

PA13-28

HB6571

House	2180-2190	11
Judiciary	1439-1446, 1686-1692	15
Senate	1765-1767, 2068-2070	6
		32

H - 1156

**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2013**

**VOL.56
PART 7
2024 - 2369**

hac/gbr
HOUSE OF REPRESENTATIVES

231
May 1, 2013

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

DEPUTY SPEAKER BERGER:

Have all the members voted? Have all the members
voted?

Will the members please check the board to
determine if your vote is properly cast.

If all the members have voted, the machine will
be locked and the Clerk will take the tally.

Will the Clerk please announce the tally.

THE CLERK:

Bill Number 5725, as amended by House A.

Total Number Voting	145
Necessary for Passage	73
Those voting Yea	145
Those voting Nay	0
Absent and not voting	5

DEPUTY SPEAKER BERGER:

The bill, as amended passes.

Would the Clerk please call Calendar Number 421?

THE CLERK:

Calendar 421, favorably reported Joint Standing
Committee on JUDICIARY HOUSE BILL 6571, AN ACT

hac/gbr
HOUSE OF REPRESENTATIVES

232
May 1, 2013

CONCERNING THE RECOMMENDATIONS OF CONNECTICUT'S
SENTENCING COMMISSION WITH RESPECT TO SEXUAL ASSAULT
IN THE FOURTH DEGREE AND KIDNAPPING IN THE FIRST
DEGREE WITH A FIREARM.

DEPUTY SPEAKER BERGER:

Representative Fox, the Esteemed House Chair of
the Judiciary Committee, for what purpose do you rise
sir?

REP. FOX (146th):

Thank you, Mr. Speaker.

I move for the acceptance of the Joint
Committee's favorable report and passage of the bill.

DEPUTY SPEAKER BERGER:

Motion for the Chamber's acceptance of the Joint
Committee's favorable report passage of the bill.

Will you comment further?

REP. FOX (146th):

Thank you, Mr. Speaker.

This bill is one of the series of bills that the
Judiciary Committee took up during the -- the course
of its meetings earlier this session and it what it
does is it expands upon some of the work from the
Sentencing Commission. And what the Sentencing
Commission did is they looked at a number of our laws

and they made recommendations, as far as where they thought that we needed changes. What this bill does - - it makes what is a fairly simple change, but it's an important one to two of our statutes.

The first change deals with the kidnapping in the first degree with a firearm. And what -- what the Sentencing Commission pointed out is that there's an inconsistency, in that the kidnapping in the first degree with a firearm, which is a more serious crime than kidnapping in the first degree, has a mandatory minimum of one year, whereas kidnapping in the first degree has a mandatory minimum of 10 years.

And the way the courts have interpreted this is that they've reduced the mandatory sentence for kidnapping in the first degree to one year. What this bill does is it corrects that and it makes it so that now both kidnapping in the first degree with a firearm, together with kidnapping in the first degree would have the -- the intended 10-year mandatory minimum.

Also, Mr. Speaker, this bill addresses our statute dealing with sexual assault in the fourth degree. And the way it was brought -- explained to the Committee through members of our Judicial Branch,

the Judges who actually have to charge these cases before a jury, is that there is a language in this -- the statute sexual assault with a first degree that is duplicative, but it does cause confusion with -- with juries and it causes confusions when -- when charging the jury for the trial judge.

What it -- what it says is that one of the provisions said -- has the word "intentional" and the reason it's not necessary is because all of the provisions that fall under sexual assault in the fourth degree require the requisite intent and when you have, you know, with intent combined with the word intentional, it creates confusion, so this attempts to eliminate that confusion as well.

So these are two -- what I would characterize as fairly simple changes, but they're important ones for our Prosecutors, for our Judges when they are charging individuals with these crimes. They'll provide further clarity and it's one that the Sentencing Commission, through its deliberations came to us and asked us to make this change and I would urge passage of the bill.

DEPUTY SPEAKER BERGER:

Thank you, Representative.

Will you remark further on the bill before us?

Will you remark further on the bill before us?

Representative Rebimbas of the 70th, the Ranking Member House -- Ranking House Member of the Judiciary Committee.

REP. REBIMBAS (70th):

Thank...

DEPUTY SPEAKER BERGER:

Representative.

REP. REBIMBAS (70th):

Thank you, Mr. Speaker, and good to see you.

DEPUTY SPEAKER BERGER:

Good to see you.

REP. REBIMBAS (70th):

Just wanted to certainly echo what Representative Fox just enumerated regarding the changes that are before us on this bill. It does clarify and strengthen the legislation that we have. Again, as appropriately summarized, it does remove the word "intentional," which was very confusing in this bill and it allows for the consistency, but also most importantly, it does strengthen the penalty of someone who kidnaps with a firearm.

Because currently, as it reads, there was a one-year-minimum-mandatory language in there for kidnapping with a firearm, whereas there was a 10-year minimum for kidnapping in the first degree without a firearm, so that really did not make much sense in that regards.

