

To: Connecticut Sentencing Commission

From: Alex Tsarkov and Louise Nadeau

Date November 9, 2022

Re: Recommendations of Animal Cruelty Subcommittee re Sexual Assault in the Fourth Degree in light of State v. Hoetzl

1. Introduction

The Subcommittee on Animal Cruelty has considered Connecticut's bestiality statute in light of the unpublished Superior Court Case of State v. Hoetzl. The 2022 Scope of Study on Animal Cruelty presented the issue. Specifically, in Hoetzl, the court found that the definition of sexual contact in 53a-65(3) was limited to contact with a person, and barred prosecution under the bestiality provision in Sexual Assault in the Fourth Degree, 53a-73a(a)(3).

The attached memorandum was drafted pursuant to the Scope of Study. Specifically, the memo examined the interplay between the bestiality crime in Section 53a-73a(a)(3) and the definition of sexual contact in Section 53a-65(3). The memo notes, among other things, that the provisions of Subdivision (3) of Section 53a-73a(a) refer to sexual contact with an animal and sexual contact with a dead body. Both acts arguably fall outside the definition of sexual contact in Section 53a-65(3).

2. Drafting approach

The memo was presented to the Animal Cruelty Subcommittee prior to its meeting on October 3, 2022. Judge Oliver, as chair of the Subcommittee, scheduled discussion on the memo, related statutes and potential drafting approaches at Subcommittee meetings held on October 3, 17, and 31, 2022. The Subcommittee voted to recommend to the full commission the attached revisions to Sections 53a-65(3) and 53a-73a(a).

The Subcommittee considered different drafting approaches. One draft divided Subdivision 53a-73a(a)(3) into subparagraph (A) for sexual contact with an animal and (B) for sexual contact with a dead body, However, the Subcommittee favored separating sexual contact with a dead body into a new subdivision.

The Subcommittee also considered creating a new statute section for bestiality. However, Section 53a-73a(3) has been in statute unchanged since its adoption in 1975. Consequently, legislative history and statutory context could be lost if a new section is created. The Subcommittee ultimately decided to keep the bestiality crime as Section

53a-73a(a)(3) and move the dead body provision to Subdivision 53a-73a(a)(4). The remaining subdivisions are renumbered accordingly.

3. Attached documents

Attached is the draft legislation recommended by the Subcommittee and the original memo on the topic.

To: Connecticut Sentencing Commission – Animal Cruelty Subcommittee

From: Louise Nadeau

Date September 27, 2022

Re: Sexual assault in the fourth degree in light of State v. Hoetzl

1. Introduction

This memo is drafted pursuant to the Connecticut Sentencing Commission study on animal cruelty. Specifically, this memo examines the interplay between the bestiality crime in Section 53a-73a(a)(3) and the definition of sexual contact in section 53a-65(3) of the general statutes.

2. State v. Hoetzl – interpretation of CGS 53a-65(3) and 53a-73a(a)(3)

In the unreported Superior Court case of State v. Hoetzl, the defendant was charged with sexual assault in the fourth degree under Section 53a-73a(a)(3) of the general statutes. The provision at issue prohibits sexual contact with an animal. The defendant argued that the definition of “sexual contact” in Section 53a-65(3) did not preclude sexual contact between a person and an animal.

The court found that (1) the definition of “sexual contact” includes only contact between persons and (2) the term persons does not include animals. Therefore, the court held the defendant could not be convicted of sexual contact with an animal under Section 53a-73a(a)(3).

As of this writing, it appears the Hoetzl case has not been appealed. Also, a search of the General Assembly legislative documents database for 2020, 2021, and 2022 suggests that no bill or amendment was filed to specifically address the holding in Hoetzl.¹ Although the Connecticut Supreme Court is the final authority on matters of statutory construction, the Hoetzl case raises questions about the statutory text. The subcommittee and full Commission may wish to examine these questions - which are the topic of this memo.

¹ The Hoetzl case was decided March 2, 2020, which was ten days before the Capitol Complex was closed to the public due to the COVID-19 worldwide pandemic and the issuance of a Declaration of Public Health and Civil Preparedness Emergencies by the Governor. The General Assembly did not reconvene for the remainder of the regular session.

3. Text of applicable sections

The pertinent provisions of the general statutes are:

Sec. 53a-65. Definitions. As used in this part, the following terms have the following meanings:

...

(3) "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 or any contact of the intimate parts of the actor with a person for the purpose of sexual gratification of the actor or for the purpose of degrading or humiliating such person.

