think it will go a long way in protecting people.

REP. SAMPSON: Thanks, sir.

Thank you, Mr. Chairman.

REP. FOX: Thank you.

Any other questions?

Thank you.

JIM MCGAUGHEY: Thank you.

REP. FOX: Next we have Mary Ann Langton.

SB918

THE INTERPRETER: I asked my (inaudible) to read my testimony to you which I prepared.

How are you doing?

REP. FOX: Thank you very much.

STATE OF CONNECTICUT

OFFICE OF PROTECTION AND ADVOCACY FOR
PERSONS WITH DISABILITIES
60B WESTON STREET, HARTFORD, CT 06120-1551

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PG 14
LINE 7

Testimony of the Office of Protection and Advocacy for Persons with Disabilities
Before the Judiciary Committee

Presented by: James D. McGaughey
Executive Director
February 23, 2011

Thank you for this opportunity to comment on two of the bills on your agenda today: **Raised Bill No. 918, AAC Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired,** and **Raised Bill 6314, AAC Sexual Assault of Persons Placed or Treated Under the Direction of the Commissioner of Developmental Service.** Both of these Bills would amend the sections of the criminal code that define and classify the crimes of second degree and fourth degree sexual assault. In general, those crimes are defined by the status of the victim or by a relationship wherein the perpetrator has responsibility for, or authority over the victim. The proposed changes would address practical problems that have arisen in pursuing prosecution of individuals who sexually assaulted people with disabilities. Our Office supports both these measures

Raised Bill No. 918 would delete obsolete references in current statute to victims who are "mentally defective" or "physically helpless" – terms which both offend and, at the same time have proven inadequate to protect people with disabilities. Instead, the bill would provide that a perpetrator would be guilty of either second or fourth degree sexual assault if the ability of the victim to communicate lack of consent to sexual intercourse or sexual contact is "substantially impaired because of a mental or physical condition and the actor knows or has reasonable cause to believe that the ability of such other person to communicate lack of consent" to sexual intercourse or contact is so impaired.

Recognition that this legislation is needed crystallized following an Appellate Court decision last year that overturned the conviction of a man who had been found guilty of Second Degree Sexual Assault of his girlfriend's daughter. In addition to having mild intellectual disability, that young woman has very substantial physical disabilities which render communication, or any movement, quite difficult for her. Our Office was called to investigate this matter, and our staff investigator testified at the trial. We also ensured that police authorities were involved as it was apparent that a crime had been committed. The woman testified at the trial using a message board with assistance in the form of an elaborate system of closed circuit TV cameras and monitors so that jurors could directly view her responses to questions – response which were slow, but clear. Although she could testify for only 15 minutes at a time before becoming too fatigued to continue, and her testimony had to be spread over five days, she never waivered in her description of what had happened to her or her determination to testify about it. The jury convicted her assailant of Second Degree Sexual Assault.

The Appellate Court's decision overturning the jury's verdict has occasioned considerable concern within the disability community in Connecticut, and is being appealed to the Supreme Court. (Our Office has filed an Amicus brief in support of the State's appeal.) However, because the Appellate Court interpreted the current statutory terms to mean that the victim must be "totally incapable" of communicating, and because the language in current statute is so arcane, the need to clarify this section of the Code has become apparent.

People with disabilities have a lot at stake here. Recent data from the Bureau of Justice Statistics shows that if you have a disability you are twice as likely to be sexually assaulted as someone who does not have a disability. At the same time, we want to be careful not to create any statutory presumptions to the effect that people with significant disabilities are categorically incapable of engaging in truly consensual sexual relations. The bill before you creates no such presumption, and will go a long way toward ensuring just results for victims with disabilities. Its language has been vetted by the various groups and agencies that have an interest. I urge you to act favorably on it.