So again, what we're proposing here is clarification, strengthening of the legislation before us, that kidnapping in the first degree with a firearm should carry the same 10-minimum-year requirement, mandatory minimum, as well as taking the word "intentionally" out that makes the language consistent throughout the bill.

So I do rise in support of this bill. It did pass Judiciary unanimously. It's also supported by the work of the Connecticut Sentencing Commission and the Judicial Branch and I ask that everyone support the bill.

Thank you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Thank you, Representative.

Will you comment further?

Representative Miner of the 66th.

REP. MINER (66th):

hac/gbr
HOUSE OF REPRESENTATIVES

237
May 1, 2013

Thank you, Mr. Speaker.

If I might, just a few questions to the proponent of the bill please.

DEPUTY SPEAKER BERGER:

Representative Fox, prepare yourself.

Representative Miner.

REP. MINER (66th):

Thank you, Mr. Speaker.

Mr. Speaker, not that long ago we passed a lot of legislation here under the title, I think, of SP-1160, that talked about strengthening our gun crime statutes and my question is that would this change -- would it still be possible to plea bargain these charges out of a kidnapping charge.

Through you.

DEPUTY SPEAKER BERGER:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

This doesn't change the plea-bargaining process, so if it's eligible to be plea-bargained in the first place, then it would still be.

DEPUTY SPEAKER BERGER:

Representative Miner.

hac/gbr
HOUSE OF REPRESENTATIVES

238
May 1, 2013

REP. MINER (66th):

Thank you, Mr. Speaker.

So if the gentleman knows, are these charges -- are these crimes eligible, in terms of being able to plea bargain.

Through you.

DEPUTY SPEAKER BERGER:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

The -- there may -- I want to make sure we're talking about the same thing. The crimes can be plea bargained. For example, a Prosecutor may determine that they don't -- the facts behind the -- the arrest do not meet the elements necessary to convict under this crime, but they may fit a separate crime.

What it -- what it is so is that the sentence, if there's a guilty plea on this -- under this statute, then the sentence could not be reduced below that mandatory minimum.

The reason for this correction is that there was the -- the inconsistency that -- that was explained, in that kidnapping in the first degree was actually held to a higher minimum than kidnapping in the first

degree with a firearm and the way the courts interpreted that was to mean that both crimes had to get reduced down to the lower mandatory minimum of the one year, and so this is meant to correct that.

DEPUTY SPEAKER BERGER:

Representative Miner.

REP. MINER (66th):

Thank you, Mr. Speaker.

And I appreciate the effort on the part of the Chairman and Ranking Member and the whole Committee, in fact, to try and reconcile what seemed to be an inequity. What I'm trying to point out to the Chamber is that there are statistics about how many times people charged with a kidnapping crime in conjunction with a gun, and more often than not the kidnapping charge sticks and the gun crime doesn't.

And so we can put all these things in place if we want. We passed a lot of legislation in this Chamber and affected a lot of people in this State, but until we stop giving away that charge, no one will spend 10 years behind bars. They'll end up facing a judge over the kidnapping crime and not the gun connection to that crime.

And I think what most law-abiding gun owners have been asking for a long time is for that activity to stop.

Thank you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Thank -- thank you, Representative.

Will you remark further on the bill before us?

Will you remark further on the bill before us?

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

THE CLERK:

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

DEPUTY SPEAKER BERGER:

Have all members voted? Have all members voted?

Will members please check the board to make sure your votes are properly cast.

If all the members have voted, the machine will be locked and the Clerk will take a tally.

Clerk please announce the tally.

THE CLERK:

Bill Number 6571.

hac/gbr
HOUSE OF REPRESENTATIVES

241
May 1, 2013

Total Number Voting	143
Necessary for Passage	72
Those voting Yea	143
Those voting Nay	0
Absent and not voting	7

DEPUTY SPEAKER BERGER:

The bill is passed.

Would the Clerk please call Calendar 357?

THE CLERK:

House Calendar 357, favorably reported Joint
Standing Committee on PUBLIC HEALTH SUBSTITUTE HOUSE
BILL 6243, AN ACT CONCERNING THE PRACTICE OF THAI
YOGA.

SPEAKER SHARKEY:

Representative Johnson.

REP. GROGINS (129th):

No. Representative Grogins.

Mr. Speaker.

SPEAKER SHARKEY:

Oh. Representative Grogins.

REP. GROGINS (129th):

Thank you, Mr. Speaker.

I move for the acceptance of the Joint
Committee's favorable report and passage of this bill.

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 5
1379 - 1717**

2013

ROBERT DEVLIN: Hi, good morning. Good to see all of you.

My name is Robert Devlin. I'm a Superior Court judge and a chief administrative judge of the Criminal Division of our court and I'm also on the Sentencing Commission and I'm chair of a subcommittee on sentencing structure.

