

**PA13-47**

HB6641

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**S - 659**

**CONNECTICUT  
GENERAL ASSEMBLY  
SENATE**

**PROCEEDINGS  
2013**

**VOL. 56  
PART 8  
2153 - 2500**

Mr. President, if there's no objection I'd ask that this bill as amended be placed on our Consent Calendar.

THE CHAIR:

Without objection, so ordered. Mr. Clerk.

THE CLERK:

On page 27, Calendar 561, substitute for House Bill number 6641, AN ACT CONCERNING THE SEXUAL ASSAULT OF A PERSON WHO IS PHYSICALLY HELPLESS OR WHO'S ABILITY TO CONSENT IS OTHERWISE IMPAIRED, favorable report of the Committee on Judiciary.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President. I move acceptance of the joint committee's favorable report and passage of the bill in concurrence with the House.

THE CHAIR:

On acceptance and passage in concurrence will you remark, Sir?

SENATOR COLEMAN:

Mr. President, this bill does two fairly important things in response to a superior court decision that caused some controversy. The Fourtin case was a prosecution for sexual assault and it was sexual assault of a female who suffered from cerebral palsy and couldn't speak and was very limited as far as communication is concerned.

And unfortunately when the case was appealed to the appellate court the issue of consent was before the court and I guess the outcome and decision was that the court felt that it could not determine whether there was consent or not because while the victim or

alleged victim could not speak she could have screamed or screeched, kicked or bitten to communicate lack of consent. She did not according to the evidence do any of these things. That decision was appealed to the supreme court and the supreme court upheld the decision of the appellate court.

And so what we have done in the Judiciary Committee is to try to fashion a bill that would address a situation and this bill does two important things. First it changes some wording. There was some wording, mentally defective was found by the advocates of the developmentally disabled to be offensive and so that wording is stricken from the statutes and replaced with impaired because of mental disability or disease. And the second thing that the bill does is to redefine physically helpless which is language that appears in the statute regarding sexual assault in the fourth degree as well as sexual assault in the second degree.

Sexual assault in the second degree involves intercourse. Sexual assault in the fourth degree involves contact. But as far as the issue of consent is concerned physically helpless is redefined to mean a -- a person's that physically helpless when that person is unconscious or for any other reason is physically unable to resist an act of sexual intercourse or sexual contact or to communicate unwillingness to an act of sexual intercourse or sexual contact.

And it is felt that with that definition while the situation that occurred in the Fourtin case may not be completely resolved it will be addressed as effectively as it can be at least to this point in time. Again I think the -- the bill accomplishes to a certain extent its purpose and objective and I would urge support here in the Senate. Thank you, Mr. President.

THE CHAIR:

Thank you. Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President. Some questions through you to the proponent of the bill.

THE CHAIR:

Please proceed, Sir.

SENATOR KISSEL:

We're referencing the supreme court decision and I believe you say -- said it was Horton -- H-o-r-t-o-n. Is that correct?

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President. F-o-u-r-t-i-n is the spelling of the name. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you. And I just wanted to make sure I had the right pronunciation so Fourtin. And in the Fourtin case which I think an awful lot of folks without stating that they felt that the court decision was incorrect felt that it was somewhat hard hearted to require a woman to bite or claw or what were some of the other things? What -- what did the court -- the underlying court that's supported by the supreme court say that the woman should have done but did not do if you could -- I know you stated it originally but just to reiterate that. Through you, Mr. President.

THE CHAIR;

Senator Coleman.

SENATOR COLEMAN:

I guess the ruling of the court was that in order to communicate lack of consent the individual could have screeched, kicked or bitten and she did not do apparently any of those things. And so consequently the trial affect should not have found beyond a reasonable doubt that the intercourse was not consensual. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. And so using the notion that an individual in her -- and do we know that her -- let me take a step back. Do we know her medical condition? What's the underlying medical condition that would elicit a decision that stated she should have screamed, kicked or bit? Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

The individual's diagnosed with cerebral palsy. She was nonverbal and at best she communicated through pointing to letters. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

So her medical condition, through you, Mr. President, was such that she was almost mute that she could not speak and therefore she had to evince here disapproval of the conduct by -- this is by the court, screaming, kicking or biting. Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Mr. President, through you. As I indicated that was the determination of the court. Through you to Mr. -- Senator Kissel.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. So now with the passage of this bill we have -- let's say we have by way of example the exact same individual or an individual in the exact same situation, a woman suffering cerebral palsy that is effectively unable to speak what does the -- under the new law what would the woman have to do in a similar situation to evince clearly that they are not a willing participant in the sexual activity? Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

I think -- through you, Mr. President. And I'm looking for that -- that section. I think the word intentionally was also removed from the sexual assault statute so that it would almost be a strict liability so to speak offense to engage in sexual intercourse with a person whose ability to communicate lack of consent was impaired. Through you, Mr. President, to Senator Kissel.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. SO -- so now just to -- to -- for legislative history and I fully intend to support this bill and I know that we struggled with this to try to come up with a solution to this court case

because it's not easy. But it's almost as I think I heard you say strict liability. So for -- I mean what would it take for an individual with cerebral palsy that can't speak to evince an indication that they are a willing sexual participant?

Because one of the issues that arose was that advocates for those with disabilities said their folks that they represent want to be able to be active participants in personal relationships as much as anybody else. And so is it simply the fact that the woman doesn't go to the police or -- or what is that bright -- is there a bright line test at all for an individual with cerebral palsy that has no ability to verbalize? Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Mr. President. That is in fact the challenge that is presented to us I suppose as public policymakers regarding this situation. And it is unclear to me although I agree with the advocates that people who have been diagnosed with cerebral palsy or any other condition should certainly have the opportunity to have a sex life.

It is unclear to me how this bill can accomplish that and at the same time protect people in that situation. So that's the challenge I think that's been presented to us as public policymakers and I suppose the challenge that remains with the court and the officers of the court. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. So let's say a State's attorney is brought in and the case is presented to him or her such that there was a sexual relationship between a man and a woman suffering from cerebral palsy such

that she could not verbalize assent to the sexual intercourse. The gentleman testifies that she was indicating that she was a willing participant. And what would it be -- what would the State's attorney look to to bring a charge against that gentleman? Would it be the passage of time?

In other words if the woman at the first available opportunity to communicate with someone in law enforcement would that be important or as is sometimes the case the trauma sometimes causes the victim to sort of withdraw for a period of time for a variety of reasons; shock, shame, disbelief such that maybe several days pass before the individual then reports to the police.

What would the State's attorney look to to try to bring a case to determine whether the male was the aggressor and effectively rape the woman or that the woman was a willing participant and just has decided to change her story or did not as an after the fact decided to change how she wanted to report out what took place? Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President. If I understand the question correctly, through you, to Senator Kissel in order for a State's attorney to even be involved someone would have made a complaint to the police or some other officials and then I guess there would be some exercise of discretion on the part of the State's attorney whether to -- to proceed with prosecution or not. But the -- the application of the language of the statute would certainly put the individual who engaged in sex with the impaired person probably have a uphill battle in terms of convincing the State's attorney that the act was a consensual act. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. And while I appreciate the efforts that we're making here and as I indicated I intend to support the bill it -- I can see how it could have a chilling effect in that if one has a sexual relationship with a physically impaired individual, let's use the woman with the cerebral palsy that cannot verbalize her intentions, one puts oneself at risk if after the fact what was originally perceived and I'll even go as far as saying actually was consensual but if the woman after the fact then decides to effectively change her view of that the -- the individual charged has -- it would seem to be that the individual charged has a burden of proof thrust upon him, could be her and that how does that mesh with the burden of proof being on the State to prove a matter beyond a reasonable doubt? Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President. I was trying to follow Senator Kissel -- I guess I apologize and have to ask him to repeat his question. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Sure. Utilizing the Fourtin case as our example but -- but -- or the individuals. Let's say that it was a consensual sexual act. Gentleman approaches with cerebral palsy, she's unable to verbalize consent and yet everything indicates it's a consensual sexual relation activity throughout an evening. Then for whatever reason five days down the road the woman says I really don't like that guy and I don't care if I throw his whole life in turmoil. I'm going to go to

the police and say I was raped. Not unbelievable. Certainly possible.

In our current judicial system the defendant, the accused is A innocent until proven guilty and B the State has the burden of proof to prove guilt beyond a reasonable doubt based upon the evidence. What this sets up though is almost a presumption and I thought I heard Senator Coleman, you state that the individual so accused would have an uphill battle with the State's attorney.

And so while I understand we're trying to balance equities here and trying to afford the disabled individual with some means other than biting and screaming and clawing how does the fact that the State's attorney might presume that there was a lack of consent -- how does that mesh with everything else in our criminal justice system such that one is innocent until proven guilty and that it is up to the State to prove guilt beyond a reasonable doubt.

It is not up to the individual to disprove their guilt. And I ask this question because if for some reason down the road we are faced with similar circumstances under this statute if I'm the defendant I'm going to state that this is unconstitutional because it is putting the burden of proof on me, the defendant not me, the Senator but the defendant in the action because this statute says that if you're in a sexual relationship with an individual that falls under the parameters of being disabled there is a presumption that it was nonconsensual.

And I don't see how those -- with the best of intentions and it's been very difficult to solve this issue being the underlying Fourtin case is so heart -- heart wrenching but I'm not so sure upon reflection this afternoon whether what we're doing here this afternoon would withstand constitutional scrutiny. And I'm wondering if any constitutional scholars -- I don't recall them at the hearing but I'm wondering if in the good Senator's opinion this could withstand such a challenge and what would be the basis for that success? Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President. I appreciate the Senator's question. I am comfortable that the statute would withstand constitutional scrutiny. At the same time I share the Senator's concern regarding the situation as we're very often called upon to do I think it's a balancing of protecting helpless individuals and I guess on the other side of that balance also making certain to the extent possible that impaired individuals who want to engage in sex have the opportunity to do that. But as far as the constitutional question is concerned this statute would not be much unlike the statute that applies to sexual intercourse with minors or sexual contact with minors.

And in that situation the State would have the burden of proving beyond the reasonable doubt all of the elements of the statutory rape statute. And in particular with respect to minors the State would primarily have to prove that the person who the defendant had sex with was under the age of 16 years of age or actually under the age of 18 years of age.

And in the case of a person whose ability to communicate consent is indeed impaired the State would have to prove beyond a reasonable doubt that this individual suffered from a mental disease or disability that impaired the individual's ability to communicate consent and that the defendant had sexual intercourse with this individual. Both of those things would have to be proven beyond a reasonable doubt and I think having done that any constitutional question would be resolved. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. And I very much appreciate that

answer. Hopefully that will go a long way if there's ever a constitutional challenge to the statute in a court of law. And clearly I'm just trying to establish legislative history, not trying to filibuster this bill. I do have one or two additional questions and shifting gears a little bit. We're talking -- in the Fourtin case we were talking about cerebral palsy.

I'm wondering if in this statute or in the bill we're defining who this will apply to and what I'm concerned about and it may -- this may be an easy answer, those that may have taken drugs or those that may have become intoxicated such that their mental status and their physical disposition would be substantially similar to the woman in the Fourtin case because there are many stories of individuals who may have taken drugs that evening or may have gone to a bar or something like that such that they may not be passed out but they may be sort of between an acute cognitive state and something less than that and they may be in such a torpor that they can't even effectively communicate verbally similar to the woman in the Fourtin case. And so I'm wondering what individuals may avail themselves of this statute should they be victimized by a sexual assault. Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Mr. President. I suppose the best answer that I can give to Senator Kissel would be this bill would not apply to someone who -- there may be other laws that apply but this bill would not apply and it's not intended to apply to someone who is intoxicated, really intoxicated. It does apply to anyone who was -- could be considered physically helpless in the sense they would have to be unconscious or for any other reason physically unable to resist an act of sexual intercourse or -- or sexual contact or unable to communicate an unwillingness to engage in sexual intercourse or sexual contact. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. So just to clarify because at the beginning of your statement, Senator Coleman, you said it would not apply to people intoxicated but what if an individual was either so intoxicated either through -- through alcohol or so drug addled that they were effectively what we would call passed out which can last a few minutes up to a few hours. What would prevent someone who's the victim saying of course I couldn't respond. I had eight long island iced teas in the course of a few hours and I was completely passed out and I can't believe that this gentleman just did this to me and I -- there's no way I could give consent.

And then the defendant, the accused would say hey when I -- when I -- when we began the interaction she was drunk but she was assenting to what I was doing and you know I can see that kind of -- and again these are very difficult cases for the State's attorney because they're usually he said she said cases and they're -- usually have to have some sort of corroborative evidence but is any kind of use of alcohol or drugs an absolute bar or if one can somehow substantiate that one is passed out that that would at least meet the threshold of -- of the State utilizing this statute to -- to proceed? Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Mr. President. In order for this bill to apply the person would have to be unconscious. Merely intoxicated I don't think would invoke the protections of this bill. And I suppose if a person's intoxicated and feels that they were taken advantage of whether or not there was consensual sex that ensued would be a question of fact to determine -- to be determined for

the prosecution by a judge or a jury. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you. And again not to belabor this but you know the colloquial term is passed out and I don't know if unconscious is more of a medical term such as someone's in a coma. And so I -- again very simple if someone had either taken so many drugs or alcohol or some mixture such that they were unconscious for some period of time is that enough to avail the State to utilize this statute against the accused such that the accused is presumed to have essentially sexually assaulted the -- the victim? Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President. And through you. I believe that would be sufficient. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. Thank you, Mr. President. Thank you, Senator Coleman for that clarification. I think we've established quite a -- a legislative history on this particular bill. It's been a difficult bill for the Judiciary Committee to get its arms around. But given some of the nuances involved in trying to solve this issue I think that we would all agree that the Fourtin case was heart wrenching. And to try to require someone to scream, bite or claw, we as a civilized society have a -- an obligation to try to do

better and hopefully this would withstand any kind of constitutional challenge.

We did the best we can on the committee and I applaud Senator Coleman's efforts and Representative Fox's and the others who worked really hard on trying to come up with a solution for this particular issue. And therefore I'm happy to support the bill at this time. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator. Senator Meyer.

SENATOR MEYER:

Very briefly, Mr. Chairman. This bill is a good bill and would come a long way if we pass it. I want to tell you that when I was studying in New York for the New York State Bar Exam I took a bar review course by Professor Charles Sparacio and he came into the class one day to tell us and explain to us the law of rape. And he said this is going to be very easy students. New York is a scream, scratch and bite state and if you don't scream, scratch and bite it's not rape. What we've done today is we've advanced the cause of women, women's rights in a much more civilized sense. And I'm happy and enthusiastic to support the bill.

THE CHAIR:

Thank you, Senator. Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President. Just briefly in support of -- of the bill. I'd like to second the comments of the distinguished Chair of the Judiciary and Senator Kissel and Senator Meyer also is that what is -- one of the things that was most disturbing about the Fourtin decision is that it seemed to almost return the law in Connecticut to as Senator Meyer pointed out the time when there was in many states what was called the utmost physical resistance standard that basically required the victim of a sexual assault to have evidence of physical resistance often involving evidence of additional injury sustained by the victim

beyond the sexual assault itself as -- as evidence of that assault.

Thereby -- thereby putting the victim actually in more danger of greater harm and greater injury than she might have suffered otherwise in the assault. That most enlightened jurisdictions had moved beyond that standard in terms of evaluating evidence in sexual assault cases. And that was one of the disturbing things about the Fourtin case that it seemed to be in effect taking a step back toward what the law had been prior to the more enlightened modern approach to those cases. So certainly applaud the committee for bringing forward the bill. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator. Senator Fasano.

SENATOR FASANO:

Thank you, Mr. Chairman. I rise in support of the bill as well and I know that all of you are on the same page as you discuss and ask these questions to try to establish a record here. A person that's physically helpless for most of us we can't understand that because we take things for granted. We wake up in the morning and we do what we do and most of family members do. And so sometimes it's hard to understand why somebody couldn't create resistance or whatever it may be.

And I think that Senator Meyer's comments about scream and so on are very appropriate. I had a brother with spinal bifida and he spent many years in hospitals and much of his time before he was able to come home to Nantucket in a place called Lakeville State Hospital in Middleboro. I was there every weekend and I can tell you I saw children who never, never would be able to speak out, to scream, to reach out to resist.

They were almost living body parts in many cases with no ability to function. And without a law like this to protect them they never would have a chance in the court system. So this is long overdue. And -- and I'm pleased to see it and pleased to support it. Thank you.

THE CHAIR:

Thank you, Senator. Senator Boucher.

SENATOR BOUCHER:

Thank you, Mr. President. Mr. President, I rise to support this bill and to commend the members of the Judiciary Committee particularly Senator Coleman and Senator Kissel for their work on this bill. In listening to the debate going back and forth and the difficulty in getting language that would somehow be able to differentiate if this individual's a willing participant or if they were a victim. I was thinking about a case that had nothing to do with rape in my district.

