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JUDICIARY COMMITTEE – MARCH 2, 2026

Raised Bill No. 290
AN ACT CLARIFYING THE MEANINGS OF
"SEXUAL INTERCOURSE" AND "SEXUAL CONTACT"

The Office of Chief Public Defender (OCPD) is strongly opposed to Raised Bill No. 290, An Act Clarifying the Meanings of "Sexual Intercourse" and "Sexual Contact." This bill is essentially raising the identical issues found in Raised Bill 5298, *An Act Clarifying the Meanings of Sexual Intercourse and Sexual Contact,* which did not get voted out of the House in the 2024 legislative session, and Raised Bill 1182, *An Act Clarifying the Meanings of Sexual Intercourse and Sexual Contact,* that did not get voted out of this Committee during the 2023 legislative session. This office again strongly opposes the bill as the bill (1) on its face - doesn't really clarify the meanings of either term; (2) suggests seemingly simple language that in reality creates far more complex issues than this would appear, necessitating constitutional challenges and uncertainty in the prosecution of all sexual assault offenses; and (3) attempts to undo holdings in two 2022 Supreme Court decisions[1] recognizing that Connecticut's sexual assault offenses are not continuous course of conduct offenses but are individual acts, which allows for defendants to be charged with multiple counts for one incident and which requires that the jury unanimously agree the act occurred.

The proposed bill would change our sexual assault statutes to allow the prosecution to choose to prosecute the offenses as a single act or as a continuing course of conduct. The bill offers no standards or explanation as to when an offense would be appropriately charged as a single act or continuous course of conduct, and it offers no definition of "continuous course of conduct."

[1] *State v. Douglas C., Jr.*, 345 Conn. 421 (2022); *State v. Joseph V.*, 345 Conn. 516 (2022).

While this office has made recommendations both in our testimony in 2023 and 2024, this office first requests that this Committee take no action on this proposed bill. Alternatively, this office would then recommend that this be referred to an issue-specific working group to ensure that all relevant stakeholders are heard in the development of this legislation.

This bill raises serious constitutional and practical concerns. Because the bill proposes changes as to how our sexual assault statutes have been interpreted as individual acts and expands liability to include "continuous course of conduct," it may not be applied to conduct predating passage of the act without violating the ex post facto clause. In that sense alone, it is arguably unconstitutional. This bill may also raise First Amendment issues as it may be unconstitutionally vague, may lead to arbitrary and standardless enforcement, and may further lead to Fifth Amendment issues concerning double jeopardy. Without question, it directly attempts to undo the two Supreme Court cases as referenced above, and it directly impacts on a defendant's Sixth Amendment right to jury unanimity – the key constitutional issue addressed by these two cases.

For decades, defendants have been convicted and sentenced for multiple sexual offenses arising from the same incident. This change both creates opportunity for constitutional challenges to their convictions and confusion around when conduct, charged under the same criminal statute, is an individual act and when it is a course of conduct. To the extent that the bill leaves to the prosecution to define what the sexual assault statutes proscribe and decide how to define what constitutes a "continuous course of conduct" versus individual acts, it may also violate separation of powers as well.

Our Supreme Court has already decided this issue:

> *The statutory scheme defines "sexual intercourse" as "vaginal intercourse, anal intercourse, fellatio or cunnilingus between persons regardless of sex. Penetration, however slight, is sufficient to complete vaginal intercourse, anal intercourse or fellatio and does not require emission of semen." General Statutes § 53a-65 (2). This definition suggests that the statute intended to criminalize* ***each single act of sexual intercourse****, which is defined in singular terms. This kind of language consistently has been interpreted as criminalizing only single acts. See Cooksey v. State, 359 Md. 1, 19–21, 752 A.2d 606 (2000) (reviewing case law from various states with similarly worded sexual assault statutes, all of which have been* ***interpreted as not criminalizing continuous course of conduct****). Thus, this language does not contemplate an ongoing, continuous course of conduct but, rather, penalizes a single instance of sexual intercourse (emphasis added).*

> *Interpreting § 53a-70 to criminalize each separate act of sexual intercourse and not a continuous course of conduct is also supported by our "well settled principle of statutory construction that the legislature knows how to convey its intent expressly ... or to use broader or limiting terms when it chooses to do so." (Internal quotation marks omitted.) State v. Ruiz-Pacheco, 336 Conn. 219, 235, 244 A.3d 908 (2020). Specifically, we can infer from the legislature's use in other statutes of the phrase "course of conduct," as well as other phrases that connote more than one act, that the legislature knows how to criminalize a course of conduct when it wants to do so. From the fact that the legislature did not do so in § 53a-70, we may infer that it did not intend to criminalize a continuous course of conduct.*[2]

In short, any argument that concerns the notion that a change in the law is necessary in order to prosecute certain offenses and offenders is not true. Defendants, prosecutors, and courts are already equipped as to how to approach such cases, and this bill is unnecessary.

Therefore, this office requests that this Committee take **no action** on this proposed bill. Alternatively, this office would then recommend that this be referred to an issue-specific working group to ensure that all relevant stakeholders are heard in the development of this legislation. Thank you.

[2] *See Joseph V.* at 544-546.