And the Sentencing Commission has a broad mandate and part of it is to examine some, you know, incongruities and inconsistencies in our criminal law that hopefully we can bring to the attention of this committee and I think improve and strengthen the application of our criminal law generally.

So I want to talk about this -- the bill I'm talking about House Bill 6571 and it suggests changes in two statutes; sexual assault in the fourth degree and the kidnapping in the first degree with a firearm. And both of these recommended changes are intended to eliminate inconsistencies in these statutes and hopefully strengthen the application of these two important criminal laws in our state.

So first let me just talk briefly about sexual assault in the fourth degree. This offense prohibits and makes criminal sexual contact in a variety of circumstances. The law in this area is very careful to distinguish accidental contact with the intimate parts of somebody else could happen in a crowded bus or crowded train, as opposed to contact that is purposeful and deserves to be prosecuted as criminal and so the statutory scheme accomplishes this distinction by its definition of sexual contact.

Sexual contact, as defined in the statute,

means any contact with the intimate parts of a person not married to the actor for the purposes of sexual gratification of the actor or for the purpose -- purpose of degrading or humiliating such other person, so in other words to be criminal the defendant must have contact with the intimate parts of another person for the purpose of sexual gratification or to degrade or humiliate the victim.

So under our present statute there's nine ways to commit this offense -- whole different categories of victims -- there's nine separate ways in which this offense can be convicted, but only Subsection One specifies that the actor must act intentionally and since all the circumstances require the actor engage in sexual contact with this intent to obtain sexual gratification or to degrade the victim under the totality of this statutory scheme, this word intentionally while it seemingly makes sense, it actually duplicative, confusing and really unnecessary.

So eliminating this word from the statute would in no way weaken its application, but in fact, would clarify and strengthen the law and make it much easier for judges to explain this statute to juries who actually have to apply in our courts. And so the Sentencing Commission recommends that the statute be amended to eliminate the word intentionally from Subsection One of our sexual assault in the fourth degree statute.

The second statute that House Bill 6571 addresses is kidnapping in the second degree with a firearm and again, this gets a bit technical, but -- but it's -- but it's important. In 1981 Connecticut converted this criminal sentencing scheme from a system based on what were called indeterminate sentences,

like five to ten, things like that, to one of definite sentences.

At that time the legislature established a penalty for a Class A Felony, other than murder to be at least ten years, but not more than 25 years and still today that is the penalty for a Class A Felony, other than murder, not less than ten, no more than 25 years.

So under this scheme a kidnapping in the first degree, which is a Class A Felony carried a mandatory sentence of ten years; however, in 1986 our Supreme Court issued a decision in a case that challenged the applicability of that general sentencing statute to kidnapping in the first degree and this challenge was based on the fact that in 1975 the legislature enacted a new and more serious offense of kidnapping in the first degree with a firearm and that offense carried a mandatory minimum term of one year.

And in State against Jenkins, reported at 198 Connecticut, our Supreme Court confronted this inconsistency in the statutes. The court suggested that this apparent inconsistency was likely due to legislative error and the court described the relationship between the ten year mandatory for kidnapping in the first degree and the one year mandatory for the more serious crime of kidnapping first degree with a firearm as an irreconcilable conflict and the court resolved this conflict by stating, "we therefore hold that until the legislature takes corrective action the sentencing provisions of kidnapping first degree with a firearm governs all prosecutions for kidnapping first degrees."

So the bottom line is that for over 25 years kidnapping first degree has had an effective minimum sentence of one year. This gets

further complicated because in 1993 the legislature added a three year mandatory term for kidnapping second degree and earlier had amended the kidnapping second degree with firearm statute to create a mandatory of three years for that offense as well.

So the effect of all this is that today our sort of kidnapping scheme looks like this, kidnapping first degree has a ten year mandatory under the penal code, but under the State against Jenkins case has an effective mandatory term of one year. Kidnapping first degree with a firearm by the terms of the statute has a one year mandatory. Kidnapping second degree has a three year mandatory and kidnapping second degree with a firearm also has a three year mandatory.

So what to do? The proposed proposal that the Sentencing Commission has put forward in this bill would be to repeal the one year mandatory for the offense of kidnapping first degree with a firearm. This would fix the so called Jenkins problem and reinstate the original ten year mandatory for kidnapping first degree, plus in accordance with sort of this general sentencing statute apply that same minimum sentence to kidnapping first degree with a firearm.

This change would do two important things. First, it would reinstate a logical progression of penalties to our kidnapping statutes and second, it would bring our law into line with what seems to be the original intent of the legislature and so these are suggested changes that are made in this bill.

Thank you for your attention. I would be happy to answer any questions that you might have about that.

SENATOR COLEMAN: Chairman Fox.

REP. FOX III: Thank you, Mr. Chairman.

And thank you, Judge Devlin and good to see you and thank you for being here to testify.