You know we all have constituent work that we do that never make the papers. It's often confidential. Many things can come up that they bring to you when they have no other recourse. And I remember getting a call by an 85 year old woman in tears in my district that felt embarrassed, disappointed and didn't know where to turn because someone had robbed her essentially of \$1,700. It was someone that promised to fix her car when she got her insurance check and never fixed her car and basically took her money. And she did try to call the police and the police didn't listen to her because when questioning this individual they basically said well she's a senile old lady and really doesn't know what she's talking about. And I was surprised but -- that the police department took his word against hers.

And in questioning her further and she embarrassed. She didn't know quite what to do and she told me that someone did witness it. Someone had overheard this. It was her accountant. So I called the police chief back and I said listen if this was your 85 year old mother how would you feel about this? Please pursue this further, bring this individual in, get his statement. And in fact this is what they did and the individual that was the perpetrator which I would call a crime was brought in to the police department, threatened with incarceration and they immediately wrote that \$1,700 check back to that individual.

And the reason I bring this up is because we had a law that I learned about during this process in our State that makes it a further penalty and crime if one were to cheat someone over the age of 60 and or is disabled. And so you know I thought about that and thought about why do we add an additional penalty for someone that's disabled. And it's obvious that they're not in a position of strength to be able to be their own advocate.

And this is a clear example of the same that we're discussing here about someone that has such a disability that is such an easy prey that can be a victim for all manners of crimes and certainly this is one of the most heinous of crimes. So I thank the committee on behalf of the disabled, on behalf of women though by the way this can happen to any gender and with all kinds of disability but particularly in addressing something that obviously needed to be addressed.

So I thank you on behalf of all of them. I'm really proud of the work that you've done and certainly the discussion should be put to rest as why this is a very good bill. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator. Will you remark further on the bill as amended? Remark further on the bill as amended? If not, Senator Coleman.

SENATOR COLEMAN:

Mr. President, if there is no objection I move that this item be placed on our Consent Calendar.

THE CHAIR:

Is there objection? Without objection, so ordered.  
Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President. Mr. President, if the Clerk would -- would call as the next items Calendar page

THE CHAIR:

The bill passes in concurrence with the House.

Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President. Mr. President, if would mark all items previously marked go should be marked passed retaining their place on the Calendar. And if the Clerk would call the items on the Consent Calendar so that we might proceed to a vote on the Consent Calendar.

THE CHAIR:

Mr. Clerk. Mr. Clerk.

THE CLERK:

On page five, Calendar 229, Senate Bill 1027, Calendar 232, Senate Bill number 984. On Calendar page nine, Calendar 336, House Bill 6529, Calendar 337, House Bill 5310. Also on page nine Calendar 338, House Bill 6313 and Calendar 339, House Bill 6315. On page ten, Calendar 345, House Bill 5970. And on page 13, Calendar 393, Senate Bill number 872. Page 18, Calendar 468, House Bill 5388. Page 27, Calendar 561, House Bill 6641 and Calendar 565, House Bill 6346. And on page 40, Calendar 302, Senate Bill 1016.

THE CHAIR:

Thank you, Mr. Clerk. The machine will be opened, vote on a Consent Calendar.

THE CLERK:

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

THE CHAIR:

Have all members voted? Have all members voted?  
Please check the board and make sure your vote has accurately recorded. If all members have voted the machine will be closed and the Clerk will announce the tally.

THE CLERK:

On today's Consent Calendar.

Total Number Voting	36
Necessary for Adoption	19
Those voting Yea	36
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

Consent Calendar 1 passes. Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President. Mr. President, before moving for moving for adjournment for today would like to announce that we will likely be in -- in session next week Tuesday, Wednesday and Thursday and also possibly Friday so members should reserve those four days next week as -- as possible or probable session days. At this point, Mr. President, would yield the floor to members for announcements of committee meetings or for other points of personal privilege.

THE CHAIR:

Thank you, Senator. Before we do that I would like to just to take the privilege of -- May is a big birthday month and we have one of our members who is celebrating her birthday tomorrow. I would like to wish Senator Bye a happy birthday tomorrow and I'm trying to figure out if her birthday wish was granted as she's not here as she would have liked to have been here. But happy birthday.

And there is a bipartisan fruit in the caucus room for Senator Bye because she didn't want a cake so we got her some fruit that's -- that she requested. So

**H - 1157**

**CONNECTICUT  
GENERAL ASSEMBLY  
HOUSE**

**PROCEEDINGS  
2013**

**VOL.56  
PART 8  
2370 - 2742**

DEPUTY SPEAKER ORANGE:

Have all members voted? Have all members voted?  
Please check the board to determine if your vote has  
been properly cast. If all members have voted, the  
machine will be locked and the Clerk will take a  
tally, please.

And would the Clerk please announce the  
tally.

THE CLERK:

Bill 6311.

Total number voting	142
Necessary for adoption	72
Those voting Yea	142
Those voting Nay	0
Those absent and not voting	8

DEPUTY SPEAKER ORANGE:

The bill passes.

Will the Clerk please call Calendar Number 463.

THE CLERK:

Yes, Madam Speaker, on page 33, House Calendar  
463, favorable report of the Joint Committee on  
Judiciary, Substitute House Bill 6641, AN ACT  
CONCERNING THE SEXUAL ASSAULT OF A PERSON WHO IS  
PHYSICALLY HELPLESS OR WHOSE ABILITY TO CONSENT IS

OTHERWISE IMPAIRED.

DEPUTY SPEAKER ORANGE:

The distinguished chairman of the Judiciary Committee, Representative Gerald Fox.

REP. FOX (146th):

Thank you, Madam Speaker.

I move for the acceptance of the joint committee's favorable report and passage of the bill.

DEPUTY SPEAKER ORANGE:

The question before the chamber is acceptance of the joint committee's favorable report and passage of the bill. Will you remark, sir?

REP. FOX (146th):

Thank you, Madam Speaker.

This bill comes before us with the support of the Division of Criminal Justice as well as CONNSACs. It's a bill that we've heard in the Judiciary Committee over the course of at least a couple of years now and what it does is it attempts to address a problem that the testimony that has brought before us during a series of public hearings and what that is is that those who suffer from mental disabilities are individuals who at times twice as likely to be victims of sexual assault than those who don't. And one of

the elements that has been brought to our attention is that oftentimes those individuals are not able to consent to sexual acts and what happens, as a result, they can be abused or subject to abuse.

One of the issues, though, in speaking with prosecutors in a recent Supreme Court decision, is that the definition of "physically helpless" in our statute does not necessarily meet the need that would help these individuals to bring a claim who are suffering from mental diseases. And what this bill does is it really does two things. It -- in one area, it changes the terminology where it says current law says "mentally defective," it changes that to "mental disability or disease." It also expands the definition of physically helpless to include -- to include those who are physically unable to resist an act of sexual intercourse or sexual contact or to communicate unwillingness to an act of sexual intercourse or sexual contact.

Now, in the bill that came out of the Judiciary Committee, there was a definition that was needed and it -- and it should be incorporated here. And what -- what we've done, Madam Speaker, is the Clerk has an amendment, LCO Number 6580. I would ask that that be

called and I be allowed to summarize.

DEPUTY SPEAKER ORANGE:

Will the Clerk please call LCO Number 6580, which will be designated as House Amendment Schedule "A."

THE CLERK:

House Amendment Schedule "A," LCO 6580 offered by Representative Fox and Rebimbas.

DEPUTY SPEAKER ORANGE:

The Representative seeks leave of the chamber to summarize. Is there any objection? Objection?

Seeing none, Representative Fox.

REP. FOX (146th):

Thank you, Madam Speaker.

What this does is it takes the definition that formerly for "mentally defective" and it includes the definition of "impaired because of mental disability or disease" and I move adoption of the amendment.

DEPUTY SPEAKER ORANGE:

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

Representative Rebimbas, the distinguished ranking member of the Judiciary Committee, you have the floor, madam.

REP. REBIMBAS (70th):

Thank you, Madam Speaker.

And I want to thank Representative Fox for introducing this amendment as well. It's an amendment that certainly I do support and it does provide the clarification that's needed for the underlying bill that we have today as highlighted by Representative Fox. So I do support the amendment.

DEPUTY SPEAKER ORANGE:

Thank you, madam.

Will you care to remark further on the amendment before us? Will you care to remark on the amendment before us?

If not, let me try your minds. All those in favor please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ORANGE:

All those opposed nay.

The ayes have it. The amendment is adopted.

Will you care to remark further on the bill as amended? Will you care to remark further on the bill as amended?

Representative Fox.

REP. FOX (146th):

Thank you, Madam Speaker.

As I said in my opening remarks, this is a bill that will hopefully and it is the intention to address those situations where people do have mental disabilities and are unable to -- to consent or to express a willingness to consent when faced with sexual contact. What it -- it is the hope here that this bill will address those concerns that prosecutors have raised when they struggled to find the appropriate charge in situations where they know it should fall under this definition and they're not sure if it does and it's hope that this will assist them as they proceed in prosecuting these cases.

DEPUTY SPEAKER ORANGE:

Thank you, sir.

Representative Rebimbas.

REP. REBIMBAS (70th):

Thank you, Madam Speaker.

I do rise in support of the bill that's before us. As has been previously already testified to, it certainly does expand the definition of sexual assault with respect to individuals who are physically helpless and it clarifies what the criteria for that

would be. It also strengthens our Connecticut law as well as to hold offenders accountable in that regard. And again, you know, many times here on the House floor, we're passing legislation that protects a lot of our most vulnerable people and certainly those with these types of mental disabilities and/or mental diseases are some of our most vulnerable residents in the state of Connecticut and this legislation I ask for everyone's support.

But through you, Madam Speaker, just for legislative intent, to the proponent of the bill just a question just for clarification purposes. One of the items that came up during the question and answer whether or not a consensual sexual act with someone with a mental disease would cause them to be criminally liable under this bill, through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Through you, Madam Speaker, the answer to that would be no. A consensual act would, of course, still be permitted.

DEPUTY SPEAKER ORANGE:

Representative Rebimbas.

REP. REBIMBAS (70th):

Thank you, Madam Speaker.

And thank you, Representative Fox, for that clarification for legislative intent.

DEPUTY SPEAKER ORANGE:

Thank you, Madam.

Will you care to remark further on the bill as amended? Will you care to remark further on bill as amended? Will you care to remark?

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

THE CLERK:

The House of Representatives is voting by roll.

The House of Representatives is voting by roll. Will members please return to the chamber immediately.

(Speaker Sharkey in the Chair.)

SPEAKER SHARKEY:

Have all members voted? Have all members voted? Please check the board to determine if your vote has been properly cast. If all members have voted, the

machine will be locked and the Clerk will take a tally.

And would the Clerk please announce the tally.

THE CLERK:

Bill 6641 as amended by House "A."

Total number voting 139

Necessary for adoption 70

Those voting Yea 139

Those voting Nay 0

Those absent and not voting 11

SPEAKER SHARKEY:

The bill as amended passes.

Representative Nafis.

REP. NAFIS (27th):

Thank you, Mr. Speaker.

The Clerk is possession of a list bills to be referred which are the bill referred on today's go list. I move that we waive the reading of the lists and refer the bills to the committees as indicated.

SPEAKER SHARKEY:

The motion is to refer to the bills to the committees as indicated on our go list. Is there any objection? Is there any objection?

Seeing none, the bills are referred to the

**JOINT  
STANDING  
COMMITTEE  
HEARINGS**

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CHIEF STATES ATTORNEY KEVIN KANE: Thank you, Senator Coleman, Representative Fox, Representative Ritter, and Representative Rebimbas, and the rest of the members of the Committee.

I am here to speak on behalf of the Division of Criminal Justice. I am here to speak about number five on the agenda, Number 6641, AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPAIRED.

I also want to note the Division's support of another bill on the agenda, and that's House Bill Number 6664. Although I don't intend to speak on it, I want it clear that the Division does support that bill. I will try to answer any questions about it.

Going back to 6641, this is an issue that has troubled prosecutors and many others for several years now as we've seen cases develop and be difficult to handle. And often it's couched in terms of the Appellate Court's decisions that are unjust or something similar to that. It's not really the fault of the Appellate Courts at all. We've seen Trial Courts, and Appellate Courts, and prosecutors trying to wrestle with the definitions of some terms in our Sexual Assault in the Second Degree Statute, and our Sexual Contact Statute.

These are crimes of categorized -- have categories of certain victims, whether it's

because of their age, or because of their relationship with a teacher or counselor and patient, etc., or teacher and student, or in this case, people suffering from -- from various types of disabilities, both mental and physical.

The wording of this statute that has most concerned us, or the definition category that's most concerned us, is those that prohibit sexual -- or make it a crime to -- to engage in sex with somebody who's physically helpless.

Physically helpless, as is defined today in this statute, does not mean what we think it might normally mean. Physically helpless, the way this statute means is a person who is unconscious or physically unable to communicate unwillingness to act. Now there are people -- we've had cases that have been extremely difficult. We had one where a victim was in an ambulance, restrained, could not act, and was -- somebody else in the ambulance had sexual contact with her. She did not fall into that category of physically helpless even though she was physically helpless, but because of the fact she could stay stop, or say no, it didn't -- that section didn't cover that section.

The type that we're wrestling with that is very hard to deal with is the person who, because of a disability -- developmental disability, is unable to -- is what we consider to be physically helpless. We've had a case in which -- it's the one that's going to be referred to often, *State v. Fourtin* in which the victim had

severe disabilities, but was able to bite, screech, and scratch, and she was sexually assaulted. And because of the fact she could voice her displeasure with the assault, or make sounds in an attempt to voice her displeasure, she did not fall into the category of physically helpless.

This bill today is the product of many years of work with many different groups and advocacy groups. It strikes a balance that was very, very hard to strike. In the wording, it's made clear, the advantage of time in *State v. Fournier*, both the majority and the dissenting opinion in that case really focus on that issue and made it clear what we have to do. These changes here, which would change that definition, and which would make the other change in the statute are very helpful. It's a product I hope that this year it will pass.

Thank you.

SENATOR COLEMAN: Thank you, Attorney Kane. Are there questions for Attorney Kane?

Chairman Fox.

REP. FOX: Thank you, Chairman Coleman, and thank you, Attorney Kane.

You're -- you're right when you say that it is a difficult statute or bill to write, and it's one of the ones that we've wrestled with, and I think the courts have wrestled with, and I think we spoke earlier about how the courts can

wrestle with it when they are attempting to charge a jury. I think the prosecutors can struggle with what statute is the appropriate one to go -- go with when they bring their case. And what is it about this -- this language that we have here that makes us more confident that we can get this right?

CHIEF STATES ATTORNEY KEVIN KANE: The key change to this -- right now the category that we're concerned with is physically helpless. As defined in the statute now, physically helpless means unconscious or physically unable to communicate unwillingness to act. This will add language which will provide for an alternative, and that alternative is "or is physically unable to resist," so that when a person who is developmentally disabled and really can't resist, but can voice sounds by grunting or groaning, that being -- it will add that definition so that would cover the situation that we had in *Fourtin*. It would cover the situation that we had with the victim in the ambulance, somebody who, although they can communicate to a degree their lack of consent, they can't resist it, and have no way of resisting it. This will expand the definition to permit that.

REP. FOX: And what if -- does the actor need to know that the person's unable? That's I think is one of the (inaudible).

CHIEF STATES ATTORNEY KEVIN KANE: It's a -- it's an affirmative defense if the actor did not know -

REP. FOX: Okay.

CHIEF STATES ATTORNEY KEVIN KANE: -- that the person -- and that is in the bill. It's in -- toward the end of the bill.

REP. FOX: Sorry. I mean I have the bill as well. I just thought it would be helpful to have the (inaudible).

CHIEF STATES ATTORNEY KEVIN KANE: We have it there. That's important, too. The actor has to -- has to be aware of that.

REP. FOX: And we had -- there have been discussions, and a lot of the supporters of this bill have brought out correctly that this -- the group -- the population that this group would seek to protect is often one of the most victimized groups because of their difficulty in communicating. And do -- do you think this will help prosecutors?

CHIEF STATES ATTORNEY KEVIN KANE: This will help in a variety of ways. A number of -- yes, it certainly -- the language will help us. We've had these cases that we often couldn't get to the jury, or would decide not to charge where we felt we should. The expansion of these definitions will help us greatly in that area.

