



DIVISION OF PUBLIC DEFENDER SERVICES
State of Connecticut

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**Testimony of the Office of Chief Public Defender
Benedict R. Daigle, Assistant Public Defender**

**Committee on Judiciary – March 8, 2023
Raised S.B. 1182 – An Act Clarifying the Meanings of
Sexual Intercourse and Sexual Contact**

The Office of Chief Public Defender (OCPD) opposes **Raised S.B. 1182 – An Act Clarifying the Meanings of Sexual Intercourse and Sexual Contact (LCO 5276)**, as the bill goes beyond the cited rulings and could effectively change the burden of proof in certain instances. OCPD recommends referral to the Sentencing Commission or an issue-specific workgroup to ensure that all relevant stakeholders are heard in the development of this legislation.

In short, the cited cases, taken together, hold that a conviction for sexual assault prosecuted on a continuing course of conduct theory can stand against a claimed 6th Amendment violation as long as the risk of a nonunanimous verdict as to the specific conduct on which the conviction is based is cured by either a bill of particulars or a jury instruction on conduct unanimity.¹ Thus, defendants, prosecutors, and courts already are equipped as to how to approach such cases.

As drafted, the legislation does not define “continued course of action,” which leaves the term overly vague. Other states have set parameters around the timeframe and frequency of alleged conduct. Absent such parameters, the legislation creates concerns regarding double jeopardy.

Insofar as the legislation specifies “continuous course of conduct” without also addressing the issues which would be addressed by a bill of particulars or a jury instruction on unanimity, the legislation also leaves open a risk of 6th Amendment violations for lack of unanimity.

OCPD is available for discussion to ensure accurate codification of the rulings. Thank you.

¹ *State v. Douglas C.*, 345 Conn. 421, 285 A.3d 1067 (2022); *State v. Joseph V.*, 345 Conn. 516, 285 A.3d 1018 (2022).

Mission Statement of the Division of Public Defender Services

Striving to ensure justice and a fair and unbiased system, the Connecticut Division of Public Defender Services zealously promotes and protects the rights, liberty and dignity of all clients entrusted to us.

We are committed to holistic representation that recognizes clients as individuals, fosters trust and prevents unnecessary and wrongful convictions.