Thank you for this opportunity to comment on **Raised Bill No 6314, An Act Concerning the Sexual Assault of Persons Placed or Treated under the Direction of the Commissioner of Developmental Services.** Like RB No. 918, this bill would also amend the statutes that define the crimes of sexual assault in the second and fourth degrees. It would specifically include situations where the victim is placed or treated under the direction of DDS, and the perpetrator has supervisory or disciplinary authority over that person. Existing language addresses situations where victims are "in custody of law or detained in a hospital or other institution". However, the clear trend in human services over the past thirty years has been away from reliance on institutions and other facilities. Those with "supervisory or disciplinary authority" over DDS clients now include a variety of support workers, including drivers, job coaches, drop-in support staff and Community Companion Home (e.g. foster care) providers. Our Office has investigated situations where people who were paid to take care of DDS clients – caregivers who knew of their clients' personal histories, vulnerabilities and clinical needs, and who held power over them – had sexual relations with those clients. Those individuals could not be prosecuted, however, because there was no specific provision of the Criminal Code that proscribed their behavior. While the number these events remain relatively low, updating the statutory language will allow prosecution of those individuals who do offend in the same way that current law allows prosecution of institutional staff.

Thank you for your attention. If there are any questions, I will try to answer them.

PAGE 13
LINE 17

Advocates for people with intellectual disabilities
and related developmental disabilities

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February 23, 2011

Testimony before the Judiciary Committee:
S.B. #918 (Raised), "An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is substantially Impaired"
H.B. #6314 (Raised), "An Act Concerning the Sexual Assault of Persons Placed or Treated Under the Direction of the Commission of Developmental Services

By
Lynn C. Warner, Executive Director/The Arc of Connecticut

Senator Coleman, Representative Fox, and Members of the Judiciary Committee:

I am Lynn Warner, Executive Director of The Arc of Connecticut, a 59 year-old statewide advocacy organization for individuals with intellectual disabilities and their families. We have 23 local chapters that provide supports, services, and advocacy for individuals of all ages with intellectual and developmental disabilities throughout Connecticut.

I am here today to testify in strong support of both **S.B. 918, "An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is substantially Impaired"** and **H.B. 6314, "An Act Concerning the Sexual Assault of Persons Placed or Treated Under the Direction of the Commission of Developmental Services**, as both of these raised bills will go a long way in protecting some of the most vulnerable people who receive services and supports from the Department of Developmental Services (DDS) in Connecticut.

Among adults with intellectual disabilities, it is estimated that 83% of the females and 32% of males are the victims of sexual assault. (Johnson, I , Sigler, R. 2000. "Forced Sexual Intercourse Among Intimates," Journal of Interpersonal Violence.)

Women who live in institutional settings and women who are have multiple or significant disabilities, including the inability to communicate or speak in a manner that is considered typical or normal, are considered to be the most vulnerable to abuse because they are more dependent upon even larger numbers of people for their personal care. (Dick Sobsey, "Sexual Offenses and Disabled Victims: Research and Practical Implications", Vis-A-Vis, 1988). For example, women with disabilities often have to rely on others to help them with mobility, toileting, eating, bathing or other daily tasks. This dependence requires rather intimate relationships with a wide range of other people, including caregivers, health professionals, transportation providers and other family members. Dependence on a large network of relationships increases the chances that a woman with disabilities will experience abuse, they also have less of an ability to get away. (Health Canada, 2005).

While a disability can make it more difficult for a woman to escape or report abuse, the way society perceives persons with disabilities is probably a much more significant factor in her increased vulnerability to violence. In many ways these women tend viewed and treated as children and as lacking enough intelligence to know what has actually happened to their own bodies.

Just as any human being, a person with disabilities who cannot traditionally communicate has the right to decide who does and who does not have permission to put their hands on his or her body – whether they are supported by DDS or not. Both S.B. 918 and H.B. 6314 will reinforce this right, strengthen protections, and increase the likelihood of a criminal conviction for people who victimize vulnerable individuals.

I strongly urge this committee to vote favorable on both raised bills. Thank you for the opportunity to testify before you today.

State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY

JOINT COMMITTEE ON JUDICIARY

In Support of:

S.B. No. 918 (RAISED): An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired

H.B. No. 6314 (RAISED): An Act Concerning the Sexual Assault of Persons Placed or Treated Under the Direction of the Commissioner of Developmental Services

February 23, 2011

The Division of Criminal Justice respectfully recommends the Committee's Joint Favorable Report for S.B. No. 918, An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired, and H.B. No. 6314, An Act Concerning the Sexual Assault of Persons Placed or Treated Under the Direction of the Commissioner of Developmental Services. These bills amend the sexual assault statutes to protect vulnerable individuals who are unable to protect themselves from sexual assault.