Also, the whole idea about -- about this -- this group of victims: a) they're easily victimized; b) they're very hard to investigate those cases. They're very difficult. They do

have difficulty communication -- communicating, making people understand them. Across the board from beginning to end, they're difficult. They're -- they're -- they're hard to present the evidence with because of communication issues, because we have to find ways to corroborate and present other information about their real abilities and the limitations that they have, and to be able to focus. So they're difficult across the board. The wording of the statute, as it has been in the past, has made it impossible for us to prosecute cases that really needed to be and should have been prosecuted, and this will help us greatly.

REP. FOX: Thank you. Thanks for your testimony. Thank you, Mr. Chairman.

SENATOR COLEMAN: Thank you, Mr. Chairman. Are there other members with questions?

Representative Adinolfi.

REP. ADINOLFI: Hi. Nice to see you here again.

CHIEF STATES ATTORNEY KEVIN KANE: Hello.

REP. ADINOLFI: What -- would this disability only apply to people with disabilities, or if the person is disabled by the rapist, or the predator? But by that I mean where the mouth is gagged and the hands are tied. Now that person's disabled at the time of the incident.

CHIEF STATES ATTORNEY KEVIN KANE: That would fall under First Degree Sexual Assault, which -- which is all ready a crime.

REP. ADINOLFI: Okay.

CHIEF STATES ATTORNEY KEVIN KANE: That's all ready covered very clearly by the law.

REP. ADINOLFI: Okay. Thank you.

SENATOR COLEMAN: Are there other questions or comments?

Seeing none, thank you very much Attorney Kane.

CHIEF STATES ATTORNEY KEVIN KANE: Thank you.

SENATOR COLEMAN: James McGaughey.

JAMES MCGAUGHEY: Good morning, Senator Coleman and Representative Fox, members of the Judiciary Committee. My name is Jim McGaughey. I'm the executive director of the Office of Protection and Advocacy for Persons with Disabilities, and just like Chief States Attorney Kane, I came to testify on Bill Number 6641, AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPAIRED.

I have submitted written testimony. I won't read it, and I won't restate the facts of the case that sort of brought this problem to everyone's attention, because Chief States

Attorney Kane has done -- has done that all ready.

But I would just say that when the Appellate Court announced its decision overturning the jury's verdict, and then subsequently the Supreme Court affirmed that decision, there was considerable concern within the disability community in Connecticut because I think folks with disabilities are quite aware of the fact that there are a lot of unreported, and uninvestigated, and unprosecuted sexual assaults that occur. And there was concern about how can we access -- what kind of justice is there for -- for folks with disabilities?

This -- the bill as Attorney Kane indicated -- the decisions in the Supreme Court decision and the Appellate Court decision were sort of based on the statutory definition of the term "physically helpless." This bill would expand that definition to include a victim who is either unconscious or for any other reason is physically unable to resist an act of sexual intercourse or sexual contact, or to communicate unwillingness to such an act.

The other thing that the bill does that's totally unrelated to that case -- there was an opportunity to remove a particularly offensive term which was the term "mentally defective," and so it substitutes a more acceptable term for that which is "mental disability or disease." I think effectively it's -- it will have the same -- the same value in terms of the

weight of the law, but it's -- it's much less offensive.

Given the fact that there's so much -- that sexual assault is such a pervasive problem for folks with disabilities, and that it is so difficult to get a handle on it in terms of law enforcement response, there is a temptation to want to completely rewrite the statutes here to make it easier to prosecute. The difficulty there is that we can also inadvertently create presumptions that people are not competent or not capable of entering into consensual relationships. And so we wanted to make sure that that didn't happen.

The groups that have come together and ultimately came to consensus around the language that's in this bill I think would all agree that there's been a fair balance struck on those concerns. So we -- we believe that it will, in fact, close the existing loopholes that were exposed by the Fourtin case, and that it is definitely a step forward, but that it is not over reaching.

And that's the essence of what I said in my written testimony, so I'd be happy to answer any questions if there are any.

SENATOR COLEMAN: Do the members have any questions for Attorney McGaughey?

There are apparently no questions. Thank you for your testimony. Very good.

That does exhaust the names of individuals who signed on the public officials list, so we'll now turn to the general public list, and the first person to sign up on that list is -- it looks like Kark Kuegler.

KARK KUEGLER: Good morning, Senator Coleman, Representative Fox, Senator Doyle, Representative Ritter, Senator Kissel, Representative Rebimbas, and members of the Judiciary Committee. Thank you for the opportunity to submit testimony on behalf of Imagineers, LLC.

My name is Karl Kuegler. I'm the director of property management for Imagineers, LLC. We are a common interest community management company based out of Hartford and Seymour. We serve 178 communities from offices in Seymour and Hartford that comprise just about 17,000 condominium and other types of common interest homes. We're registered with the Department of Consumer Protection. We actually hold registration number 0001. We've been serving communities for over 32 years. I have been in the industry for 23 years and have -- hold the -- I am a certified manager of common interest communities, and serve on CAI's legislative action committee as well as chair of the organization's annual state educational conference that was just held earlier this month.

I'd like to submit testimony on two bills: Bill 6662 and Bill 6513. I have written

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PAUL KNIERIM: Am I going to regret that I said that?

REP. O'DEA: Let -- let me just say that while I was eating my lunch, I did take a pause when I heard you say that, so let me just -- just curious as to who you think should be appointing, if you had the choice?

PAUL KNIERIM: I'm speaking to you now from personal opinion, and nothing else. And only to reiterate that I did say there's certainly pros and cons to both elections and appointment processes for probate judges. But in my own opinion, a merit selection process that involves screening by a commission like the Judicial Selection Commission, and then ultimately nomination by the governor, and confirmation by the legislature would be appropriate for the Probate judges as it is for Superior Court judges.

REP. O'DEA: Thank you, sir. Thank you, Mr. Chair.

SENATOR COLEMAN: Any other members with questions or comments?

If not, thank you very much.

PAUL KNIERIM: Thank you for your time.

SENATOR COLEMAN: Barbara Albert.

BARBARA ALBERT: Good afternoon, members of the Judiciary Committee, also to everyone else. My name is Barbara Albert, Hartford renter,

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registered voter, and advocate for the disadvantaged, for civil rights and human rights, also for mental health rights, with Keep the Promise Coalition, and several other volunteer organizations. I'm on Medicare, Medicaid and Social Security Disability since the late 80s. I have multiple medical challenges including mental illnesses.

According to scientific studies, I will die 25 years earlier than the general population. I did used to work regular work before my illnesses became too overwhelming. Now I am called indigent and unemployable.

This is my testimony in support of Raised Bill Number 6641, AN ACT CONCERNING SEXUAL ASSAULT OF PERSONS WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPAIRED. I understand statement of purpose is to provide that sexual intercourse of sexual contact with a person whose ability to resist or communicate consent is substantially impaired because of such person's mental or physical condition constitutes the offense of sexual assault.

All kinds of abuse began at a very early age. My virginity was taken before I was even out of diapers. Various abuses continued until I could physically get away. I don't know what - - I didn't know what was being done was wrong. Therapy for me began ten years before I got on disability, before I was 20 years old. For my 21st birthday, the main abuser openly admitted to squeezing and tickling my inner thighs to get me to giggling. I was very little. I

still don't remember that. The main abuser said that -- said this at my birthday dinner while my boyfriend at the time was sitting across from me, as I sat there feeling totally ashamed, embarrassed, angry and humiliated, not understanding why. I all ready had started seeing a therapist because I had been hospitalized for psychiatric and substance abuse issues.

There were many more humiliations, suicide attempts, self mutilations and hospitalizations. The last time I was abused, it was forced genital contact. Other people were in the room. We were at my grandfather's funeral. No one saw anything. I couldn't move or speak. I needed to leave my body in order to not totally lose it. I was an adult age. I kept asking what is wrong with me. I have no proof of this happening other than an extensive psychiatric record and self mutilation which will never match the scars on my insides.

This is why I respectfully request support for Raised Bill Number 6641. There is still too many of us that don't talk, and/or aren't ready to remember, or don't want to remember any more. Stephen King once wrote, "Monsters are real and ghosts are real, too. They live inside us. Sometimes they win." Please help make sure they don't win anymore.

Thank you for listening.

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SENATOR COLEMAN: Thank you for your testimony. Are there questions for Ms. Albert? If not, thank you very much.

BARBARA ALBERT: It's good to see you again, Senator Coleman.

SENATOR COLEMAN: Good to see you as well.

Natasha Pierre.

NATASHA PIERRE: Good afternoon, Senators Coleman and Kissel, and members of the Committee. I'm Natasha Pierre, the policy and legislative director for the Permanent Commission on the Status of Women, and I'm here today to testify in support of House Bill 6641, AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPAIRED, and ~~and~~ House Bill 6664, AN ACT CONCERNING RESTRAINING ORDERS.

House Bill 6641 has been before this Committee in the past with your support and no opposition. While the bill was in committee, the issue was also before the Supreme Court and many thought the problem would be fixed in court. Sadly it was not fixed because the Court found that if a physically or developmentally disabled woman was conscious, she is not physically helpless if she could kick, bite, or scratch her way out of being raped.

So we are back again this year to close a gaping hole in Connecticut law that allows

offenders to get away with raping someone who is physically or developmentally disabled. House Bill 6641 would help close the loophole.

We strongly support passage of this bill because we should stop blaming the victim, stop making excuses for the offender, and start holding offenders accountable for their violent behavior.

Regarding House Bill 6664, we also support that. It would extend eligibility for civil restraining orders to all victims of stalking and sexual assault. The current law was framed to protect domestic violence victims, and thus is restricted to family or household members. However, people also need additional protection to be saved from rapists and stalkers. A change in the law would help almost 57 percent of sexual assault survivors, and 36 percent of stalking victims by allowing them to get a restraining order against their assailant, who is thankfully not a family member, but rather an acquaintance, stranger, or person of authority. Victims need to be safe no matter who the assailant is, and this bill would provide additional protection.

And we thank you for your consideration.

SENATOR COLEMAN: Thank you for your testimony.

Are there questions? There are apparently no questions. Thank you for your time and your input here.

SENATOR DOYLE: Thank you. Any further questions from the Committee? Seeing none, thank you very much.

TERRY SULLIVAN: Thank you.

SENATOR DOYLE: Next speaker is Susan Yolen, then Kim McClain, Lauren MacDonald, Kristie Leff, Rebekah Diamond.

Is Susan here? Yes, she is. Good afternoon.

SUSAN YOLEN: Good afternoon, Senator Doyle. I'm Susan Yolen. I'm with Planned Parenthood of Southern New England. I'm the vice president for policy and advocacy, and I'm here to speak on H.B. 6641 and that's concerning the sexual assault of persons whose ability to communicate lack of consent is substantially impaired.

Just as a piece of background, Planned Parenthood is the state's largest provider of family planning and reproductive health care. We operate 18 health centers in the state, and we serve nearly 65,000 people, including a whole number of people in Rhode Island where we also have services.

I'd first like to say that we've done a lot of work with the disability rights community and been aware for a long time of the desperate need for access to basic reproductive health care by women with disabilities, which brings us to our support for this bill, because we realize that healthcare providers are unaware

of these needs. Many of them don't offer services. They don't have the equipment necessary to offer the appropriate care to women who need reproductive health care, and disturbingly many providers don't actually understand that women with disabilities engage in healthy, consensual sexual behavior, and at the same time, as you've heard earlier today, regrettably they're sexually assaulted twice as often as people without disabilities.

So the fact that we have an egregious result in *State of Connecticut v. Richard Fourtin* is no surprise. The result of this ruling is that in order to be considered physically helpless, and to receive special protection, an individual must be unconscious or in a state akin to unconsciousness.

The changes suggested in H.B. 6641 include removing the hideously offensive term "mentally defective," and replacing it with more acceptable language describing those with mental disability or disease. Even more critical, the language will clarify the definition of physical helplessness to mean that a person is physically helpless when he or she is conscious, but physically unable to resist, or communicate unwillingness to submit to a sexual act.

As you know, the court ruled that although the victim in the Fourtin case couldn't speak or walk and needed assistance with virtually every activity of daily life, she still theoretically

could have resisted her rapist by biting, kicking, or scratching.

Individuals with disabilities deserve our protection, and the presumption that we should expect that each of us will do whatever is possible to resist a rape if you are confronted with that threat. People with disabilities deserve the same justice.

As advocates of Planned Parenthood for reproductive justice, we believe that all people should be free of oppression and have the right to independent decision making when it comes to their bodies, gender, and sexuality. When we have unfair laws that disadvantage marginalized communities, we have created an unjust and unequal system.

Virtually everyone agrees that H.B. 6641 is a good bill, and regardless of the many challenges that all of you face this particular legislative session, it must be enacted before another Fourtin case is allowed to stand. We urge you to pass 6641. Thank you very much.

SENATOR DOYLE: Thank you, Susan. Let me just point this bill was around the last two years, and unfortunately it didn't get through both chambers, so we're hoping, as Senator Kissel said, hopefully the third time's the charm.

SUSAN YOLEN: Right. We hope so. Thank you so much.

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that this is a very time-consuming process, the \$250 would represent just a small portion of the State's exposure in processing that claim.

SENATOR DOYLE: Thank you very much. Any questions from the Committee? Seeing none, thank you very much.

KIM MCCLAIN: Thank you. I appreciate your time.

SENATOR DOYLE: Sure.

Next speaker is Lauren MacDonald, then Kristie Leff, Rebekah Diamond, Peter Jones.

Lauren MacDonald.

LAUREN MACDONALD: Good afternoon, Distinguished Committee Members. My name is Lauren MacDonald and I'm a second-year law student at Quinnipiac University School of Law, and a resident of Hamden, Connecticut. I am also a student in the law school's Civil Justice Clinic which provides free legal services to indigent people, many of whom have intellectual and physical disabilities.

We support Raised Bill Number 6641, AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPAIRED.

As the Connecticut Supreme Court noted in *State v. Fournin* last fall, the term physically helpless has an unusual and very limited definition. It is not enough that a person is

unable to resist unwanted sexual advances to be considered physically helpless. A victim must be unable to communicate. This demanding standard for qualifying as physically helpless deprives protection to virtually anyone who is awake and able to move. As a result, few people meet the standard.

For example, in *People v. Orda*, a man who was paralyzed from the neck down was sexually assaulted by a home health aide who removed him from his wheelchair and performed oral sex on him. A New York Trial Court held that this man was not physically helpless because he spit and screamed in protest.

In *People v. Morales*, a woman with muscular dystrophy, who was paralyzed from the neck down and used a wheelchair, was sexually assaulted by a man who broke into her apartment. The woman verbally protested during the assault, but was unable to physically resist the attack due to her paralysis. A New York Trial Court held that she was not physically helpless because she screamed for help.

In *State v. Bucknell*, a woman with Lou Gehrig's disease, who was paralyzed from the chest down, was sexually assaulted by her brother who threatened to hurt her if she told anyone. The Washington Court of Appeals held that she was not physically helpless because she was able to talk and answer questions.

In *People v. Huurre* a woman with cerebral palsy, epilepsy, intellectual disabilities, and

no understandable speech was sexually assaulted. The Court of Appeals of New York held that she was not physically helpless because she could make guttural noises and understand a few signs.

And finally, in *State v. Fournin*, a woman with cerebral palsy, intellectual disabilities, and hydrocephalus was sexually assaulted by her mother's boyfriend. The Connecticut Supreme Court held that she was not physically helpless because she could communicate by various non-verbal means including the use of a communication board, as well as by gestures, biting, kicking and screaming.

As these cases demonstrate, a demanding standard for qualifying as physically helpless creates a tragic paradox for people with disabilities. They are disabled enough to be preyed upon, but not disabled enough to be protected under the law prohibiting such conduct.

As a result, people with disabilities who are sexually assaulted now find themselves in a catch-22. They can say nothing and allow the violator to offend with impunity, or they can tell someone and find they are not protected under the law because they are not physically helpless. No matter what they do, people with disabilities find no justice. Raised Bill Number 6641 protects people with disabilities by lowering the standard for qualifying as physically helpless.

In conclusion, Connecticut law should not deprive people with disabilities the protection against sexual assault by requiring that they meet a demanding standard for qualifying as physically helpless. The victim in *Fourtin* and the people of Connecticut deserve better, and our laws ought to do better. We urge this Committee to do justice and approve Raised Bill Number 6641. Thank you very much for your time and the opportunity to present this.

SENATOR DOYLE: Thank you. Any questions from the Committee? Seeing none, thank you very much.

LAUREN MACDONALD: Thank you.

SENATOR DOYLE: The next speaker is Kristie Leff, then Rebekah Diamond, Peter Jones, Dan Rys.

Is Kristie Leff here? Yes, she is.

KRISTIE LEFF: Thank you, Senator Doyle, members of the Committee. My name is Kristie Leff. I'm an attorney at Bender, Anderson and Barba. I'm here to speak in favor of Raised Bill Number 6662.