This is something -- and I know you've discussed it in the past and it's one of the reasons I think the Sentencing Commission and the work of the commission is so important, because you can point out when these types of inconsistencies exist and the way you explain it is it's completely, you know, logical that we would not want a one year -- when -- when there's a mandatory of ten years that the Supreme Court has then determined it's actually a one year because we have a different crime where there's a minimum mandatory of one year.

One of the difficulties though is in trying to explain this when people just see okay we're -- we're taking away a mandatory minimum on a kidnapping, they're like wait a second we shouldn't be doing that and -- and in effect we're not doing that --

ROBERT DEVLIN: Right.

REP. FOX III: -- but it's important that you're here and that the members of the committee that are here get to understand the reasoning behind why this is an important change. Why it can create confusion for those who charge, as well as those who defend and have to explain to their clients the differences as well as when you're trying to charge a jury and you -- you want to go through all of that.

On -- on the first -- the sexual assault in the fourth degree that you mentioned, you -- your

recommendations that we remove the word intentional and I -- I've asked this question earlier on the -- the drug free zone bill, but also on -- on this, was there consensus with respect to removing the word intentional because I would -- does that make it more difficult to prove -- does the word intentional make it more difficult to prove the crime?

I -- I would think there might be some reluctance on at least some people do that, but I would be interested in your comments.

ROBERT DEVLIN: Sure. This was a consensus proposal by all the members on the commission. The -- the sort of mental element of the offense is -- is grounded in the definition of sexual contact, in other words, you have to -- the contact has to be motivated by an intent for sexual gratification.

No matter which -- because, you know, the statute applies to coaches, it applies to people that may be have a position of authority over the victims, a whole range of -- of circumstances. And so the word intentional, which only applies to one of the nine subsections of the statute, creates difficulties, like for example, Subsection One talks about sexual contact with a minor. The word intentional creates this ambiguity that does the actor have to actually know the person is a minor in -- in the event, which is not the law in Connecticut.

That's not a -- we protect young people and we don't require that the actor know the person's age, but that extra word in the statute just creates this ambiguity which is unnecessary to really I think, you know, put forward the really intent of the statute against the people that deserve to be prosecute of course. That's

the idea. It creates ambiguities that are -- could be completely avoided if we just eliminate it.

It would either be better if we had intentionally on all nine subsections of the statute or none, but having it in one creates us this problem. That -- that's the case (inaudible). Yeah.

REP. FOX III: Okay. Well -- well, thank you very much for your testimony today.

SENATOR COLEMAN: Are there others with questions?

Representative Rebimbas.

REP. REBIMBAS: Thank you, Mr. Chair.

And thank you, Your Honor, for your testimony.

Just clarification, is there no kidnapping charge that carries or does not even have a one year mandatory minimum?

ROBERT DEVLIN: Correct. There's no -- we have four -- four types of kidnapping in Connecticut; kidnapping one, kidnapping two and both can be enhanced if the actor uses a firearm, so right now kidnapping one and kidnapping has a one year mandatory. Kidnapping with a firearm has a one year mandatory and then kidnapping two and its two different versions has a three year mandatory. Those are the sentencing structures here, yeah.

REP. REBIMBAS: Thank you.

SENATOR COLEMAN: Do other members have questions?

Seeing none, thank you, Judge, for your time --

13
hac/gbr JUDICIARY COMMITTEE

March 11, 2013
11:00 A.M.

ROBERT DEVLIN: Thank you, Senator Coleman.

SENATOR COLEMAN: -- and your input.

ROBERT DEVLIN: Thank you.

SENATOR COLEMAN: Representative Claire Janowski.

REP. JANOWSKI: Good morning, Representative Fox, Senator Coleman and members of the Judiciary Committee.

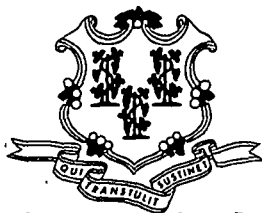
I'm here in support of House Bill 6581 and SB 1062, concerning changes to the youthful offender laws and with me is David Norman. He is a constituent in my district and a third year law student at Quinnipiac Law School and he brought these bills to my attention and they're important. He has a passion for restructuring the current youthful offender laws to a better consider the treatment and rehab of the youthful offenders and I would like to defer to him to give testimony on the importance of the -- what is trying to be accomplished in these two bills.

DAVID NORMAN: Thank you, Representative Janowski and thank you for advocacy on -- on this issue and -- and other issues that are of importance to children in our state.

Good morning, Senator Coleman, Representative Fox, Senator Kissel, Representative Rebimbas and distinguished members of the committee.

I'm pleased to support House Bill 6581 and Senate Bill 1062, which represent, as you're aware, the Connecticut Sentencing Commission's recommended consensus proposals regarding juvenile sentencing reform.

Now, let me be clear, serious crimes deserve



**Connecticut
Sentencing
Commission**

www.ct.gov/opm/csc

TESTIMONY IN SUPPORT OF HB 6571

AN ACT CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT SENTENCING COMMISSION WITH RESPECT TO SEXUAL ASSAULT IN THE FOURTH DEGREE AND KIDNAPPING IN THE FIRST DEGREE WITH A FIREARM.