Sec. 53a-73a. Sexual assault in the fourth degree: Class A misdemeanor or class D felony. (a) A person is guilty of sexual assault in the fourth degree when: ...

(3) such person engages in sexual contact with an animal or dead body;...

Section 53a-73a(a)(3) requires sexual contact, and sexual contact is defined in Section 53a-65(3) as "... any contact with the intimate parts of a person". The key question in determining the applicability of Section 53a-73a(a)(3) is – does a "person" include an animal? Another question, related to the statutory text but unrelated to the case, is – does a "person" include a dead body?

4. Applicable statutory definitions of "person"

A search of the general statutes for the phrase "person means" yields 290 statute sections. Although some of these sections may not be definitional, most had section titles that included the word "Definitions".

Below are two overarching definitions of "person" that apply to Section 53a-73a.

CGS Section 1-1(a) and (k)

Sec. 1-1. Words and phrases. Construction of statutes.

(a) In the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly.

...

(k) The words "person" and "another" may extend and be applied to communities, companies, corporations, public or private, limited liability companies, societies and associations.

CGS 53a-3 (Definitions applicable to Title 53a)

Sec. 53a-3. Definitions. Except where different meanings are expressly specified, the following terms have the following meanings when used in this title:

(1) "Person" means a human being, and, where appropriate, a public or private corporation, a limited liability company, an unincorporated association, a partnership, a government or a governmental instrumentality; (emphasis added)

5. Application of definitions to animals

The definition of person in Section 1-1(k) does not assist the analysis since it provides that the word "person" may extend to communities, companies, corporations, and other entities. The definition does not include animals.

The definition of person in Section 53a-3 applies to Sections 53a-65 and 53a-73a. The text provides that "person" means a human being, and where appropriate, any of the listed entities. The definition also does not include animals.

6. Drafting considerations if amending CGS 53a-65(3))

Caution is always advised when amending a criminal statute. With respect to Section 53a-65(3), an amendment would present some questions. For example, if the term "animal" is inserted, it seems necessary to limit its application to Section 53a-73a(a)(3). Otherwise, all sexual assault offenses may apply to an act of sexual contact with an animal. Currently, only sexual assault in the fourth degree applies to sexual contact with an animal.

One possible amendment to the definition of "sexual contact" is as follows:

Section 1. Subdivision (3) of section 53a-65 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2023*):

(3) "Sexual contact" means (A) 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 or any contact of the intimate parts of the actor with a person

for the purpose of sexual gratification of the actor or for the purpose of degrading or humiliating such person; or (B) for the purposes of subdivision (3) of subsection (a) of section 53a-73a, as amended by this act, any contact with the intimate parts of an animal or a dead human body, or any contact of the intimate parts of the actor with an animal or a dead human body, for the purpose of sexual gratification of the actor.

This approach retains the existing statutory framework but reiterates the provisions for purposes of Section 53a-73a(a)(3). This approach also clarifies that a “dead body” is a dead human body, and not the dead body of an animal.² The proposed new language omits reference to the “purpose of degrading or humiliating” an animal or dead human body since it appears inapplicable. However, the subcommittee or Commission may decide differently.

7. Drafting considerations if amending CGS 53a-73a(a)(3)

With respect to Section 53a-73a(a)(3), there are two offenses in the same subdivision. This is unusual. Usually, each offense is listed in a separate subdivision. However, it seems the offenses have co-existed in subdivision (3) since the section was first enacted as Section 6 of Public Act 75-619.³

One of the offenses in subdivision (3) is sexual contact with an animal – commonly referred to as bestiality. The other offense is sexual contact with a dead body – commonly referred to as necrophilia. It is arguable that the term “person” or “human being” does not apply to either an animal or a dead body.

To separate the two offenses in subdivision (3), it may be easier to create subparagraphs. The reference to an animal would be designated Subparagraph (A) and the reference to a dead body would be designated Subparagraph (B). The alternative is to renumber the dead body offense as Subdivision (4) and renumber the remaining subdivisions accordingly. Renumbering the subdivisions may cause confusion regarding past convictions under the renumbered provisions. However, renumbering may be an option if it is determined that confusion would be minimal.

The pertinent changes could read as follows:

...

² The phrase “dead human body” is used in the Georgia Code, O.C.G.A. 16-6-7. Further research can be conducted to determine the terminology used in other states.

³ P.A. 75-619, Section 6, provides in part: “Sec. 6. (NEW) (a) A person is guilty of sexual assault in the fourth degree when: (3) such person engages in sexual contact with an animal or dead body.” The later subdivisions were added in subsequent years.