Collection of monthly common charge assessments is vital to the effective operation and economic stability of condominium associations. The legislature recognized this in 1984 when it enacted the Common Interest Ownership Act. Section 47-258 of that Act allows condominium associations to foreclose when a unit owner does not pay common charges. Section 47-258(b) currently provides that the association's lien

restore the status quo regarding the way these foreclosure actions have been handled since 1984, and preserves the intent of the statute which is to protect the financial stability of condominium associations.

Thank you for your time, and I'll answer any questions if there are any.

SENATOR COLEMAN: Are there questions for Ms. Leff? You've apparently been thorough in your comments. No questions. Thank you for your testimony.

KRISTIE LEFF: Thank you.

SENATOR COLEMAN: Rebekah Diamond.

REBEKAH DIAMOND: Good afternoon, Senator Coleman, Representative Fox and members of the Committee. My name is Rebekah Diamond. I am a student at UConn School of Social Work, and I've worked with developmentally disabled adults for the past five years.

Today I am here in support of H.B. 6641, AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPAIRED. In removing the wording "developmentally defective" from the Connecticut General Statutes, Section 1 through 4, and replacing it with impaired because of -- of mental disability or disease, I believe that you would be returning power to those who have been marginalized for so long.

The Merriam-Webster Dictionary defines defective as "imperfect in form, or falling below the norm." By using language such as developmentally defective, we are inviting the public to think of those who are disabled -- disabled as less than the rest of us. Within our country and within our state, we have made tremendous strides as we have worked to bring people who are impaired due to mental, physical, disability of disease out of the institutions and into the community.

But I'm here to say that with language such as "mentally defective," we are in a way keeping them institutionalized. By defining these individuals as defective, we are not allowing them to reach their full potential and to practice their autonomy.

It is up to you, our state's -- our state's elected officials to set an example for the rest of the citizenry of Connecticut and remove this derogatory language from the legislation. I respectfully urge you to pass this bill. Thank you.

SENATOR COLEMAN: Thank you. Are there questions? Seeing none, thank you for your testimony.

Next is Peter Jones.

PETER JONES: Good afternoon --

SENATOR COLEMAN: Good afternoon.

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rc/gbr JUDICIARY COMMITTEE

March 25, 2013  
10:00 A.M.

REP. FOX: Thank you, and thank you for your testimony and for waiting here this afternoon, and for filling in. Are there any questions? Thank you very much.

KRISTIN FERGUSON: Thank you.

REP. FOX: Next is Anna Doroghazi. Hello, Anna.

ANNA DOROGHAZI: Hello. Good afternoon, Representative Fox, Senator Coleman, and members of the Committee. My name is Anna Doroghazi and I'm the director of public policy and communication at Connecticut Sexual Assault Crisis Services. CONNSACs is the statewide coalition of Connecticut's nine local community-based sexual assault crisis services programs. During our last fiscal year our advocates throughout the state provided support services and counseling to over 7000 victims and survivors of sexual violence in their loved ones.

I'm here today to speak in support of House Bill 6641, AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPAIRED, and also House Bill 6664, AN ACT CONCERNING RESTRAINING ORDERS.

A lot of other folks have all ready done a very thorough job of addressing the need for House Bill 6641, so I'll just briefly say that CONNSAC strongly supports this legislation. We know that several court cases have pointed out the limitations of the existing statute when it

comes to sexual assault victims who are physically helpless, whether due to a physical or mental disability or some other extenuating circumstance.

We believe that 6641 will address these limitations and make it easier for prosecutors to hold offenders accountable when they sexually assault individuals with disabilities.

This bill will also remove the phrase "mentally defective" from the statute, and replace it with language that is both less offensive to individuals with mental disabilities and diseases, and also more effective at addressing exactly what we're hoping to protect in the statute.

We respectfully request the committee's support of this bill and look forward to its success this session.

I'd also like to speak in support of House Bill 6664, AN ACT CONCERNING RESTRAINING ORDERS.

This bill would allow all victims of sexual violence and stalking to apply for civil restraining orders. Currently state law permits survivors of these crimes to obtain civil restraining orders, but only if the offenders are considered family or household members, so relatives, roommates, individuals who have a child in common, partners current or former. Family or household members perpetrate fewer than half of sexual assaults, and only about two-thirds of stalking incidents.

together as a master -- under a master association. Each condo has its own board, generally nine members. The nine members are -  
- select the trustee who is on the board. It is not a direct vote by the unit owners.

REP. O'NEILL: Okay. That's -- that's the point that I was trying to get at. Thank you very much.

REP. FOX: Thank you. Are there other questions?

A VOICE: (Inaudible).

REP. FOX: Well, are you signed up to speak, sir. Oh, you already spoke. Maybe you can just talk to Representative O'Neill privately.

Anybody else? Any members of the committee?

Thank you very much, sir.

CALVIN TURIN: Thank you.

REP. FOX: Next is Meg McDermott.

MEG MCDERMOTT: Can you hear me?

REP. FOX: Yes. Yes.

MEG MCDERMOTT: Thank you for allowing me to speak today, Members of the Committee. And my name is Meg McDermott and I live in Unionville, Connecticut. I'm speaking on behalf of the Developmental Disabilities Council where I'm co-chair -- where I co-chair the legislative policy and program committee. The Council is

HB 6641

governor -- a governor-appointed body which includes people with developmental disabilities, family members, and professionals working toward full inclusion of children and adults with all disabilities in the community. As a woman with disabilities, this bill has special meaning to me.

The Council is in favor of Raised Bill 6641 for the following reasons. The proposed language would strengthen Connecticut law so that offenders would be accountable when they sexually assault people with developmental disabilities. The -- the phrase "developmentally defective" will be removed from the State statute and replaced with more appropriate language. And the proposed bill will clarify the term "physically helplessness" as defined in -- in the Connecticut Assault -- Sexual Assault Statutes.

The new definition clearly will state that a person -- that a person is physically helpless when he or she is -- is conscious, but physically unable to resist or communicate their willingness to a sexual act.

Nationally, 20 -- 20 percent of woman and 10 percent of men are sexually abused. These statistics are significantly higher for people with disabilities because predators may view people with disabilities as being vulnerable and easy to exploit. Their attackers may be their parents and other family members, personal assistants, spouses, as well as other people who may take advantage of them. We need

to ensure that -- that our most vulnerable citizens are protected from sexual assault. The Council urges that you vote yes on -- on Bill 6641.

And finally, I just want to say that -- that it's important to remember that sexual assault can -- can happen to any woman, man, or child. This time disability does not put us in -- in a separate group. We all must come together to stop abuse. Thank you.

REP. FOX: Well thank you, and thanks for your commitment to being here all day. Are there questions? Thank you very much for your testimony before us.

Next is Mary DeLucia. Hello.

MARY DELUCIA: Hello. Good afternoon, Representative Fox and Distinguished Members of the Judiciary Committee. My name is Mary DeLucia and I am the campus advocate for the Sexual Assault Crisis service of YWCA in New Britain. I'm here today in support of H.B. 6641, AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPAIRED.

(HB6664)

I have been a sexual assault counselor advocate for many years now, and have worked with many survivors, all -- the majority, if not all have said if their verbal no was not listened to, they did not fight back.

Sexual assault is a crime of power and control, and it is about forcing or coercing someone to give up their power over their own body. H.B. 6641 will more clearly define someone being physically helpless, as someone who is conscious, but unable to resist or communicate their unwillingness to submit to a sexual act. This adjustment is much needed to hold sex offenders criminally accountable. People with disabilities are twice as likely -- likely to be sexually assaulted than people without disability, and the law needs to sufficiently defend their rights for a violence-free life.

Our consent law of "No Means No" is not enough to protect people who do not have the ability to speak or otherwise resist to sexual acts due to physical or developmental restrictions, not to mention having physical or mental disabilities makes someone more vulnerable to abuse -- to abuse because they are more reliant on others.

I cannot count how many times I have heard of someone sexually assaulted by another patient or a staff member of an institution where they were getting help. Sexual assault is about power and control, and it's too easy for the offender to sexually assault someone who is physically or developmentally disabled because they can easily overpower them.

An example of the dire need for H.B. 6641 to be passed is seen in the 2012 case which you have heard about in previous testimony, the *State of Connecticut v. Richard Fourtin*. Because of the

conviction of this case, the defendant was let go of the crime of rape because the victim did not -- could have fought back and didn't. During the sexual assault the fear of -- that survivors are feeling puts them in a frozen state where they cannot flee, fight, or do anything but survive the assault. A sexual assault offender wants control over the survivor regardless of fighting back.

I strongly urge the committee to support H.B. 6641. Advocates have fought for many years to pass this bill, and it is a good bill that closes a loophole that has existed for too long, and all ready let at least two offenders off of raping someone.

I also -- I also strongly urge the Committee to pass H.B. 6644, AN ACT CONCERNING RESTRAINING ORDERS that will allow sexual assault survivors to obtain a restraining order. As the campus advocate, I have heard of many cases of survivors of sexual assault being raped or sexually assaulted by friends or mutual acquaintances, and if they have not pressed charges, they see their assailant almost every day on campus, at various events, and social gatherings, and they are re-traumatized because of it.

(HB6664)

Thank you for your time.

REP. FOX: Thank you for your testimony. Are there questions? I don't see any, but thank you very much.

positive attitude in our Village will suffer. Property values are likely to fall from excessive penny pinching, and we may be burdened with sudden assessments to correct false economy. Heritage Village has never had an assessment up to now.

So please don't make budget rejection easier. Maintain your present well-developed, well-thought out system. Thank you very much. I appreciate your time, and I don't know how you do it.

REP. FOX: Well you're here today too, so, no, thank you very much.

DAVID ROBERTS: Thank you.

REP. FOX: And we appreciate it, and we'll have to talk about this. A lot of response today in the public hearing process.

DAVID ROBERTS: Thank you.

REP. FOX: Geralyn Laut. Hello.

GERALYN LAUT: Hi. My name is Geralyn Laut.

REP. FOX: Laut; I'm sorry.

GERALYN LAUT: I live at 126 South Mill Drive in South Glastonbury which is one of 87 units in the South Mill Condo Association. Just briefly I just want to recap my support of H.B. 6662 with the amendment to include the evergreen clause.

SB 1101    SB 1145  
HB 6513    HB 6641

I would like to personally oppose H.B. 1101 concerning security cameras. Quite honestly one does lose an element of privacy living in a multi-unit development, and I don't personally think I would like my neighbors to see me coming and going from my back porch or side common area. I think that should be something that would be left up to an individual association and not the gentleman's concern.

I would also oppose 1145 and 6513. I have attended board meetings and I, too, avow for the time and energy that's put into a voluntary position as the board of directors. I would trust their judgment regarding decisions for the long-term benefit of a community such as South Mill, and quite honestly, after hearing testimony earlier -- I was not here to testify on behalf of 6641, but I would like to support that bill in honor of those people that are not able to be here because of physical and developmental problems to support such an effort.

Thanks for your time and energy.

REP. FOX: Well thank you. That sometimes happens. People sit here all day. They listen to another bill and they end up testifying on that. So that's great.

GERALYN LAUT: Yeah. No. That certainly seems like something that should be addressed.

REP. FOX: Well thank you.

**Pachkovsky, Alex**

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**From:** Langton, Mary-Ann <Mary.Ann.Langton@ct.gov>  
**Sent:** Friday, March 22, 2013 2:59 PM  
**To:** Jud Testimony  
**Subject:** AN ACT CONCERNING SEXUAL ASSAULT  
**Attachments:** McDermott testimony, HB6641 FINAL DRAFT.docx

**Judiciary Committee**

**March 25, 2013**

**Testimony in FAVOR of H.B. 6641**

**AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPAIRED.**

My name is Meg McDermott and I live in Unionville CT. I am speaking on behalf of the CT Council on Developmental Disabilities, where I co-chair the Legislative Policy and Program Committee. The Council is a Governor-appointed body which includes people with developmental disabilities, family members and professionals working toward full inclusion of children and adults with all disabilities in the community. As a woman with a disability, this bill has special meaning to me.

The Council is in **FAVOR** of Raised Bill 6641 for the following reasons: 1. The proposed language would strengthen Connecticut law so that offenders would be accountable when they sexually assault people with developmental disabilities. 2. The phrase "mentally defective" will be removed from state statutes and replaced with more appropriate language; and 3. The proposed bill will clarify the term "physical helplessness" as defined in the Connecticut sexual assault statutes. The new definition clearly will state that a person is "physically helpless" when he or she is conscious but physically unable to resist or communicate unwillingness to a sexual act.

Nationally, 20% of women and 10% of men are sexually abused. These statistics are significantly higher for people with disabilities because predators may view people with disabilities as being vulnerable and easy to exploit. Their attackers may be their parents and other family members; personal assistants; spouses; as well as others who may take advantage of them.

We need to ensure that our most vulnerable citizens are protected from sexual assault. The Council urges you to vote **YES ON BILL 6641**.

**Thank you.**

**Meg McDermott**

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STATE OF CONNECTICUT  
COUNCIL ON DEVELOPMENTAL DISABILITIES



Judiciary Committee

March 25, 2013

Testimony in FAVOR H.B. 6641

AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS  
WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS  
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We need to ensure that our most vulnerable citizens are protected from sexual assault. The Council urges you to vote **YES ON BILL 6641**.

**Thank you.**

Testimony of the Sexual Assault Crisis Service of YWCA New Britain  
IN SUPPORT OF HB 6641 AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS  
WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY  
IMPAIRED AND HB 6664 AN ACT CONCERNING RESTRAINING ORDERS.

Mary DeLucia, Campus Advocate  
Judiciary Committee, March 25, 2013

Senator Coleman, Representative Fox, and distinguished members of the Judiciary Committee, my name is Mary DeLucia and I am the campus advocate for the Sexual Assault Crisis Service of YWCA New Britain (SACS), which is a crisis counseling and advocacy center for survivors of sexual assault for the Hartford county and part of the Tolland county areas. I am writing in support of HB 6641 AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPAIRED. I am also in support of HB 6664 AN ACT CONCERNING RESTRAINING ORDERS.

I have been a sexual assault crisis counselor-advocate for many years now, and have worked with survivors who have disabilities as well as with survivors who do not have disabilities. The majority - if not all - of the survivors I have worked with did not fight their attacker when their verbal "No" was not listened to. Sexual assault is a crime of power and control; it is about forcing or coercing someone to give up their power over their own body. HB 6641 will more clearly define someone being "physically helpless" as someone who is conscious but unable to resist or communicate their unwillingness to submit to a sexual act. This adjustment to the already existent bill is much needed to hold sex offenders criminally accountable. People with disabilities are twice as likely to be sexually assaulted than people without disabilities and the law needs to sufficiently defend their rights to a violence-free life. Our consent law of "No means No" is not enough to protect people who do not have the ability to speak or otherwise resist to sexual acts due to physical or developmental restrictions. Not to mention, having physical and developmental disabilities makes someone more vulnerable to abuse because they are more reliant on others. I cannot count how many times I have heard of someone sexually assaulted by either another patient or a staff member of an institution that was supposed to be helping them. Since sexual assault is about power and control it is too easy for an offender to sexually assault someone who is physically or developmentally disabled because they can easily overpower them, especially with this law the way it is written currently.

An example of the dire need for HB 6641 to be passed is seen in the 2012 case of the State of Connecticut versus Richard Fournin. This case had a conviction for sexual assault overturned because even though the survivor lacked the ability to speak and was paraplegic; she did not scratch, kick, or fight her assailant, so they could not prove that she did not consent. During a sexual assault, the fear that survivors are feeling puts them in a frozen state where they cannot flee, fight, or do anything but survive the assault. A sexual assault offender wants control over the survivor regardless of fighting back, and in many cases it may actually be safer for the survivor to refrain from fighting their attacker. It is unacceptable to allow the sex offender to be vindicated with this heinous crime simply by saying it was a consensual act because the survivor was not "physically helpless" and could have fought back. If this same disabled survivor was instead the victim of a mugging, would we be asking her why she did not fight her mugger before giving them her wallet? Most likely, we would not.

I strongly urge the committee to support HB 6641. Advocates of sexual assault centers have been trying to pass HB 6641 for four years, and though we do not have any organized opposition to it, it still has not passed. This is a good bill that closes a loophole that has existed for too long and already

let at least two offenders off with raping someone. Even when saying "No" to an assault, victims rarely engage in physical combat with their attackers; if someone is not able to communicate their resistance to consent due to physical or developmental restrictions, it is still illegal if the initiator does not get permission to continue any sexual contact. By passing HB 6641 we can help stop the victim blaming of sexual assault and instead focus on holding the sex offenders criminally accountable. HB 6641 will help empower survivors to have the strength to come forward and report the crime. Right now it is a well known fact that rape is the least reported and convicted crime in the United States. A main reason for a survivor to not report the assault is their concern that they will not be believed. The survivor in the 2012 case previously mentioned made a criminal report of the assault that happened to her and the court did not believe her. Just because she did not say "No" does not mean she said "Yes". We need to acknowledge that sexual violence is a crime of power and control and actually hold offenders accountable for their actions. It is never the survivor's fault; we need to have our laws stop blaming them. By passing HB 6641 we can do just that.

