



## State of Connecticut

### DIVISION OF PUBLIC DEFENDER SERVICES

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

**JUDICIARY COMMITTEE - March 11, 2024**

*Raised Bill No. 5298*

### **AN ACT CLARIFYING THE MEANINGS OF SEXUAL INTERCOURSE AND SEXUAL CONTACT**

**The Office of Chief Public Defender (OCPD) opposes *Raised H.B. 5298 An Act Clarifying the Meanings of Sexual Intercourse and Sexual Contact (LCO 5276)*.** The bill is identical to *Raised Bill No. 1182, An Act Clarifying the Meanings of Sexual Intercourse and Sexual Contact* which did not get voted out of this Committee during the 2023 legislative session. This office again opposes the bill as the bill goes beyond the cited rulings and could effectively change the burden of proof in certain instances. As recommended last year, this office recommends that this be referred to the Sentencing Commission or an issue-specific workgroup to ensure that all relevant stakeholders are heard in the development of legislation.

The cases cited hold that a conviction for sexual assault prosecuted on a continuing course of conduct theory can stand against a claimed 6<sup>th</sup> 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.<sup>1</sup> 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, as proposed, creates concerns regarding double jeopardy.

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

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**Testimony of Benedict R. Daigle, Assistant Public Defender**

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 6<sup>th</sup> Amendment violations for lack of unanimity.

Therefore, this office requests that this Committee take no action on this proposed bill. As always, this office is available for discussion to ensure accurate codification of the rulings. Thank you.