H.B. No. 6314 is largely technical in nature. It corrects what is essentially a loophole in the existing statute that first came to light several years ago when an employee of a group home operating under a contract with what is now the Department of Developmental Services had sex with a client residing in the group home. The bill prohibits such activity much in the same fashion that existing law makes it illegal for a teacher to be sexually involved with a student or a coach to have sexual activity with a student athlete. The Division respectfully recommends a Joint Favorable Report.

S.B. No. 918 clarifies the sexual assault statutes to address recent court rulings in cases involving the sexual assault of individuals whose ability to communicate is substantially impaired due to mental or physical disability or advanced age.

In *State v. Fourtin*, 118 Conn. App. 43 982 A.2d 261 (2009), 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 Connecticut Appellate Court 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. The Committee should be aware that the state has appealed the Appellate Court decision but oral argument has yet to be scheduled before the Connecticut Supreme Court.

Even if the state prevails on the appeal, additional cases warrant action by the General Assembly to clarify the language of the statutes and the legislative intent. *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.

S.B. No. 918 was drafted by the Division of Criminal Justice to correct this situation. Originally introduced in the 2010 Regular Session, the bill was approved initially by the Joint Committee on Human Services and subsequently by the Judiciary Committee. The 2010 version (S.B. No. 315) passed the Senate but was not taken up in the House before adjournment. S.B. No. 918 includes the same language as the 2010 bill, which was patterned after two Ohio statutes:

> *gross sexual imposition, R.C. 2705 05 (A)(5)* which is similar to our fourth degree sexual assault, General Statutes § 53a-73a. (Section 53a-73a prohibits nonconsensual sexual contact and sexual contact with certain protected persons, or persons who stand in certain relationships to the actor, such as student/teacher);
>
> and *Rape, R.C. 2907.02 (A) (1) (c)* which is similar to our second degree sexual assault, General Statutes §53a-71, (Section 53a-71 prohibits sexual intercourse with certain protected persons, and persons who stand in certain relationships to the actor, such as student/teacher).

The types of situations in which these charges would be employed are reflected in the following Ohio decisions:

State v. Brown, 2009 WL3258845 (Oh. App. 3 Dist.) (2009)(finding evidence of substantial impairment where adult victim was mentally disabled, could speak only one to three word sentences, played with stuffed animals, slept with dolls, had mental capacity of five- to seven-year- old);

State v. Dorsey, 5th Dist. No. 2007-CA-091, 2008-Ohio-2515 at 43 (finding sufficient evidence of substantial impairment of 80 year old victim who suffered from dementia, lived independently, but was unable to care for herself without some assistance);

State v Thomas, 1st Dist. No. C-060318, 2007- Ohio- 1723 (finding sufficient evidence of substantial impairment where victim was mentally handicapped, worked for a company that employed those unable to maintain employment in the regular work force, was unable to live independently, and was unable to find her way home from any point at a significant distance from her house);

State v. Shepherd, 8th Dist. No. 81926, 2003- Ohio- 3356 (finding sufficient evidence of substantial impairment where 33 year old victim, who lived alone, had a mental age of five, and had child-like interests such as coloring, playing hide and seek, and watching cartoons.).

The Division of Criminal Justice believes S.B. No. 918 addresses the problems identified in the recent Connecticut cases and would afford greater protection to those unable to protect themselves from sexual assault. As demonstrated in the Ohio decisions, the language of this legislation has been tested and affirmed by the courts. Given the very serious nature of the conduct involved and the potential threat to vulnerable individuals, the Division of Criminal Justice believes the General Assembly should proceed immediately with the enactment of this legislation regardless of the pending appeals in the specific cases. Accordingly, we would respectfully request the Committee's Joint Favorable Report for S.B. No. 918.

The Division expresses its appreciation to the Committee for its consideration of these proposals. We would be happy to answer any questions or to provide any additional information the Committee might require.