I also strongly urge the committee to pass HB 6664, because a lot of sex offenders are getting away with rape and sexual assault and still tormenting the survivor by constant contact, simply because the survivor was never in a relationship with them and is not a family/ household member. Every time a survivor has to have any contact with their assailant it is a form of re-victimization. So many times I have had to tell survivors: "We can try to get a restraining order, but due to your current relationship to the offender, we might not get it". Currently, 17 states offer civil orders of protection to sexual violence survivors, please, let's make Connecticut number 18. By passing HB 6664 and allowing for all survivors of sexual violence to obtain civil restraining orders, you will be helping them feel safer and empowering them to move on and heal themselves from the trauma.

Thank you for taking the time to read this.

Mary DeLucia  
mdelucia@ywcanewbritain.org

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**Testimony in support of H.B. 6641, AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS  
WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPAIRED**

March 25, 2013

Submitted by Rebekah Diamond

Good afternoon Senator Coleman, Representative Fox, members of the committee:

My name is Rebekah Diamond. I am a student at UConn School of Social Work and I have also worked with developmentally disabled adults for the past five years.

Today I am here in support of H.B. 6641, AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPAIRED.

In removing the wording "developmentally defective" from the Connecticut General Statutes section 1, Section 53a-71, Section 2. Section 53a-73a, Section 3, Section 53a-65, and Section 4, Section 53a-67 and replacing it with "impaired because of mental disability or disease" I believe we would be returning power to those who have been marginalized for so long.

The Merriam-Webster dictionary defines defective as, "imperfect in form or function" or "falling below the norm". By using language such as "developmentally defective" within our laws, we are inviting the public to think of those who are disabled as "less than" the rest of us.

Within our country and within our state we have made tremendous strides as we have worked to bring people who are impaired due to mental, physical disability or disease out of the institutions and into the community. But I'm here to say that with language such as "developmentally defective" we are in a way keeping them institutionalized. By defining these individuals as defective we are not allowing them to reach their full potential and to practice their autonomy.

It is up to you, our state's elected officials, to set an example for the rest of the citizenry of Connecticut and remove this derogatory language from legislation: I respectfully urge you to pass this bill.

Thank you for your time and consideration.

**Testimony of Susan Lloyd Yolen, Vice President, Public Policy & Advocacy,  
Planned Parenthood of Southern New England, regarding  
HB 6641, An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate  
Lack of Consent is Substantially Impaired.**

Good afternoon members of the Judiciary Committee. I am Susan Yolen, Vice President for Public Policy and Advocacy for Planned Parenthood of Southern New England, the state's largest provider of family planning and reproductive health care. Each year, PPSNE cares for nearly 70,000 patients at 18 health centers in Connecticut and Rhode Island.

I would first like to say that Planned Parenthood has long worked with the disability rights community, and been cognizant of the desperate need for access to basic reproductive health care by women with disabilities. All too often, women who are physically, mentally or developmentally disabled are unaware of places where they can go to for sexual health care, treatment, basic reproductive exams and contraception. Many health providers are unaware of these needs and don't offer the services or own the equipment necessary to offer appropriate care. More disturbingly, many health providers do not realize that women with disabilities both engage in healthy, consensual sexual behavior and at the same time, regrettably, are sexually assaulted twice as often as those without a disability.

So the fact that we have an egregious result in *State of Connecticut v Richard Fournin* is no surprise. The result of this ruling is that in order to be considered physically helpless, and to receive special protection from sexual assault, an individual must be "unconscious or in a state akin to unconsciousness." The only suspense in this situation will be how long it takes the General Assembly to rectify this injustice that has resulted in at least two sex offenders being released from prison because of the failings of our state statutes.

The changes to HB 6641 include removing the hideously offensive term "mentally defective" and replacing it with more acceptable language describing those with mental disability or disease. Even more critical, the language will clarify the definition of "physical helplessness" to mean that a person is physically helpless when he or she is conscious but physically unable to resist or communicate unwillingness to submit to a sexual act.

As you know, the Court ruled that although the victim in the *Fournin* case could not speak or walk and needed assistance with all activities of daily life, she still, theoretically, could have resisted her rapist by biting, kicking or scratching him. How can we consider ourselves residents of an enlightened State when we hold disabled rape victims to such a standard, and we allow rape convictions to be overturned in such a case? Individuals with disabilities deserve our protection and the presumption that we all should expect: that each of us will do whatever is possible and to resist rape if we are confronted with that threat. People with disabilities deserve the same justice.

As advocates for reproductive justice we believe all people should be free of oppression and have the right to independent decision making when it comes to their bodies, gender and sexuality. When we have unfair laws that disadvantage marginalized communities we have created an unjust and unequal system. HB 6641 will ensure that all people with disabilities who have survived sexual assault are treated with the same respect and dignity under the law. We are aware that this legislation has come before the General Assembly without action for four years, and this is a shame. Virtually everyone agrees this is a good bill, and regardless of the many difficult challenges facing the legislature this year, it must be enacted before the tragedy of another *Fournin* ruling is allowed to stand. Planned Parenthood urges passage of HB 6641. Thank you

Testimony of Quinnipiac University School of Law Civil Justice Clinic

**In Support of Raised Bill No. 6641**

Judiciary Committee

March 25, 2013

Good morning distinguished Committee Members. My name is Lauren MacDonald, and I am a second-year law student at Quinnipiac University School of Law and a resident of Hamden, Connecticut. I am also a student in the Law School's Civil Justice Clinic, which provides free legal services to indigent people, many of whom have intellectual and physical disabilities. We care about the law's treatment of people with disabilities and we support Raised Bill No. 6641, "An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired."<sup>1</sup>

**I. The Current Definition of "Physically Helpless" is an "Unusual and Very Limited Definition."**

Connecticut law makes it a crime to engage in sexual intercourse with, or to intentionally subject to sexual contact, a person who is "physically helpless."<sup>2</sup> "Physically helpless," in turn, has "an unusual and very limited definition."<sup>3</sup> Under Connecticut law, a person is "physically helpless" if the person is "unconscious or for any other reason is physically unable to communicate unwillingness to act."<sup>4</sup> As the Connecticut Supreme Court made clear in the case of *State v Fournin* last fall, "[t]he term 'physically helpless' has a particular statutory meaning that requires more than a showing that a victim is totally physically incapacitated"<sup>5</sup> As a result, it is not enough that a person is unable to resist unwanted sexual advances; to be considered "physically helpless," a victim must be unable to communicate. As discussed below, few people meet this demanding standard for qualifying as "physically helpless."

A If you can speak, you are most likely not "physically helpless"

- o In *People v Morales*, a woman with muscular dystrophy, who was paralyzed from the neck down and used a wheelchair, was sexually assaulted by a man who broke into her apartment. The woman verbally protested during the assault but was unable to physically resist the attack due to her paralysis. A New York trial court held that she was not "physically helpless" because she screamed for help.<sup>6</sup>

<sup>1</sup> An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired, Raised Bill No. 6641 (proposed Jan. 2013) [hereinafter Raised Bill No. 6641], available at <http://www.cga.ct.gov/2013/TOB/H/2013HB-06641-R00-HB.htm>

<sup>2</sup> CONN. GEN. STAT. ANN. § 53a-71 (West 2011) (second degree sexual assault), CONN. GEN. STAT. ANN. § 53a-73a (West 2011) (fourth degree sexual assault).

<sup>3</sup> *State v Fournin*, 52 A.3d 674, 682 n.14 (Conn. 2012) (quoting *Coley v State*, 616 So. 2d 1017, 1020 (Fla. Dist. Ct. App. 1993)).

<sup>4</sup> CONN. GEN. STAT. ANN. § 53a-65 (West 2009).

<sup>5</sup> *Fournin*, 52 A.3d at 689 (emphasis added), see also *id.* at 681 ("[T]otal physical incapacity does not, by itself, render an individual physically helpless.")

<sup>6</sup> *People v Morales*, 528 N.Y.S.2d 286, 287 (Sup. Ct. 1988).

- In *State v. Hufford*, a woman suffering from hyperventilation was strapped to a gurney and sexually assaulted by a paramedic in the back of an ambulance. The Connecticut Supreme Court held that she was not physically helpless because she told the paramedic to stop touching her.<sup>7</sup>
- In *People v. Orda*, a man who was paralyzed from the neck down was sexually assaulted by a home health aide, who removed him from his wheelchair and performed oral sex on him. A New York trial court held that the man was not “physically helpless” because he spit and screamed in protest.<sup>8</sup>
- In *State v. Bucknell*, a woman with Lou Gehrig’s disease, who was paralyzed from the chest down, was sexually assaulted by her brother, who threatened to hurt her if she told anyone. The Washington Court of Appeals held that she was not “physically helpless” because she was able “to talk [and] answer questions.”<sup>9</sup>
- In *People v. Clyburn*, a woman with Huntington’s Disease, which caused her to experience involuntary writhing movements, was sexually assaulted by a man who broke into her bedroom. A New York appeals court held that she was not “physically helpless” because she addressed the man that assaulted her and discussed the assault with two police officers who responded to the scene.<sup>10</sup>

B. If you cannot speak, but you can move your body—even just a little—you are most likely not “physically helpless.”

- In *State v. Fournin*, a woman with cerebral palsy, intellectual disabilities,<sup>11</sup> and hydrocephalus, was sexually assaulted by her mother’s boyfriend. Even though she could not speak and could not walk or stand on her own, the Connecticut Supreme Court held that she was not “physically helpless” because she could bite, kick, scratch, screech, groan, and gesture, and she could communicate through the use of an icon-based electronic communication board.<sup>12</sup>
- In *People v. Huurre*, a woman with cerebral palsy, epilepsy, intellectual disabilities,<sup>13</sup> and “no understandable speech” was sexually assaulted. The Court of Appeals of New York upheld the determination of a lower court that she was not “physically helpless” because she could “make guttural noises” and “understand[ ] . . . a few signs.”<sup>14</sup>

<sup>7</sup> *State v. Hufford*, 533 A.2d 866, 873 (Conn. 1987)

<sup>8</sup> *People v. Orda*, 690 N.Y.S.2d 822, 826 (Sup. Ct. 1999)

<sup>9</sup> *State v. Bucknell*, 183 P.3d 1078, 1081 (Wash. Ct. App. 2008)

<sup>10</sup> *People v. Clyburn*, 623 N.Y.S.2d 448, 449 (App. Div. 1995).

<sup>11</sup> A clinical psychologist compared the victim’s “total functioning” to that of a two- to five-year-old child. *Fournin*, 52 A.3d at 677 n.7

<sup>12</sup> *Id.* at 695

<sup>13</sup> A psychiatrist testified that the victim had the cognitive capacity of a three-year-old child. *People v. Huurre*, 603 N.Y.S.2d 179, 180 (App. Div. 1993), *aff’d*, 645 N.E.2d 1210 (1994)

<sup>14</sup> *Id.*

C. So long as you are awake and can move *something*, you are probably not “physically helpless.”

Because of the high level of limitation necessary to qualify as “physically helpless,” very few people fall within this definition. Generally speaking, in order to be considered “physically helpless,” one must be unconscious, asleep, or incapacitated as a result of drugs or alcohol.<sup>15</sup> Therefore, so long as a person is awake and can move *something*, that person is probably not “physically helpless.”

The *Hufford* and *Fourtin* cases perfectly illustrate just how demanding the “physically helpless” standard is. The victim in *Hufford*, who was completely immobilized after being strapped to a gurney, was not considered “physically helpless” because she could speak. The victim in *Fourtin* could not speak, but she was likewise not considered “physically helpless” because she could communicate “by various [non-verbal] means, including the use of a communication board, as well as by gestures, biting, kicking and screaming.”<sup>16</sup>

Given this demanding standard for qualifying as “physically helpless,” one wonders whether a person like world-renowned physicist, Stephen Hawking, would be covered by the law. As a result of amyotrophic lateral sclerosis (ALS), Mr. Hawking is almost completely paralyzed. He uses a wheelchair and speaks through speech-generating computer software that he operates by twitching his cheek.<sup>17</sup> If Mr. Hawking were sexually assaulted, chances are that he would not be considered “physically helpless” because he can move his cheek (not to mention his eye brows and mouth) and use speech-generating computer software.<sup>18</sup>

## **II. The Demanding Standard for Qualifying as “Physically Helpless” Fails to Protect People with Disabilities.**

The current definition of “physically helpless” does not adequately protect people with disabilities from sexual assault. By creating an inappropriately demanding standard for qualifying as “physically helpless,” the current definition deprives protection to those who need it most.

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<sup>15</sup> See *Fourtin*, 52 A 3d at 684

<sup>16</sup> *Id* at 689

<sup>17</sup> See Damien Gayle, *Stephen Hawking's voice technology overhauled to help his speech keep up with his super-sharp mind*, MAIL ONLINE (Jan. 22, 2003), <http://www.dailymail.co.uk/sciencetech/article-2266289/Stephen-Hawkings-talking-technology-overhauled-help-speech-super-sharp-mind.html>

<sup>18</sup> In *Fourtin*, the Connecticut Supreme Court explicitly reserved the question of whether a victim who “could communicate via [a] communication board *only*” would be considered “physically helpless.” *Fourtin*, 52 A 3d at 690 n 21 (emphasis added).

A. People with disabilities deserve protection from sexual assault.

According to Connecticut's Office of Protection and Advocacy, people with disabilities are twice as likely to be sexually assaulted as those without disabilities.<sup>19</sup> Research shows that individuals with disabilities are victimized not only by criminals but also by police, who do "not respond to about twenty three percent of [violent] crimes against victims with disabilities."<sup>20</sup> Furthermore, these crimes are usually underreported and "those that are reported are rarely prosecuted."<sup>21</sup>

B. The demanding standard for qualifying as "physically helpless" deprives people with disabilities of protection from sexual assault, creating a tragic paradox.

The demanding standard for qualifying as "physically helpless" creates a tragic paradox for many people with disabilities. They are disabled "enough" to be preyed upon, but not disabled "enough" to be protected by laws prohibiting such conduct. As a result, people with disabilities who are sexually assaulted now find themselves in a Catch-22: they can say nothing and allow the violator to offend with impunity, or they can tell someone and find they are not protected under the law because they are not "physically helpless." No matter what they do, people with disabilities find no justice. As Justice Norcott noted in his dissenting opinion in *Fourtin*, unless the definition of "physically helpless" is changed, "individuals with disabilities who are victims of sex crimes will not come forward."<sup>22</sup>

III. Raised Bill No. 6641 Protects People with Disabilities by Lowering the Standard for Qualifying as "Physically Helpless."

Raised Bill No. 6641 rightly lowers the standard for qualifying as "physically helpless" under Connecticut law by protecting individuals who are "physically unable to resist an act of sexual intercourse or sexual contact."<sup>23</sup> The Defendant in *Fourtin*, the man who sexually assaulted his girlfriend's daughter, successfully argued to the Connecticut Supreme Court that "[s]tatutes have to mean something and their effects have to have limits."<sup>24</sup> This is true as far as it goes, but our argument to you, the legislature, is that those limits must be *reasonable* ones. If the effect of a statute is too constrained, the statute means nothing. That is what has happened here. The demanding standard for qualifying as "physically helpless" deprives protection to virtually anyone who is awake and able to move. This is *not* a reasonable limit, and this is why we need Raised Bill No. 6641.

In conclusion, Connecticut law should not deprive people with disabilities of protection against sexual assault by requiring that they meet a demanding standard for qualifying as "physically

<sup>19</sup> Brief of Amici Curiae Office of Protection and Advocacy for Persons with Disabilities, ARC of Connecticut, and Developmental Disabilities Council of Connecticut, *State v. Fourtin*, 52 A.3d 674 (2012) (No. 18523), 2011 WL 5075537, at \*2 [hereinafter Brief of OPA]

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at \*4

<sup>22</sup> *Fourtin*, 52 A.3d at 701 n 22 (quoting Brief of OPA, *supra* note 19)

<sup>23</sup> Raised Bill No. 6641, *supra* note 1

<sup>24</sup> Brief of the Defendant/Appellee, *State v. Fourtin*, 52 A 3d 674 (2012) (No. 18523), 2010 WL 7800158, at \*27.

helpless.” The victim in *Fourtin* and the people of Connecticut deserve better, and our laws ought to do better. We urge this Committee to do justice and approve Raised Bill No. 6641.<sup>25</sup>

Thank you very much for your time and for the opportunity to present this testimony.