By Judge Robert J. Devlin,
Chair of the Sentencing Commission's Committee on Sentencing Structure,
Policy and Practices

Senator Coleman, Representative Fox, Senator Kissel, Representative Rebimbas and members of the Judiciary Committee, thank you for the opportunity to speak in support of Raised Bill 6571. This is one of several bills recommended for passage by the Connecticut Sentencing Commission, of which I am a member.

Raised Bill No. 6571 would make changes to two statutes: Sexual Assault in the Fourth Degree and Kidnapping in the First Degree with a Firearm. Both recommended changes are intended to eliminate inconsistencies in the law and strengthen the application of these two important criminal statutes.

Sexual Assault in the Fourth Degree: §53a-73a

This offense prohibits and makes criminal sexual contact in a variety of circumstances. The law in this area is careful to distinguish accidental contact with the intimate parts of another person (as could happen in a crowded train or bus) from sexual contact that is purposeful and deserves to be prosecuted as criminal. The statutory scheme accomplishes this distinction through the definition of "sexual contact." Sexual contact as used in the statute means "any contact with the intimate parts of a person not married to the actor for the purpose of sexual gratification of the actor or the purpose of degrading or humiliating such other person ..." General Statutes §53a-65(3). In other words, to be criminal the defendant must have contact with an intimate part of another person for the purpose of sexual gratification or for the purpose of degrading or humiliating the victim.

At present the statute lists nine ways in which Sexual Assault in the Fourth Degree can be committed, only one of which specifies that the actor must act "intentionally." Since all of these circumstances require that the actor engaged in sexual contact with the intent to obtain sexual gratification or to degrade the victim, under the totality of the statutory scheme, this word is duplicative, confusing and unnecessary.

Eliminating this word from the statute would in no way weaken its application but in fact would clarify and strengthen the law and make it easier for judges to instruct juries on the meaning of the statute. **The Sentencing Commission therefore recommends that the statute be amended to eliminate the word "intentionally" from subsection §53a-73a(a)(1).**

The Honorable
Joseph M. Shortall, Chair

Undersecretary
Mike Lawlor, Vice Chair

Andrew J. Clark, Acting
Executive Director

Kidnapping in the Second Degree with a Firearm: 53a-92a

The Problem

In 1981, Connecticut converted its criminal sentencing scheme from a system based on indeterminate sentences to one of definite sentences. At the time, the legislature established the penalty for a class A felony (other than murder) to be at least ten years but not more than twenty-five years (C.G.S. §53a-35a). This is still the penalty for a class A felony other than murder.

Under this statutory scheme, until 1986 Kidnapping First Degree (§53a-92) (a class A felony) carried a mandatory sentence of ten years. However, in 1986 the Connecticut Supreme Court issued a decision in a case that challenged the applicability of the statute to Kidnapping First Degree. This challenge was based on the fact that the Legislature had enacted a statute in 1975 that established a new, more serious, offense of Kidnapping First Degree with a Firearm that carried a mandatory minimum term of one year. (Public Act 75-380, codified as §53a-92a). In *State v. Jenkins*, 198 Conn. 671 (1986), our Supreme Court confronted the inconsistency in the statutes. The Court suggested that this apparent inconsistency was likely due to legislative error. *State v. Jenkins*, supra, 198 Conn. 676. The Court described the relationship between the ten year mandatory for Kidnapping First (§53a-92) and the one year mandatory for the more serious crime of Kidnapping First with a Firearm (§53a-92a) as an "irreconcilable conflict." *Id.*, 680.

The Court ultimately resolved the conflict as follows:

"We therefore further hold that, until the legislature takes corrective action, the sentencing provisions of §53a-92a (b) governs all prosecutions for kidnapping first degree." *Id.*

The bottom line is that, as a result of this ruling, for the last twenty-five years Kidnapping First Degree has had an effective minimum sentence of one year. To complicate matters further, in 1993 the legislature added a three year mandatory minimum to Kidnapping Second Degree (§53a-94). P.A. 93-148. Also, in 1992, the legislature increased the mandatory minimum for Kidnapping Second Degree with a Firearm (§53a-94a) from one to three years. P.A. 92-260.

The effect of all this is that our present sentencing scheme for kidnapping looks like this:

Kidnapping 1st (§53a-92) – 10 year mandatory minimum per the Penal Code but reduced to one year pursuant to *State v. Jenkins*.

Kidnapping 1st with a Firearm (§53a-92a) – one year mandatory

Kidnapping 2nd (§53a-94) – three year mandatory

Kidnapping 2nd with a Firearm – three year mandatory

MEMBERS

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Patricia Rehmer

John Santa

David Shepack

Susan O. Storey

Erika M. Tindill

Thomas J. Ullmann

The Honorable
Gary White

The Remedy

The present proposed amendment to the Kidnapping First Degree with a Firearm would repeal the one year mandatory for that crime. This would fix the Jenkins problem and reinstate the original ten year mandatory for Kidnapping First Degree plus, in accordance with §53a-35a, make that same minimum sentence applicable to Kidnapping First Degree with a Firearm.