Pg 1 Line 2

Dannel P Malloy
Governor

State of Connecticut
Department of Developmental Services

DDS

Peter H. O'Meara
Commissioner

Kathryn du Pree
Deputy Commissioner

TESTIMONY OF THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
TO THE
JUDICIARY COMMITTEE

February 23, 2011

Senator Coleman, Representative Fox and members of the Judiciary Committee. I am Peter O'Meara, Commissioner of Developmental Services. Thank you for the opportunity to testify in support of our department's proposal **H.B. No. 6314 - An Act Concerning the Sexual Assault of Persons Placed or Treated under the Direction of the Commissioner of Developmental Services.**

This bill clarifies that it is a crime (sexual assault in the second degree) for someone with supervisory or disciplinary authority to engage in sexual relations with a consumer (client) of the Department of Developmental Services (DDS). It also clarifies that it is a crime (sexual assault in the fourth degree) when someone with supervisory or disciplinary authority intentionally subjects a consumer of DDS to sexual contact. Currently, Section 17a-276 states that "all persons admitted to a state training school, regional facility or other facility provided for the care and training of the mentally retarded shall, until discharged therefrom either by the commissioner or by operation of law, be under the custody and control of the director of such facility." This legal status has been considered sufficient to establish "in custody of law" for the sexual assault statutes. However, the argument could be made that Sec 53a-71 and Sec 53a-73a, as currently written, do not apply to persons who receive supports and services under the direction of the DDS Commissioner, when those persons are not in "placement in a facility", and have a relationship with staff providing such supports and services H.B. No 6314 seeks to clarify this ambiguity.

This issue was raised when a similar situation happened in the DCF system and the prosecutor was able to apply the statute and seek sexual assault charges against the staff person. It came to light that if this happened in the DDS system, the same protections might not exist depending upon interpretation of the current statute and the term "in the custody of law". As DDS consumers and their families continue to take charge of their individual budgets and hiring decisions, and with other new modes of providing supports and services under the direction of the DDS Commissioner, it becomes more important that penalties be increased for serious misconduct on the part of staff that would prey on vulnerable individuals in the community.

The language in this bill is the same as was proposed in 2009 in H.B. No 6645, which passed unopposed in the Judiciary and Public Health Committees and in the House. The intent is to prohibit a person who has disciplinary or supervisory authority over a person placed or treated under the direction of the Commissioner of Developmental Services in any public or private facility or program from engaging in sexual activity with such person This statutory amendment would also be consistent with our commitments to the federal government regarding the state's efforts to protect persons with intellectual disability. It is our hope that there will never be the necessity to use the provisions of these statutes, but we believe that it is important to have these prohibitions, as criminal sanctions, in place.

Thank you for the opportunity to testify in support of H.B. No. 6314. Please contact Christine Pollio Cooney, Director of Legislative Affairs at (860) 418-6066 if you have any questions.

S – 632

CONNECTICUT
GENERAL ASSEMBLY
SENATE

PROCEEDINGS
2011

VOL. 54
PART 21
6546-6914

Continuing calendar page 26, one additional item: Calendar 598, House Bill Number 6629.

Move to place this item on the Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Moving now to calendar page 27, where we have several items. First item, Madam President, is Calendar 600, House Bill Number 6314.

Madam President, move to place this item on the Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Continuing calendar page 27, Calendar 601, House Bill Number 6529.

Madam President, move to place the item on the Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Mr. Clerk.

THE CLERK:

Immediate roll call's been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber. Immediate roll call's been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber.

THE CLERK:

Madam President, the items placed…

THE CHAIR:

I would ask the Chamber to be quiet please so we can hear the call of the Calendar for the Consent Calendar.

Thank you.

Please proceed, Mr. Clerk

THE CLERK:

Madam President, the items placed on the first Consent Calendar begin on calendar page 5, Calendar 336, House Bill 5697.

Calendar page 7, Calendar 421, Substitute for House Bill 6126.

Calendar page 8, Calendar 449, Senate Bill 1149.

Calendar page 10, Calendar 470, Substitute for House Bill 5340. Calendar 474, Substitute for House Bill 6274. Calendar 476, House Bill 6635.

Calendar page 12, Calendar 499, Substitute for House Bill 6638. Calendar 500, House Bill 6614. Calendar 508, House Bill 6222.

Calendar page 13, Calendar 511, House Bill 6356. Calendar 512, Substitute for House Bill 6422. Calendar 514, House Bill 6590. Calendar 515, House Bill 6221. Calendar 516, House Bill 6455.