Quinnipiac University School of Law Civil Justice Clinic

By: Lauren MacDonald, Law Student  
Kevin Barry, Supervising Attorney

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<sup>25</sup> Raised Bill No. 6641, *supra* note 1

The Sexual Assault Crisis Service of the YWCA New Britain  
22 Glen St New Britain CT 06051 (860) 225-4681

Testimony of Erica Mello, Child Advocate

In Support of HB 6641, An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired.

My name is Erica Mello, and I am a Child Advocate with the Sexual Assault Crisis Service, a program of the YWCA New Britain. SACS provides free and confidential services to residents of 46 towns in the Central Connecticut region. This includes a 24-hour English and Spanish language hotline, short-term crisis counseling and support groups, as well as medical, court and police accompaniments. Based on my work with survivors, I would like to testify in support of HB 6641, An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired.

Revisions to current state statute are essential to ensure offenders who assault residents with disabilities are held accountable. Vulnerabilities in the current state statute were made especially clear following the Connecticut Supreme Court's decision in *State of Connecticut v Richard Fournin (2012)* By defining "physical helplessness" so narrowly as to only protect individuals who are "unconscious or in a state akin to unconsciousness", a woman who could not eat, walk, or perform activities of daily living unassisted was left unprotected by law and the conviction of her offender was overturned. This decision is especially troubling given the increased chance of victimization disabled individuals face. Working with clients who could possibly fall victim to this loophole cements the urgency to provide protection for those most in need.

HB 6641 would expand the definition of "physically helpless", removing the obligation of disabled victims to physically resist an attack. This is a crucial step in holding offenders accountable and taking the burden off of victims to physically resist an attack in order to prove sexual assault. Shock, safety concerns and fear all play a role in a victim's response to an assault, expecting any victim of sexual assault to physically resist an attack is asking them to ignore basic survival instincts. Additionally, HB 6641 would replace terms such as "mentally defective" within the statute with more dignified language. These revisions would be indicative of Connecticut's commitment to respect and protect all victims of sexual assault.

I hope that the Committee will see the importance of ensuring the protection of disabled victims of sexual assault and is in support of HB 6641. Thank you for your consideration.

Testimony of April Smolski, LMFT

Bristol, CT

[Aprilny23@yahoo.com](mailto:Aprilny23@yahoo.com)

Submitted to the Judiciary Committee

March 25, 2013

***HB 6641: An Act Concerning The Sexual Assault of Persons whose Ability to communicate lack of consent is substantially impaired***

My name is April Smolski, I am a licensed Marital and Family Therapist as well as trained and certified Sexual assault victim advocate and counselor. I am a former Director of the New Britain and Hartford Sexual Assault Crisis Service and a state certified Sexual Assault Crisis Counselor/Advocate. I am writing in request for support of HB 6641: An act concerning the sexual assault of persons whose ability to communicate lack of consent is substantially impaired.

I have worked with the Sexual Assault Crisis Service in several capacities over the course of over 15 years. Statistics show that more than 1 in 4 girls and 1 in 6 boys are sexually abused before the age of 18 years old. Some of the most vulnerable clients I have worked with have been children and adults with developmental disabilities. These disabilities are included and not limited to Autism, Asperger's syndrome, Down's syndrome, cerebral palsy and other social communication and learning disorders as well as mental health related diagnosis Connecticut Statistics show more than 90% of victims know their perpetrator. In over 90% of the cases I have provided treatment the perpetrator was a family friend, doctor, older sibling, or other person entrusted with the child or person's care

I have provided therapy to victims with mental health and developmental diagnosis who have encountered fear of losing their home, fear of displacement to foster care, fear of losing their lives if they were to report this crime. I encourage you to imagine for a moment that you are a young child or adult with disabilities and someone has just told you that if you do not comply to their sexual act they will kill you, your parents, your pet. . .

Many victims are confused, unsure if what occurred is assault because someone has "convinced" them otherwise or they were threatened and scared. They attempt suicide, dissociate and are ultimately institutionalized or perpetuate the cycle because they were not given opportunity to have their voice heard. They are conscious however neurologically it is impossible for these victims to comprehend many of the aspects of what has just occurred or when it occurs frequently it causes tremendous confusion, guilt and fear/anxiety and greater mental health concerns.

This is an unspeakable crime, literally. Perpetrators, have one main goal: To ensure their victims remain silent, to ensure their victim believes that they are "crazy" and do not know what they are talking about. They may therefore develop dissociative identity disorder, depression and anxiety further complicating their delicate emotional, mental and behavioral health. In fact they depend on this and even blame the victim based on their disability. "What do they know they can't even....(fill in the blank)" "How can you believe what they say, they don't even know what (fill in the blank) means?"

A young woman with autism told me that when she told of her abuse no one believed her. She attempted suicide and withdrew from family and friends. It is all the more disturbing to me as a professional and one who cares deeply for individuals with mental health and developmental diagnosis to know that to this point the law is not stated to protect these individuals with neurological, developmental and mental health needs. If you would like to further discuss this with me I may be contacted at [aprilny23@yahoo.com](mailto:aprilny23@yahoo.com)

Thank you for your time and consideration.

Regards,

April Smolski, LMFT

Testimony of Connecticut Sexual Assault Crisis Services  
**In Support of HB 6641: Holding Offenders Accountable  
for Sexually Assaulting People with Disabilities**  
Vicky Wasilewski, Interim Hartford Child Advocate

Dear members of the Supreme Court,

My name is Vicky Wasilewski, and I am the Interim Hartford Child Advocate for the Connecticut Sexual Assault Crisis Services (CONNSACS). CONNSACS is the statewide association of Connecticut's nine community-based rape crisis programs. During this last year, our advocates throughout the state have provided services to over 7,000 victims of sexual violence and their loved ones. For some of these victims, their severe mental and/or physical disabilities have caused them to experience grave difficulty when in the process of proving that they were truly sexually assaulted. The current law only defines "physically helpless" as "unable to consent to sexual contact, or that a person must be unconscious or in a state akin to unconsciousness" and that makes it more difficult to prosecute these offenders who have sexually assaulted individuals beyond this diameter. Based on our work with these victims, we would like to testify in support of holding offenders accountable for sexually assaulting people with disabilities.

Among the population of adults with developmental disabilities, as many as 83% of female and 32% of males are victims of sexual assault in their lifetime. Also, 49% of people with developmental disabilities, who are victims of sexual violence, will experience 10 or more abusive incidents, while only 3% of these sexual abuse cases ever get reported. Of the women with disabilities who have been married, 38% experience sexual violence by their partner, 33% by friends or acquaintances, 33% by foster family members, and 25% by caregivers or service providers. This degrading violence needs to stop and offenders of these crimes need to start being held accountable. I believe with the help of HB 6641, we can work towards reevaluating these statistics and helping survivors of sexual assault with disabilities to finally regain their courage and power and reclaim justice for themselves. Individuals who experience sexual assault and have physical and/or developmental disabilities should be given the same rights as everyone else and the empowerment to move and grow beyond that. CONNSACS hopes that you will see the importance of HB 6641 and join us in supporting it.

Thank you for your consideration.



Testimony to the Judiciary Committee  
March 25th, 2013  
By Leslie Simoes, Executive Director, Arc Connecticut

Testimony in support of:

H.B. No. 6641 (RAISED) AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS  
WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPAIRED.

The Arc Connecticut is a 60-year old advocacy organization committed to protecting the rights of people with intellectual and developmental disabilities and to promoting opportunities for their full inclusion in the life of their communities.

Just as any human being does, a person with a disability who can not traditionally communicate has the right to decide who and who does not have permission to put their hands on his or her body. H.B. No. 6641 (RAISED) AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPAIRED will reinforce that right, strengthen protections and increase the likelihood of a second degree sexual assault conviction for people who victimize persons with disabilities.

Section 1 of Section 53a-71of The Connecticut State Statute details the different degrees sexual assault offences and felonies, adding language that people with disabilities will be included in this statute would be a huge step forward in the disability community and prevent miscarriages of justice such as that in the Fourtin Case. An article from 2011 regarding that case is attached for the Committee's reference.

People with disabilities have been ridiculed, abused, assaulted, bullied and misunderstood for many, many years. Sexual assault against ANY person is despicable, but even more

offensive when committed against individuals with disabilities. For three years, Arc Connecticut has worked in coalition with other organizations to make this legislation possible. To provide that sexual intercourse or sexual contact with a person, whose ability to resist or communicate consent is substantially impaired because of such person's mental or physical condition, constitutes the offense of sexual assault is not only the ethical and moral thing to do, it is supported by many in the disability rights community not only in Connecticut but across the country.

The Arc Connecticut commends this committee for raising this bill again and urges the members of this committee to not only vote favorably, but to become champions of the bill and help the advocates move it through the process.

Please do not hesitate to contact me with questions, for clarification or to arrange a visit with a private provider of community based services for individuals with intellectual and developmental disabilities in you area. Thank you for your time and consideration.

Leslie Simoes  
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## October 14, 2011, By Arielle Levin Becker, The CT Mirror

### **"Case on assault of woman with disabilities goes to high court"**

In a case being closely watched by advocates for people with disabilities, the state Supreme Court will hear arguments Monday over whether a woman who had cerebral palsy and mental retardation and who could not speak or walk met the legal definition of "physically helpless" when she allegedly was sexually assaulted

A jury convicted Richard Fourtin of sexual assault for having sexual contact with the woman, but an Appellate Court panel reversed the conviction, ruling that prosecutors had failed to prove that the woman was helpless

Advocates for sexual assault victims and people with disabilities say the outcome will have significant implications

"In this particular case, the appellate court decision literally says this woman isn't physically helpless because we know for a fact that she can kick and she can bite and she can scratch," and she would have done so if she did not consent, said Anna Doroghazi, director of public policy and communication for Connecticut Sexual Assault Crisis Services. "If you applied that to a typical able-bodied person, we would never say, 'You weren't raped because you didn't bite this guy.' We don't require anyone else in the population to take every single measure to say no "

The alleged assault took place in 2006, when the woman was 25. Fourtin, of Bridgeport, had helped to care for her

A staff member at an adult day care program the woman attended noticed that she looked aggravated and scared, and the woman used gestures and a communication board--a board with letters that a person can point to, to spell words--to tell him Fourtin had sexually assaulted her at her home. A medical exam found symptoms consistent with sexual assault.

A jury in 2008 convicted Fourtin of attempted second-degree sexual assault and fourth-degree sexual assault under a statute that prohibits sexual contact with a person who is physically helpless. He was sentenced to 11

years in prison, to be suspended after serving six

Fourtin did not contest the evidence that he had sexual contact with the woman, but argued that the state did not prove that she met the legal definition of physically helpless. State statute defines physically helpless as when a person is "unconscious or for any other reason is physically unable to communicate unwillingness to an act."

The appellate judges agreed with Fourtin, noting in the 2009 ruling that while the woman was nonverbal, she could communicate by gesturing, vocalizing and using a communication board.

"To manifest her displeasure, she can kick, bite and scratch," the ruling said. "The complainant can also vocalize her feelings by groaning or screeching "

Former Supreme Court Justice Ellen Ash Peters served on the panel and wrote the unanimous opinion

"The state has not alleged that, at the time when the defendant assaulted the complainant, she was unconscious, intoxicated, asleep or for some other reason unable to communicate nonverbally, such as by kicking, scratching and screeching," Peters wrote

Peters noted that the state did not charge Fourtin under a separate statutory provision that outlaws sexual intercourse with a person who is "mentally defective to the extent that such other person is unable to consent."

In the ruling, Peters also cited a 1987 Connecticut Supreme Court case, *State v. Hufford*, in which a woman was alleged inappropriately touched by a paramedic while she was being transported to a hospital and physically restrained. The state argued that the woman was physically helpless because she could not move away from the paramedic, but the court ruled that she should not be considered physically helpless because she had repeatedly told the defendant to stop.

In the Fourtin case, Peters noted that witnesses testified that the woman was able to make herself understood, sometimes through the use of a communication board, and sometimes through gestures. And, Peters wrote, the alleged assault only came to light because the woman was able to communicate with the day care center staff member.

"[The staff member's] testimony squarely contradicts the state's assertion that the complainant was unable to transmit a message to the intended recipient with sufficient clarity to be called 'communication,'" Peters wrote

Advocates for sexual assault victims and people with disabilities said the ruling sets a higher standard in proving sexual assault against a people with disabilities, who are already at higher risk of sexual assault

Doroghazi noted that the sexual assault charges Fourtin faced apply to situations in which a person can be taken advantage of, such those involving a minor, a therapist and patient, or a teacher and a student. In giving a detailed opinion about what a person would have to do to be considered physically helpless, she said, the ruling invalidated the protection.

"People with disabilities face such extremely high, devastatingly high rates of sexual abuse to begin with that if there's any community that really deserves the protection of the law and who really relies on this law to be effective, it's this community," she said.

James D McGaughey, executive director of the state Office of Protection and Advocacy for Persons with Disabilities, said that if the ruling's standard for a person with a disability to give or deny consent stands, people with disabilities that affect their communication would effectively be required to physically resist.

In addition, he said, people with disabilities might not feel that their safety is being protected, and prosecutors would be less likely to pursue cases in which victims have disabilities. Such cases are already difficult to prosecute, he noted.

"Effectively, they will have less protection," he said.

Leshe Simoes, assistant executive director of The Arc of Connecticut, attended Fourtin's trial. She said the woman testified by tapping on a communication board that had the alphabet and the words "yes" and "no" on it.

"It was just such a visual display of how this woman was not able to communicate effectively to her assailant, 'Stop,'" she said.

McGaughey said that if the Supreme Court upholds the appellate court decision, "it becomes imperative at that point that the legislature do something to address this problem."

Advocates have sought to clarify the law. A bill before legislators this year would have changed the language in the sexual assault statutes, eliminating the references to physical helplessness and "mentally defective," and making a person guilty of sexual assault if he or she subjected a person to sexual contact whose ability to communicate lack of consent is "substantially impaired because of a mental or physical condition" Under the proposed changes, the accused person would have to have reasonable cause to believe the person's ability to communicate a lack of consent was impaired.

# Rape Crisis Center

of Milford, Inc.

*Serving Ansonia, Derby,  
Milford, Orange, Seymour,  
Shelton, & West Haven*

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*Child Advocate*

Sheila Richards  
*Adult Advocate*

Jessica Champagne  
*College Advocate*



Testimony of Cynthia Dugan, Counselor/Advocate  
In Support of HB6641, An Act Concerning the Sexual Assault of Persons  
Whose Ability To Communicate Lack of Consent is Substantially Impaired  
Judiciary Committee Public Hearing

Senator Coleman, Representative Fox, and members of the Judiciary Committee, my name is Cindy Dugan. I am a counselor/advocate for the Rape Crisis Center of Milford, Inc. I am submitting this testimony on behalf of all victims of sexual assault who have survived one of the most terrifying experiences of their lives and still find the strength and courage to come forward to seek help and support. For some, support from one of the nine centers across Connecticut who offer a safe haven to work through the multitude of emotions this crime perpetuates. For others, support not only from a rape crisis center but from law enforcement and ultimately the criminal justice system should they make the difficult decision to report this crime. This is a particularly difficult decision for victims of sexual assault to make. Therefore, when they do it is imperative that laws are structured to offer protection.

Sexual assault is a crime of power and control perpetrated by individuals who look for vulnerability. Persons with disabilities are one of the most vulnerable group of people to become victims of this crime. 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. I would also offer that people with disabilities would also face increased difficulty reporting this crime.

This bill will close a loophole in the Connecticut criminal statute that has allowed offenders to abuse individuals whose ability to consent is significantly impaired and go unpunished. At the same time it does not create any statutory presumptions that people with disabilities are completely incapable of making a decision to engage in consensual sexual relations.

All victims of sexual assault deserve protection under the law. I urge you to support this extremely important piece of legislation for those who are some of our most vulnerable members of society.

Thank you for your consideration.

Sincerely,

Cynthia Dugan  
Counselor/Advocate  
Rape Crisis Center of Milford

Testimony of Ingrid Pasten  
In Support of bill *HB 6641- An Act Concerning the Sexual Assault of Persons Whose Ability to  
Communication Lack of Consent is Substantially Impaired*  
March 25, 2013

Senator Coleman, Representative Fox, and members of the Judiciary Committee, my name is Ingrid Pasten, I am a permanent resident of Stamford CT and am the Bilingual/Bicultural Crisis Counselor and Advocate at *The Center for Sexual Assault Crisis Counseling and Education*. I am also an undergraduate student at *Sacred Heart University* where I am pursuing my Bachelor's Degree in Social Work.