This change would do two important things. First, it would reinstate a logical progression of penalties to our kidnapping statutes; and second, it would bring our law into line with the original intent of the legislature.

Thank you for your attention.



Connecticut Sexual Assault Crisis Services, Inc.

96 Pitkin Street · East Hartford, CT 06108 · Phone. 860-282-9881 · Fax 860-291-9335 · www.connsacs.org

Testimony of Connecticut Sexual Assault Crisis Services
**In Support of HB 6571, AN ACT CONCERNING THE RECOMMENDATIONS OF THE
CONNECTICUT SENTENCING COMMISSION WITH RESPECT TO SEXUAL ASSAULT IN
THE FOURTH DEGREE AND KIDNAPPING IN THE FIRST DEGREE WITH A FIREARM**

Anna Doroghazi, Director of Public Policy and Communication
Judiciary Committee Public Hearing, Monday, March 11, 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.

We would like to express our support for HB 6571, *An Act Concerning the Recommendations of the Connecticut Sentencing Commission with Respect to Sexual Assault in the Fourth Degree and Kidnapping in the First Degree with a Firearm*. Under current statute, a person is guilty of sexual assault in the fourth degree when such person "*intentionally* subjects another person to sexual contact" under certain conditions outlined in subdivision (1) of subsection (a) of Sec. 53a-73a; in subdivisions (2-9) of the same subsection, there is no requirement for an actor to act "*intentionally*." This discrepancy is confusing and unnecessary. It is also redundant: for this section, "sexual contact" means "any contact with the intimate parts of a person...for the purpose of sexual gratification of the actor or for the purpose of degrading or humiliating such person." This requirement to act with purpose eliminates the need to additionally specify that an actor must act intentionally. By removing the word "*intentionally*" from subdivision (1) of subsection (a), HB 6571 will eliminate redundant language and bring consistency to the section.

Thank you for your consideration.

Anna Doroghazi
anna@connsacs.org

PAGE 1
LINE 18

**STATE OF CONNECTICUT
JUDICIAL BRANCH**

EXTERNAL AFFAIRS DIVISION

231 Capitol Avenue
Hartford, Connecticut 06106
(860) 757-2270 Fax (860) 757-2215

**REMARKS OF JUDGE ROBERT J. DEVLIN, JR.
JUDICIARY COMMITTEE INFORMATIONAL HEARING**

Raised Bill 6571, AAC the Recommendations of the Connecticut Sentencing Commission with Respect to Sexual Assault in the Fourth Degree and Kidnapping in the First Degree with a Firearm

Senator Coleman, Representative Fox, Senator Kissel, Representative Rebimbas and members of the Judiciary Committee, thank you for the opportunity to speak in support of Raised Bill 6571. This is one of several bills recommended for passage by the Connecticut Sentencing Commission, of which I am a member.

Raised Bill No. 6571 would make changes to two statutes: Sexual Assault in the Fourth Degree and Kidnapping in the First Degree with a Firearm. Both recommended changes are intended to eliminate inconsistencies in the law and strengthen the application of these two important criminal statutes.

Sexual Assault in the Fourth Degree: §53a-73a

This offense prohibits and makes criminal sexual contact in a variety of circumstances. The law in this area is careful to distinguish accidental contact with the intimate parts of another person (as could happen in a crowded train or bus) from sexual contact that is purposeful and deserves to be prosecuted as criminal. The statutory scheme accomplishes this distinction through the definition of "sexual contact." Sexual contact as used in the statute means "any contact with the intimate parts of a person not married to the actor for the purpose of sexual gratification of the actor or the purpose of degrading or humiliating such other person ..." General Statutes §53a-65(3) In other words, to be criminal the defendant must have contact with an intimate part of another person for the purpose of sexual gratification or for the purpose of degrading or humiliating the victim.

At present the statute lists nine ways in which Sexual Assault in the Fourth Degree can be committed, only one of which specifies that the actor must act "intentionally." Since all of these circumstances require that the actor engaged in sexual contact with the intent to obtain sexual gratification or to degrade the victim, under the totality of the statutory scheme, this word is duplicative, confusing and unnecessary.

Eliminating this word from the statute would in no way weaken its application but in fact would clarify and strengthen the law and make it easier for judges to instruct juries on the

meaning of the statute. The Sentencing Commission therefore recommends that the statute be amended to eliminate the word "intentionally" from subsection §53a-73a(a)(1).