Calendar page 14, Calendar 517, House Bill 6350. Calendar 519, House Bill 5437. Calendar 522, House Bill 6303.

Calendar page 15, Calendar 523, Substitute for House Bill 6499. Calendar 524, House Bill 6490. Calendar 525, House Bill 5780. Calendar 526, House Bill 6513. Calendar 527, Substitute for House Bill 6532.

Calendar page 16, Calendar 528, House Bill 6561. Calendar 529, Substitute for House Bill 6312. Calendar 530, Substitute for House Bill 5032. Calendar 532, House Bill 6338.

Calendar page 17, Calendar 533, Substitute for House Bill 6325. Calendar 534, House Bill 6352.

Calendar 536, House Bill 5300. Calendar 537, House Bill 5482.

calendar page 18, Calendar 543, House Bill 6508. Calendar 544, House Bill 6412. Calendar 546, Substitute for House Bill 6538. Calendar 547, Substitute for House Bill 6440. Calendar 548, Substitute for House Bill 6471.

Calendar page 19, Calendar 550, Substitute for House Bill 5802. Calendar 551, House Bill 6433. Calendar 552, House Bill 6413. Calendar 553, Substitute for House Bill 6227.

Calendar page 20, Calendar 554, Substitute for House Bill 5415. Calendar 557, Substitute for House Bill 6318. Calendar 558, Substitute for House Bill 6565.

Calendar page 21, Calendar 559, Substitute for House Bill 6636.

Calendar page 22, Calendar 563, Substitute for House Bill 6600. Calendar 564, Substitute for House Bill 6598. Calendar 566, House Bill 5585.

Calendar page 23, Calendar 568, Substitute for House Bill 6103. Calendar 570, Substitute for House Bill 6336. Calendar 573, Substitute for House Bill 6434.

Calendar page 24, Calendar 577, Substitute for House Bill 5795.

Calendar page 25, Calendar 581, House Bill 6354.

Calendar page 26, Calendar 596, Substitute for House Bill 6282. Calendar 598, Substitute for House Bill 6629.

Calendar page 27, Calendar 600, House Bill 6314. Calendar 601, Substitute for House Bill 6529. Calendar 602, Substitute for House Bill 6438. Calendar 604, Substitute for House Bill 6639.

Calendar page 28, Calendar 605, Substitute for House Bill 6526. Calendar 608, House Bill 6284.

Calendar page 30, Calendar number 615, Substitute for House Bill 6485. Calendar 616, Substitute for House Bill 6498.

Calendar page 31, Calendar 619, Substitute for House Bill 6634. Calendar 627, Substitute for House Bill 6596.

Calendar page 32, Calendar 629, House Bill 5634. Calendar 630, Substitute for House Bill 6631. Calendar 631, Substitute for House Bill 6357. Calendar 632, House Bill 6642.

Calendar page 33, Calendar 634, Substitute for House Bill 5431. Calendar 636, Substitute for House, correction, House Bill 6100.

Page 34, Calendar 638, Substitute for House Bill 6525.

Calendar page 48, Calendar 399, Substitute for Senate Bill 1043.

Calendar page 49, Calendar 409, Substitute for House Bill 6233. Calendar 412, House Bill 5178. Calendar 422, Substitute for House Bill 6448.

Calendar page 52, Calendar 521, Substitute for House Bill 6113.

Madam President, that completes the item placed on the first Consent Calendar.

THE CHAIR:

Thank you, sir.

We call for another roll call vote. And the machine will be open for Consent Calendar number 1.

THE CLERK:

The Senate is now voting by roll on the Consent Calendar. Will all Senators please return to the Chamber. The Senate is now voting by roll on the Consent Calendar, will all Senators please return to the Chamber.

Senator Cassano, would you vote, please, sir.

Thank you.

Well, all members have voted. All members have voted. The machine will be closed, and Mr. Clerk, will you call the tally?

THE CLERK:

Motion is on option Consent Calendar Number 1.

Total Number Voting	36
Those voting Yea	36
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

Consent Calendar Number 1 has passed.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

We might stand at ease for just a moment as we prepare the next item…

THE CHAIR:

The Senate will stand at ease.

(Chamber at ease.)