As a sexual assault crisis counselor I have worked with two clients who were victims of sexual assault who were identified as having a mental disability. In both cases the perpetrators knew that the victims were identified as having mental disabilities. It is because of their disabilities that this population is often victimized – many perpetrators know that because of their disabilities victims may not be able to formally communicate the assault and many will have an even greater level of fear than those without a disability.

Sex offenders who perpetrate sexual violence against people with disabilities are often not held accountable nor are their crimes successfully prosecuted. The existing Connecticut law states that a victim of sexual assault has to be “physically helpless” to deny consent. This concept makes references only to an individual who is unconscious or physically incompetent to express consent to sexual contact, and leaves no consideration to any other victims who might be helpless to stop a perpetrator because of a physical or mental disability. Because of what we know about sexual violence, this law does not account for the reality that victims of sexual violence do not have the ability to control the way they respond – their response will be decided based on their brains decision as to what will be safest in that given moment (this is a normal response for *all* people who are in situations that are traumatic.) With this gap in our state law, many perpetrators are not successfully prosecuted and held accountable for their crimes. Studies tell us that perpetrators of sexual violence are likely to have more than one victim – leaving perpetrators in these cases the ability to sexually assault many victims.

For these reasons I stand firmly behind *HB 6641 An Act Concerning the Sexual Assault of Persons Whose Ability to Communication Lack of Consent is Substantially Impaired* because victims who are disabled have the right to live their lives free from all type of violence and abuse.

The *Act Concerning the Sexual Assault of Persons Whose Ability to Communication Lack of Consent* can improve the services by.

- Persons with disabilities being adequately protected from potential perpetrators.
- Removing language that is offensive to persons with mental disabilities.
- Creating a fair law in which perpetrators are more likely to be held accountable for their offenses
- Providing loved ones the ability to report on behalf of victims because there are more cases that the law would find criminal.

I firmly believe this bill will be crucial to hold sex offenders accountable for the actions. It would be extremely beneficial for victims and their families to find support from the law on this matter.

Thank you for your time,

Ingrid Pasten  
80 Mayflower Ave.  
Stamford, CT 06906  
valposusan@yahoo.com

**Testimony of Austin Longendyke**  
**In Support of HB 6641 An Act Concerning the Sexual Assault of Persons Whose Ability to**  
**Communicate Lack of Consent is Substantially Impaired**  
March 25, 2013

My name is Austin Longendyke and I am testifying in support of HB 6641, *An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired*. I am a senior at the University of Connecticut, double-majoring in American Studies and Women's, Gender, and Sexuality Studies, and a resident of Norwich, Connecticut. Through both my personal relationships with survivors of sexual assault and my work as a peer educator in UConn's Violence Against Women Prevention Program, I have learned just how prevalent sexual assault is both within the university community and the state at-large. It is up to the state legislature to ensure that laws holding sexual offenders accountable for their crimes protect *all* Connecticut residents; giving a more specific definition of "physical helplessness" would serve to protect some of the state's most vulnerable populations from assault.

The current language within the Connecticut law concerning sexual assault is problematic for a variety of reasons. For one thing, the term "mentally defective" within the law is both outdated and offensive, and does not belong in any contemporary law. HB 6641's call for the removal of this term would be a step in the right direction toward a more inclusive Connecticut. Also, the current vague wording concerning "physical helplessness" has been found by the Connecticut Supreme Court to only pertain to people who are "unconscious or in a state akin to unconsciousness."<sup>1</sup> Consequently, the current wording has allowed at least two sexual assault perpetrators free because their victims, though not necessarily able to walk and/or speak, did not meet the criteria set by the court in *Fourtin*. The clarification of the term "physically helpless" that HB 6641 would call for would protect not only those who are unconscious, but also those who may be conscious but physically unable to resist assault or communicate a lack of consent. The bill would close any loophole that an assailant might use to escape punishment for their crime.

I urge all legislators to support HB 6641 because it serves to protect some of the most vulnerable populations in the state from sexual assault. While it is the duty of the state to protect its citizens, many Connecticut residents are not adequately protected under the current Connecticut laws concerning sexual assault. This bill would serve to not only enable a safer Connecticut for all of its residents, but also remove outdated and offensive language from the law books.

Thank you very much for your attention on this matter,

Austin Longendyke  
19 Ann St., Apt. 1  
Norwich, CT 06360

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<sup>1</sup> *State of Connecticut v Richard Fourtin* (2012)



Dannel P Malloy  
Governor

State of Connecticut  
Department of Developmental Services

**DDS**

Terrence W Macy, Ph.D  
Commissioner

Joseph W Drexler, Esq  
Deputy Commissioner

DEPARTMENT OF DEVELOPMENTAL SERVICES TESTIMONY  
BEFORE THE JUDICIARY COMMITTEE

H.B. No. 6641 - An Act Concerning the Sexual Assault of Persons Whose Ability to  
Communicate Lack of Consent is Substantially Impaired

March 25, 2013

Senator Coleman, Representative Fox and members of the Judiciary Committee I am Terrence W Macy, Ph.D, Commissioner of the Department of Developmental Services. Thank you for the opportunity to submit testimony in support of H.B. No. 6641 - An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired

Over the past several years, the Department of Developmental Services has been monitoring and providing input on various versions of a bill that would address the legal circumstances that led to the State Supreme Court's decision in *State v Fourtin*. By changing the definition of "physically helpless", H.B. No. 6641 includes protections for both those persons who are unable to communicate unwillingness to sexual contact and those persons who cannot physically resist unwanted sexual contact. This change should enhance the court's ability to prosecute those predators who would take advantage of the most vulnerable citizens of Connecticut

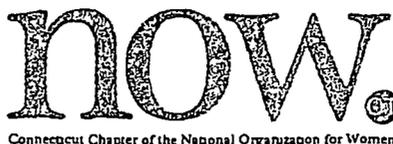
While the department recognizes that adults with intellectual disability have the right to engage in consensual sexual relations, it is imperative that persons who have an impaired ability to consent to sexual contact or to defend themselves from unwanted sexual contact are protected. This bill will provide better tools to prosecutors to address exploitation, and the lack of capacity to consent, while maintaining the right of individuals with intellectual disability and other disabilities to have relationships. This difficult balance is addressed properly through this legislation. I would also like to thank the committee for replacing the term "mentally defective" with more accurate and appropriate terminology

Thank you for the opportunity to testify to in support of H.B. No. 6641. Please contact Christine Pollio Cooney, Director of Legislative and Executive Affairs at (860) 418-6066, if you have any questions.

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March 25, 2013  
 Judiciary Committee  
 Testimony in Favor of Bill No. 6641

On behalf of the Connecticut Chapter of the National Organization for Women (CT NOW), we would like to express our support for House Bill 6641, *An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired*.

Sexual consent is an important issue that can be difficult to navigate especially when coupled with questions of ability. CT NOW recognizes this, and is particularly concerned after learning about the statistic that the National Crime Victimization Survey (NCVS) found in 2007, which asserts that persons with a disability have an age-adjusted rate of rape or sexual assault that is more than twice the rate for persons without a disability. Considering that rape and sexual assault is already underreported for the non-disabled population, it is likely that this number is even higher for people with disabilities; as they would not or could not report their assault.

We appreciate the elimination of the term "mentally defective," as that connotes a type of inferiority that should not be associated with a person's other abilities.

We are pleased to see clarifying language on the definition of physically helpless. We agree that the definition should include the inability to "resist an act of sexual intercourse or sexual contact". Currently, the definition only addresses a person who is unconsciousness or who has a physical inability to communicate. However, one could be conscious and able to communicate, but constrained in a way that prevented resistance.

CT NOW hopes that the bill's proposed changes will help delineate the line of sexual assault, and make clear the definitions of mentally or physically impaired. We find it offensive that the statute under which we operate today allows perpetrators to sexually assault disabled women without consequence.

Laura Bachman, Co-President  
 Jacqueline Kozin, Co-President  
 Brie Johnston, Vice President of Public Policy  
 Cynthia Luo, Board Member

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TESTIMONY BEFORE THE JUDICIARY COMMITTEE  
RAISED BILL NO. 6641  
Barbara Albert, Hartford Renter

Good morning/afternoon members of the Judiciary Committee, also to everyone else.

My name is Barbara Albert, Hartford renter, registered voter, and Advocate for the Disadvantaged, Civil and Human Rights, also for Mental Health Rights with Keep the Promise Coalition and several other volunteer organizations. I am on Medicare, Medicaid, and Social Security Disability since the late '80s. I have multiple medical challenges including mental illnesses. According to "scientific studies", I will die twenty five years earlier than the general population. I did used to do 'regular work' before my illnesses became too overwhelming. Now, I am called indigent, and unemployable.

This is my testimony in support of Raised Bill No. 6641, AN ACT CONCERNING SEXUAL ASSAULT OF PERSONS WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY INPAIRED. I understand the "Statement of Purpose", is: "To provide that sexual intercourse or sexual contact with a person, whose ability to resist or communicate consent is substantially impaired because of such person's mental or physical condition, constitutes the offense of sexual assault.

All kinds of abuse began at a very early age. My virginity was taken before I was even out of diapers. Various abuses continued until I could physically get away. I didn't know what was being done was wrong. Therapy for me began ten years before I got on Disability, before I was 20 years old. For my 21<sup>st</sup> birthday, the main abuser openly admitted to 'squeezing and tickling my inner thighs' to get me 'giggling'. I was very little. I still don't remember that. The main abuser said this at my 'birthday diner', while my boyfriend at the time was sitting right across from me, as I sat there, feeling totally ashamed, embarrassed, angry, and humiliated, not understanding why. I already had started seeing a therapist, because I had been hospitalized for psychiatric and substance abuse issues. There were many more humiliations, suicide attempts, self mutilations, and hospitalizations. The last time I was abused, it was forced genital contact. Other people were in the room. We were at my grandfather's funeral. No one saw, anything. I couldn't move, or speak, I needed to 'leave my body' in order to not totally 'lose it'. I was adult age. I keep asking, 'what is wrong with me?' I have no proof of this happening, other than an extensive psychiatric record, and the self mutilation, which will never match the scars on my insides.

This is why I respectfully request, support for Raised Bill No. 6641. There are still too many of us that don't talk, and/or aren't ready to remember. Or don't want to remember any more.

Stephen King once wrote," Monsters are real, and ghosts are real too. They live inside us Sometimes they win "

Please help make sure they don't win anymore. Thank you for listening.

PAGE 1  
LINE 2

State of Connecticut  
DIVISION OF CRIMINAL JUSTICE

**TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE**

IN SUPPORT OF:

**H.B. NO. 6641: AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPAIRED**

JOINT COMMITTEE ON JUDICIARY  
March 25, 2013

The Division of Criminal Justice respectfully recommends the Committee's **JOINT FAVORABLE REPORT** for **H.B. No. 6641, An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired**.

This legislation addresses concerns brought before the Judiciary Committee for several years and articulated in the decisions of the Connecticut Appellate Court (118 CA 43 (2009)) and the Connecticut Supreme Court (307 C 186 (2012)) with regard to the matter of *State of Connecticut v. Richard Fourtin*. For several years, the Division of Criminal Justice has recommended legislation to address the issues raised in these cases, and most notably the *Fourtin* case. One concern in the past has been the fact that a final decision in the case was still forthcoming. Now that the Supreme Court has rendered its decision, it is appropriate – and necessary – for the General Assembly to act.

H.B. No. 6641 is the product of extensive discussions involving the Division of Criminal Justice, advocacy groups for individuals with disabilities and representatives of the criminal defense bar. The legislation itself originated to large extent from a footnote in the Supreme Court's dissenting opinion authored by Justice Norcott in the *Fourtin* case and builds upon statutory language already in place in other states.

In *State v. Fourtin* 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 Appellate Court, initially, and the Supreme Court, ultimately, 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.

In conclusion, H.B. No. 6641 is the carefully crafted product of much discussion and deliberation by the Division of Criminal Justice, advocates for individuals with disabilities and other interested parties. The Division wishes to extend its appreciation to all who have

contributed to this process and to the Judiciary Committee for your consideration again this year of this important issue. We would respectfully request the Committee's JOINT FAVORABLE REPORT and would be happy to answer any questions or provide any additional information the Committee might require. Thank you.



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

002670  
PAGE 2  
LINE 2

James D. McGaughey  
Executive Director

Phone 1/860-297-4307  
Confidential Fax 1/860-297-4305

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

Presented by: James D. McGaughey  
Executive Director  
March 25, 2013

Good morning and thank you for this opportunity to support Raised Bill No. 6641, An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent Is Substantially Impaired.

This bill amends those sections of the Criminal Code that describe the crimes of second and fourth degree sexual assault by deleting the offensive term, "mentally defective"; and by elaborating on the definition of the term "physically helpless".

Recognition that this legislation is needed crystallized following an Appellate Court decision two years ago 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 at the start of the investigation, as it was apparent that a crime had been committed. The woman testified at the trial using a message board, and an elaborate system of closed circuit TV cameras and monitors was installed in the courtroom so that jurors could directly view her responses to questions – responses 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 wavered in her description of what had happened to her or her determination to testify about it.

The Appellate Court's decision overturning the jury's verdict occasioned considerable concern within the disability community in Connecticut, as did last year's Supreme Court ruling which upheld it. Much of the rationale for those decisions rested on what the Court found to be insufficient evidence that the victim was "physically helpless" as that term is currently defined in the statute. This bill will expand that statutory definition to include a victim who is either unconscious or, "for any other reason, is physically unable to resist an act of sexual intercourse or sexual contact or to communicate unwillingness to an act of sexual intercourse or sexual contact." (Lines 122-125 ) In an unrelated improvement, the bill will also remove the term "mentally defective" from both the definitions section and the listing of victim characteristics that trigger the crimes of second and fourth degree sexual assault, replacing it with the more precise and much less offensive term, "mental disability or disease". These recommended changes reflect a consensus reached between State's Attorneys, State human service agencies, and advocacy groups for people with disabilities and victims of sexual assault.

This bill is about more than adopting politically correct language. People with disabilities have a major stake in the effectiveness of the protections afforded under our criminal law. Recent data from the Bureau of Justice Statistics shows that a person with a disability is twice as likely to be sexually assaulted as someone who does not have a disability. Indeed, since our Office has been involved in efforts to address the problems that surfaced in the case referred to above, I have been approached by a number of people who have long been active in the disability rights movement – people whom I have known for years – who have shared with me, confidentially, that they, too, have been victims of sexual assault. Our Office's own experience investigating abuse of people with intellectual disability bears this out. A year does not go by without at least several instances where a van driver, a paid care giver or, even a member of the victim's own family is found to have sexually assaulted an individual with an intellectual disability.

Given how pervasive this problem is, it may be tempting to enact provisions that would dramatically change the statutory elements regarding communicating lack of consent. However, we need 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 your interest. If you have any questions I will try to answer them.




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 Connecticut Sexual Assault Crisis Services, Inc.
 

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Testimony of Connecticut Sexual Assault Crisis Services  
**In Support of HB 6641, AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS WHOSE  
 ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPAIRED  
 and In Support of HB 6664, AN ACT CONCERNING RESTRAINING ORDERS**  
 Anna Doroghazi, Director of Public Policy and Communication  
 Judiciary Committee Public Hearing, Monday, March 25, 2013

Senator Coleman, Representative Fox, and members of the Judiciary Committee: my name is Anna Doroghazi, and I am the Director of Public Policy and Communication for Connecticut Sexual Assault Crisis Services (CONNSACS). CONNSACS is the coalition of Connecticut's nine community-based sexual assault crisis services programs, which provide sexual assault counseling and victim advocacy to men, women, and children of all ages. During our last fiscal year, advocates throughout the state provided hospital and court accompaniment, support groups, individual counseling, 24/7 hotline support, and post-conviction services to over 7,000 victims and survivors of sexual violence. Based on our experience working with victims/survivors of sexual violence, we respectfully request the Committee's support for HB 6641 (An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired) and HB 6664 (An Act Concerning Restraining Orders).

**CONNSACS strongly supports HB 6641**, An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired. Connecticut law criminalizes intercourse or sexual contact with an individual who is "mentally defective"<sup>1</sup> or "physically helpless."<sup>2</sup> In addition to using language that is offensive to people with disabilities, these terms have proven problematic because of their absolute nature. According to statute, in order for an individual to be considered "mentally defective," such person must have a mental condition that renders him or her "incapable of appraising the nature of such person's conduct." Similarly, statute defines "physically helpless" as being either *unconscious* or physically *unable* to communicate unwillingness to an act.