Kidnapping in the Second Degree with a Firearm: 53a-92a

The Problem

In 1981, Connecticut converted its criminal sentencing scheme from a system based on indeterminate sentences to one of definite sentences. At the time, the legislature established the penalty for a class A felony (other than murder) to be **at least ten years** but not more than twenty-five years (C.G.S. §53a-35a). This is still the penalty for a class A felony other than murder

Under this statutory scheme, until 1986 Kidnapping First Degree (§53a-92), a class A felony, carried a mandatory sentence of ten years. However, in 1986 the Connecticut Supreme Court issued a decision in a case that challenged the applicability of the statute to Kidnapping First Degree. This challenge was based on the fact that the Legislature had enacted a statute in 1975 that established a new, more serious, offense of Kidnapping First Degree with a Firearm with a mandatory minimum term of just one year. (Public Act 75-380, codified as §53a-92a). In *State v Jenkins*, 198 Conn. 671 (1986), our Supreme Court confronted the inconsistency in the statutes. The Court suggested that this apparent inconsistency was likely due to legislative error. *State v Jenkins*, supra, 198 Conn. 676. The Court described the relationship between the ten year mandatory for Kidnapping First (§53a-92) and the one year mandatory for the more serious crime of Kidnapping First with a Firearm (§53a-92a) as an "irreconcilable conflict." *Id.*, 680.

The Court ultimately resolved the conflict as follows:

"We therefore further hold that, until the legislature takes corrective action, the sentencing provisions of §53a-92a (b) governs all prosecutions for kidnapping first degree." *Id.*

The bottom line is that, as a result of this ruling, for the last twenty-five years Kidnapping First Degree has had an effective minimum sentence of one year. To complicate matters further, in 1993 the legislature added a three year mandatory minimum to Kidnapping Second Degree (§53a-94). P.A. 93-148. Also, in 1992, the legislature increased the mandatory minimum for Kidnapping Second Degree with a Firearm (§53a-94a) from one to three years. P.A. 92-260.

The effect of all this is that our present sentencing scheme for kidnapping looks like this:

Kidnapping 1st (§53a-92) – 10 year mandatory minimum per the Penal Code but reduced to one year pursuant to *State v Jenkins*

Kidnapping 1st with a Firearm (§53a-92a) – one year mandatory

Kidnapping 2nd (§53a-94) – three year mandatory

Kidnapping 2nd with a Firearm – three year mandatory

The Remedy

The present proposed amendment to the Kidnapping First Degree with a Firearm would repeal the one year mandatory for that crime. This would fix the *Jenkins* problem and reinstate the original ten year mandatory for Kidnapping First Degree plus, in accordance with §53a-35a, make that same minimum sentence applicable to Kidnapping First Degree with a Firearm.

This change would do two important things. First, it would reinstate a logical progression of penalties to our kidnapping statutes; and second, it would bring our law into line with the original intent of the legislature.

Thank you for your consideration.

S - 657

**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2013**

**VOL. 56
PART 6
1512 - 1826**

cah/meb/gdm/gbr
SENATE

89
May 14, 2013

Senator -- Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, if the Clerk would call as the next item, as we've mentioned, Calendar page 26, Calendar 508, House Bill 6571.

THE CHAIR:

Mr. Clerk.

THE CLERK:

On page 26, Calendar 508, House Bill Number 6571, AN ACT CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT SENTENCING COMMISSION WITH RESPECT TO SEXUAL ASSAULT IN THE FOURTH DEGREE AND KIDNAPPING IN THE FIRST DEGREE WITH A FIREARM, Favorable Report of the Committee on Judiciary.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you again, Madam President.

I move acceptance of the joint committee's Favorable Report and passage of the bill.

THE CHAIR:

Motion is on passage.

Will you remark, sir.

SENATOR COLEMAN:

Madam President, let me preface my remarks by saying that the sentencing commission has done some admirable work. And there are a number of bills that will come before the Senate and the

cah/meb/gdm/gbr
SENATE

90
May 14, 2013

entire General Assembly this year that are the products of the good work that the sentencing commission has done. This is one of those bills.

And the sentencing commission was charged with the responsibility of reviewing statutes that relate to sentencing, and trying to identify inconsistencies and to make modifications to bring our statutes up to date and to make them more efficient and effective.

This bill does two things primarily. First, in the case of the charge or offense of sexual assault in the fourth degree, it eliminates the requirement that any person act intentionally in order to be charged with and potentially found guilty of sexual assault in the fourth degree.

And the second thing that the bill does is -- believe it or not, Madam President, there was some material inconsistency between the charges of kidnapping in the first degree and kidnapping in the first degree with a firearm.

And the inconsistency is that kidnapping in the first degree carried with it a minimum sentence of 10 years incarceration, while kidnapping in the first with a firearm, an offense which is considered more serious, carried with it a minimum sentence of one year of incarceration.

And so what this bill does is to address that inconsistency and to provide for, in both instances, a minimum sentence of ten years of incarceration. So I would urge passage of the bill, Madam President.

Thank you.

THE CHAIR:

Thank you.

Will you remark?

Senator Kissel.

cah/meb/gdm/gbr
SENATE

91
May 14, 2013

SENATOR KISSEL:

Thank you very much, Madam President.