By addressing only the most severe physical and mental disabilities, Connecticut's sexual assault statutes are insufficient to hold offenders accountable when they sexually assault individuals with severe but not completely incapacitating disabilities. The limits of existing statute were illustrated in *State v. Fourtin*, a 2009 Connecticut Appellate Court decision and subsequent 2012 Connecticut Supreme Court decision that overturned verdict of a man who had been found guilty of sexually assaulting a woman with severe disabilities. The defendant, Fourtin, was initially convicted of attempted sexual assault in the second degree and sexual assault in the fourth degree in January of 2008. Both charges stemmed from sexual contact with an individual who, according to the Court, has "significant disabilities ..including cerebral palsy, mental retardation, and hydrocephalus She cannot walk and needs assistance in performing the activities of daily living."

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<sup>1</sup> Conn Gen Stat. § 53a-71(a)(2)

<sup>2</sup> Conn Gen Stat. § 53a-71(a)(3)

Despite the victim's disabilities, the Appellate court was "not persuaded that the complainant was either unconscious or so uncommunicative that she was physically incapable of manifesting to the defendant her lack of consent." Specifically, the Appellate Court found that because the victim "could communicate using various nonverbal methods, including screeching, biting, kicking, and scratching," "no reasonable jury could have concluded that she was physically helpless."

The Appellate Court's decision was appealed to the Connecticut Supreme Court, which upheld the ruling. The state Supreme Court concluded that "the term 'physically helpless' has a particular statutory meaning that requires more than a showing that a victim is totally physically incapacitated."

The *Fourtin* decision exposed statutory inadequacies that must be remedied. People with disabilities face the highest rates of sexual victimization of any population in our country, and our laws must offer them reasonable protection. Research estimates that up to 83% of women and 32% of men with developmental disabilities will experience some kind of sexual abuse during their lifetime.<sup>3</sup> In many cases, people with disabilities are abused by loved ones or care providers: 32% of those who abuse people with intellectual disabilities are family members or acquaintances, and in 44% of cases, the abuser has a relationship with the victim specifically related to the person's disability (residential care staff, transportation providers, personal care assistants, etc.).<sup>4</sup>

It can be extremely difficult for victims of sexual violence to report abuse that is perpetrated by people they know and trust. For survivors with disabilities whose daily care may be dependent on an abuser, it takes an incredible amount of courage to report an assault. When victims come forward and seek justice, they deserve the protection of laws that do not treat their disability as a liability and that adequately hold their offenders accountable.

At the same time, it is not the case that having a disability renders an individual incapable of consent in all circumstances. HB 6641 is the result of thoughtful conversations between CONNSACS, disability advocacy organizations, and the Division of Criminal Justice. We believe that this legislation addresses the statutory gaps illustrated in *Fourtin* and similar cases without restricting anyone's ability to engage in consensual sexual intercourse or sexual contact, and we respectfully request the Committee's support.

CONNSACS also supports HB 6664, An Act Concerning Restraining Orders. This bill would allow victims of sexual violence and stalking who are not family or household members of the offender to apply for a civil restraining order. Connecticut law currently allows survivors of these crimes to obtain civil restraining orders, but only if the perpetrators are spouses, former spouses, parents/children, persons eighteen years of age or older who are related by blood or marriage, persons sixteen years of age or older who are residing together or have resided together, persons who have a child in common, and persons who are in or have recently been in a dating relationship

While approximately 42% of sexual assault survivors and two-thirds of stalking victims are

<sup>3</sup> Johnson and Sigler, "Forced Sexual Intercourse Among Intimates" *Journal of Interpersonal Violence* 15 1 (2000)

<sup>4</sup> Baladerian, N "Sexual Abuse of People with Developmental Disabilities" *Sexuality and Disability* 9 4 (1991) 232-335

assaulted by someone who falls under this statutory definition of "family or household member,"<sup>5</sup> other survivors are assaulted by a friend, acquaintance, school/work colleague, or a stranger and are therefore ineligible for a civil restraining order in Connecticut. Sexual assault crisis counselors have found that some ineligible victims are so fearful of their offender immediately after an assault that they consider lying about their relationship to the offender in order to secure a temporary restraining order. Survivors of sexual violence should not be placed in a position where their fear of an offender outweighs their fear of committing perjury. We believe that HB 6664 will provide survivors with an appropriate way to seek relief from the court regardless of their relationship to their perpetrator.

HB 6664 will also bring Connecticut's civil restraining orders for sexual assault and stalking victims in line with the criminal protective orders available to such victims. All victims of sexual violence and stalking, regardless of their relationship to the perpetrator, are able to apply for criminal protective orders. Survivors are able to apply for these orders upon the arrest of their offender, but, unfortunately, sexual assault and stalking have low arrest rates for perpetrators. Data from the federal Uniform Crime Report indicates that only 26% of reported forcible rapes result in arrests,<sup>6</sup> and federal crime victimization surveys place the arrest rate for stalking at about 8%.<sup>7</sup>

There is precedent for civil orders in other states. 33 states offer civil restraining/protective orders to non-family/household victims of harassment or stalking, and at least 17 offer such orders to victims of sexual violence. The American Bar Association provides excellent (though somewhat dated) breakdowns of which states offer civil protective orders for sexual assault and stalking/harassment:

- Sexual Assault (2009):  
<http://www.vaw.unn.edu/documents/sexualassaultcpobystate/sexualassaultcpobystate.pdf>
- Stalking/harassment (2007):  
<http://www.americanbar.org/content/dam/aba/migrated/domviol/docs/StalkingHarassmentCPOChartJune07.authcheckdam.pdf>

We understand that there are concerns about HB 6664 that stem from having survivors of non-family or household member victimization in family court. We appreciate these concerns and are open to addressing this issue elsewhere in statute. The goal of HB 6664 is not to overwhelm the already stretched family court system but to provide much-needed civil restraining orders to *all* survivors of sexual violence and stalking.

Thank you for your consideration of both HB 6641 and HB 6664. We would be happy to address any questions or concerns that the Committee might have about either of these proposals, and we respectfully request your support.

Anna Doroghazi  
[anna@connsacs.org](mailto:anna@connsacs.org)

<sup>5</sup> Black, Basile, Breiding, Smith, Walters, Merrick, Chen, & Stevens *The National Intimate Partner and Sexual Violence Survey* Atlanta, GA CDC, 2011

<sup>6</sup> Kimberly A. Lonsway and Joanne Archambault. "The 'Justice Gap' for Sexual Assault Cases: Future Directions for Research and Reform." *Violence Against Women* 12(8) (2012) 150

<sup>7</sup> Baum, Catalano, Rand (Bureau of Justice Statistics) and Rose (National Institute of Justice) *Stalking Victimization in the United States* Washington DC DOJ, 2009



**Written Testimony of the Women's Center of Greater Danbury, Inc.**  
 Melanie E. Danyliw, Director of Training & Program Development, Legislative Liaison  
**Raised Bill 6641 An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired**

**HB 6664 An Act Concerning Restraining Orders**

Submitted to Senator Coleman, Representative Fox and members of the Judiciary Committee  
 March 24, 2013

This testimony in support of **RB 6641** and **HB 6664** is submitted by the Women's Center of Greater Danbury, the nonprofit social service agency - and CONNSACS and CCADV member program - providing sexual assault and domestic violence crisis services and education throughout upper Fairfield and lower Litchfield counties. During the 2011-12 fiscal year, the Women's Center helped 2632 victims and completed 22,341 school and professional educational contacts.

In regards to **Raised Bill 6641**, For four years, this legislation closing a loophole in Connecticut law so that offenders who sexually assault someone with a physical or developmental disability can be held accountable has enjoyed strong bipartisan support and yet has not been passed - often because of unrelated issues. In that time, at least two sex offenders have gone free due to this loophole. Because our state's Supreme Court decision in *State of Connecticut vs. Richard Fournin (2012)* has now so narrowly defined "physically helpless" that the vast majority of people with disabilities are unprotected from sexual predators, it is critical that action be taken in support of this legislation. In all cases of sexual assault, we firmly believe that it should not be necessary that any *victim* prove lack of consent, rather, the burden to determine consent is entirely the responsibility of the person initiating the sexual contact. Beyond that argument, however, statistics show that predators target populations who are vulnerable - who either cannot protect themselves or whose credibility may be compromised by arguments focusing on disability, age, or socioeconomic status; in fact, people with disabilities are assaulted at twice the rate of those with no disabilities. The *Fournin* decision facilitates this lack of accountability and increases the level of danger those populations already endure. Fairness dictates that our laws protect all of our citizens - but most especially the most vulnerable. This legislation will do this.

In regards to **HB 6664**, Currently, only sexual assault and stalking victims who fall under the protection of our law covering household and dating violence are eligible for civil restraining orders. This bill would extend eligibility to all victims of stalking and sexual assault including the 40.8% of victims who are raped by an acquaintance, the 13.8% raped by a stranger, and the 36% of victims stalked by someone not meeting the current or former household or dating requirement. For instance, as a member of our local Multidisciplinary Team investigating child sexual assault cases, we have often seen cases where a child continues to be exposed to the dangers of a sexual predator while an investigation is being conducted and when an arrest is never made, including when the perpetrator is a neighbor, babysitter, or dating the child's mother. The ability to secure a civil restraining order would enhance not only these victims, but all victims of sexual assault and stalking, sense of safety and protection when no other remedies are available. We know such orders are effective: civil restraining orders have been successfully extended to these sexual assault victims in 17 states and, in 32 states, to victims of stalking outside of the household, family or dating relationships.

Because of these arguments, the Women's Center strongly urges support of **HB 6664** and **RB 6641**. Thank you for your consideration of our testimony.

Melanie E. Danyliw  
 Director of Training & Program Development/Legislative Liaison  
 Women's Center of Greater Danbury  
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Connecticut General Assembly



PCSW

Permanent Commission on the Status of Women

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Testimony of  
 Natasha M. Pierre, JD, MSW  
 The Permanent Commission on the Status of Women  
 Before the Judiciary Committee  
 March 25, 2013

Re: H.B. 6641, AAC the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired

H.B. 6664, AAC Restraining Orders

Senators Coleman and Kissel, Representatives Fox and Rebimbas, and members of the committee, thank you for this opportunity to provide testimony on behalf of the Permanent Commission on the Status of Women (PCSW) regarding HB 6641 and HB 6664 which would advance protections to address violence against women.

*Impact on Women:*

- Twenty-six percent of Connecticut women and 10% of Connecticut men are sexual assault survivors.<sup>1</sup>
- People with disabilities are sexually assaulted at twice the rate of people who do not have a disability.<sup>2</sup>
- 40.8 % of rape survivors were raped by an acquaintance, 13.8% by a stranger, and 2.5% by a person in authority.<sup>3</sup>
- The Centers for Disease Control reports that the health care costs of intimate partner violence –physical assault, rape and stalking – exceed \$5.8 billion each year, nearly \$4.1 billion of which is for direct medical and mental health services.<sup>4</sup>

<sup>1</sup> Connecticut Sexual Assault Crisis Services (CONNSACS). *Sexual Assault in Connecticut Fact Sheet*

<sup>2</sup> Connecticut Sexual Assault Crisis Services (CONNSACS), March 22, 2013 Press Release on H.B. 6641

<sup>3</sup> Connecticut Sexual Assault Crisis Services (CONNSACS)

<sup>4</sup> Center for Disease Control. *Costs of Intimate Partner Violence Against Women in the United States*, March, 2003  
 <[http://www.cdc.gov/ncipc/pub-res/ipv\\_cost/04\\_costs.htm](http://www.cdc.gov/ncipc/pub-res/ipv_cost/04_costs.htm)>.

PCSW Testimony  
Before Judiciary Committee  
March 25, 2013  
Page 2 of 2

**H.B. 6641, AAC the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired**

H.B. 6641 has been before this Committee in the past with your support and no opposition. While the bill was in Committee, the issue was also before the Supreme Court<sup>5</sup> and many thought the problem would be fixed in court. Sadly, it was not fixed because the Court found that if a woman was conscious, she was not “physically helpless” since she could bite, kick or scratch her way out of being raped.

So, we are back again this year to close a gaping hole in Connecticut law that allows offenders to get away with raping someone who is physically or developmentally disabled. H.B. 6641 clearly states that a person is “physically helpless” if he or she is conscious but physically unable to resist or communicate unwillingness to submit to a sexual act.

We strongly support passage of this bill because we should stop blaming the victim, stop making excuses for offenders, and start holding offenders accountable for their violent behavior.

**H.B. 6664, AAC Restraining Orders**

We also support passage of H.B. 6664 which would extend eligibility for civil restraining orders to all victims of stalking and sexual assault. The current law was framed to protect domestic violence victims and thus is restricted to family or household members, however times have changed and people need additional protections to be safe from rapists and stalkers.

Changing the law could help almost 57% of sexual assault survivors and 36% of stalking victims by allowing them to get a restraining order against their assailant who is thankfully not a family member, but an acquaintance, stranger, or person of authority. Victims need to be safe no matter the assailant and H.B. 6664 would provide additional protections.

We look forward to working with you to address these important issues. Thank you for your consideration.

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<sup>5</sup> *State of Connecticut v Richard Fourtin (2012)*

**JOINT  
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3486 - 3845**

**2013**

6641

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March 26, 2013

Judiciary Committee  
300 Capitol Avenue  
Hartford, CT 06106

Re: H.B. 6641

To the Committee:

Regarding the referenced bill and certain representations made in CT Mirror, March 25, 2013:

1. I represented Mr. Fournin in the appeal which is the impetus for this bill. CT Mirror is wrong when it states that Mr. Fournin did not contest the charge in this case. He surely did. He did so of course at trial. On appeal he could not challenge the main evidence, namely the credibility of the complaining witness, because credibility cannot be challenged in the appellate process. He made clear, however, in his brief, that he did not concede the state's version of events. An appeal resolves issues of law, not issues of fact, or purported fact, which was why he raised the issue as he did.

2. The attributed statement in the article that "people with disabilities are significantly more likely to be raped or sexually assaulted than people without a disability" is not supported by evidence in the article and is counter-indicated by evidence produced by the Department of Justice in its 2006 report "Criminal Victimization," published in *Bureau of Justice Statistics*. This report states that since 1993, on a national basis, the rate of sexual assaults nationwide has decreased 69 per cent. Another report, "Connecticut Law Enforcement Agency Crime Reports 1980 to 2005," at [www.disastercenter.com/crime/ctcrime](http://www.disastercenter.com/crime/ctcrime) found that from 2005 to 2008, Connecticut ranked 49<sup>th</sup> in the nation in the incidence of rapes. Before that it ranked 47<sup>th</sup>. Thus not only are such crimes going down overall, they are going down with particular force here.

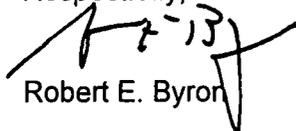
It is reasonable to infer, therefore, that since assaults overall are going down, assaults against persons handicapped are going down as well. Moreover, since neither report provides a separate category for the handicapped, it is reasonable to further infer that neither the Department of Justice nor the compilers of the Connecticut report consider that matter to be of sufficient scope or urgency to warrant special attention.

3. The wording of the bill would not exclude a wide swath of people who might want to have sexual relations but find themselves impaired; for instance, victims of stroke. This bill as written would criminalize per se the spouse or paramour of a stroke victim, with no indication when in a victim's recovery that criminalization would end, and what basis, or how. The appeal in the Fournin case took four and a half years. This bill has the potential for that level of litigation and more.

4. The law as it exists does not disadvantage the state or a complaining witness. Juries are inclined anyway to believe women who charge sexual assault, and juries are especially inclined that way for women with disabilities. See, e.g., Bottoms, et al., "Jurors' Perceptions of Adolescent Sexual Assault Victims Who Have Intellectual Disabilities," *Law and Human Behavior*, Vol 27, No. 2, April, 2003. This study is consistent with others which speak to the biases of jurors in cases of sexual assault, all of which demonstrate a bias in favor of the complainant. See, e.g., Warren, et al., "The Believability of Children and Their Interviewers' Hearsay Testimony: When Less is More," *Journal of Applied Psychology*, Vol. 87, No. 5 Oct. 2002; McCauley, et al., "When will a child be believed? The impact of the victim's age and juror's gender on children's credibility and verdict in a sexual abuse case," *Child Abuse and Neglect*, Vol. 25, Issue 4 April, 2001; Vidmar, "Case Studies of Pre- and Midtrial Prejudice in Criminal and Civil Litigation," *Law and Human Behavior*, Vol. 26, No. 1, Feb. 2002.

Finally, I note the present statute is derived from New York law and New York does not seem to have a problem with it. Thought might be given as to why people here do.

Respectfully,



Robert E. Byron

Note: I have submitted much of the above to CT Mirror by way of response to its article.