I rise in support of this bill. While I certainly respect and admire the hard work of the sentencing commission, and indeed, in many areas that hard work is clearly evinced in their work product. As some of those bills come before us, I do have strong disagreements with some of their recommendations, but this particular bill is not one of them.

Indeed, it would be anomalous to have as a mandatory minimum a one-year sentence for kidnapping with a firearm, and then, for the more normal kidnapping or one without a firearm to have a mandatory minimum of ten. And I'm glad that we created a new bench -- base -- base level of the higher -- of the mandatory minimums, because very, very frightening to be kidnapped, in fear of one's life.

So it's a good bill. It ought to pass, and I urge my colleagues to support it.

Thank you, Madam President.

THE CHAIR:

Thank you.

Will you remark? Will you remark?

Senator Coleman.

SENATOR COLEMAN:

Madam President, if there's no objection, I'd ask that this matter also be placed on our Consent Calendar.

THE CHAIR:

Seeing no objection, so ordered, sir.

Senator Looney.

S - 658

**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2013**

**VOL. 56
PART 7
1827 - 2152**

The bill passes.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, if the Clerk might now call the items on the Consent Calendar before proceeding to a vote on that Consent Calendar.

THE CHAIR:

Mr. Clerk.

THE CLERK:

On Page 1, Calendar 545, Senate Resolution Number 27; also on Page 1, Calendar 546, Senate Resolution Number 28. On Page 2, Number 547, Senate Resolution Number 29. On Page 2, Number 549, Senate Resolution Number 31. On Page 5, Number 184, Senate Bill 1026. On Page 7, Calendar Number 253, Senate Bill Number 763. On Page 16, Calendar Number 412, Senate Bill Number 962. On Page 17, Calendar Number 436, Senate Bill Number 673. On Page 18, Calendar Number 438, Senate Bill Number 761. Also on Page 18, Calendar Number 443, Senate Bill Number 1056. On Page 19, Calendar Number 449, Senate Bill Number 828. On Page 20, Calendar Number 461, House Bill Number 6540.

On Page 21, Number 469, House Bill Number 6574. On Page 23, Number 480, Senate Bill Number 238. On Page 25, Calendar Number 501, House Bill Number 5799. Also on Page 25, Number 507, House Bill Number 5117. On Page 26, Calendar Number 508, House Bill Number 6571. On Page 26, Calendar Number 509, House Bill Number 6348. Also on Page 26, Calendar Number 510, House Bill Number 6007 and on Page 26, Calendar Number 512, House Bill Number 6392.

On Page 40, Calendar Number 48, Senate Bill Number 519. On Page 40, Calendar Number 60, Senate Bill Number 859. Also on Page 40, Calendar Number 104, Senate Bill Number 833.

cah/meb/gdm/gbr
SENATE

393
May 14, 2013

On Page 41, Calendar Number 107, Senate Bill Number 917. On Page 42, Calendar Number 123, Senate Bill Number 434. On Page 43, Calendar Number 129, Senate Bill Number 898. Also on Page 43, Calendar Number 139, Senate Bill Number 158. On Page 43, Calendar Number 167, Senate Bill Number 879.

On Page 45, Calendar Number 195, Senate Bill Number 816. Also on Page 45, Calendar Number 204, Senate Bill 652. On Page 47, Calendar Number 241, Senate Bill 1040. On Page 48, Calendar Number 269, Senate Bill 1003. Also on Page 48, Calendar Number 270, Senate Bill Number 1007.

On Page 50, Calendar Number 304, Senate Bill 1019. Also on Page 50, Calendar Number 310, Senate Bill 903. And finally on Page 53, Calendar Number 399, Senate Bill 1069.

THE CHAIR:

Mr. Clerk, will you call for a roll call vote. The machine will be open on the Consent Calendar.

THE CLERK:

Immediate roll call vote has been ordered in the Senate. Immediate roll call vote has been ordered in the Senate. Senators please return to the Chamber. Immediate roll call vote in the Senate.

THE CHAIR:

If all members have voted, if all members have voted the machine will be locked. Mr. Clerk, will you please call the tally.

THE CLERK:

On Consent Calendar Number 1.

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 is passed.

Are there any points of personal privilege?

Senator Doyle.

SENATOR DOYLE:

Thank you, Madam President.

Yeah for a point of information for the Chamber.

THE CHAIR:

Please proceed, sir.

SENATOR DOYLE:

Yes, thank you, Madam President.

Tomorrow the General Law Committee will be meeting at 11:15 outside the Hall of the House. The bulletin said 15 minutes before the early session so now we're making it definitive. Tomorrow at 11:15 outside the Hall of the House the General Law Committee will be considering one bill that was referred to us.

Thank you, Madam President.

THE CHAIR:

Thank you.

Senator Duff next.

SENATOR DUFF:

Thank you, Madam President.

For the point of announcement please.

THE CHAIR:

Please proceed, sir.