(3) such person engages in sexual contact with (A) an animal or (B) a dead human body;

...

(b) Sexual assault in the fourth degree is a class A misdemeanor or, if the victim of the offense is a person under sixteen years of age, a class D felony.

This approach allows for a person to be charged with a violation of CGS Section 53a-73a(a)(3)(A) or 53a-73a(a)(3)(B). The amendment to the penalty provision in subsection (b) also clarifies that the victim must be a person under sixteen years of age, and not an animal or dead body under sixteen years of age.

8. Scope of proposed draft

Any recommendation of the subcommittee or Commission could be limited to the animal cruelty aspect of Sexual Assault in the Fourth Degree. However, if the subcommittee or Commission determine there are questions with respect to the remaining text of Section 53a-73a(a)(3), it may recommend further amendment to address those questions. Such a recommendation is likely within the scope of the Sentencing Commission's charge in Section 54-300 of the general statutes.⁴

The following draft is provided for discussion purposes.

⁴ CGS 54-300 provides in part: (b) The mission of the commission shall be to review the existing criminal sentencing structure in the state and any proposed changes thereto, including existing statutes, proposed criminal justice legislation and existing and proposed sentencing policies and practices and make recommendations to the Governor, the General Assembly and appropriate criminal justice agencies.

(c) In fulfilling its mission, the commission shall recognize that: (1) The primary purpose of sentencing in the state is to enhance public safety while holding the offender accountable to the community, (2) sentencing should reflect the seriousness of the offense and be proportional to the harm to victims and the community, using the most appropriate sanctions available, including incarceration, community punishment and supervision, (3) sentencing should have as an overriding goal the reduction of criminal activity, the imposition of just punishment and the provision of meaningful and effective rehabilitation and reintegration of the offender, and (4) sentences should be fair, just and equitable while promoting respect for the law.

(Draft – 9/27/22 – for discussion purposes only)

AN ACT concerning the recommendations of the Connecticut Sentencing Commission with respect to sexual assault IN THE FOURTH DEGREE.

Section 1. Section 53a-73a of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2023):

(a) A person is guilty of sexual assault in the fourth degree when: (1) Such person subjects another person to sexual contact who is (A) under thirteen years of age and the actor is more than two years older than such other person, or (B) thirteen years of age or older but under fifteen years of age and the actor is more than three years older than such other person, or (C) physically helpless, or (D) less than eighteen years old and the actor is such other person's guardian or otherwise responsible for the general supervision of such other person's welfare, or (E) in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person; or (2) such person subjects another person to sexual contact without such other person's consent; or (3) such person engages in sexual contact with (A) an animal or (B) a dead human body; or (4) such person is a psychotherapist and subjects another person to sexual contact who is (A) a patient of the actor and the sexual contact occurs during the psychotherapy session, or (B) a patient or former patient of the actor and such patient or former patient is emotionally dependent upon the actor, or (C) a patient or former patient of the actor and the sexual contact occurs by means of therapeutic deception; or (5) such person subjects another person to sexual contact and accomplishes the sexual contact by means of false representation that the sexual contact is for a bona fide medical purpose by a health care professional; or (6) such person is a school employee and subjects another person to sexual contact who is a student enrolled in a school in which the actor works or a school under the jurisdiction of the local or regional board of education which employs the actor; or (7) such person is a coach in an athletic activity or a person who provides intensive, ongoing instruction and subjects another person to sexual contact who is a recipient of coaching or instruction from the actor and (A) is a secondary school student and receives such coaching or instruction in a secondary school setting, or (B) is under eighteen years of age; or (8) such person subjects another person to sexual contact and (A) the actor is twenty years of age or older and stands in a position of power, authority or supervision over such other person by virtue of the actor's professional, legal, occupational or volunteer status and such other person's participation in a program or activity, and (B) such other person is under eighteen years of age; or (9) such person subjects another person to sexual contact who is placed or receiving services under the direction of the Commissioner of Developmental Services in any public or private facility or program and the actor has supervisory or disciplinary authority over such other person.

(b) Sexual assault in the fourth degree is a class A misdemeanor or, if the victim of the offense is a person under sixteen years of age, a class D felony.

Sec. 2. Subdivision (3) of section 53a-65 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2023*):

(3) "Sexual contact" means (A) 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 or any contact of the intimate parts of the actor with a person for the purpose of sexual gratification of the actor or for the purpose of degrading or humiliating such person; or (B) for the purposes of subdivision (3) of subsection (a) of section 53a-73a, as amended by this act, any contact with the intimate parts of an animal or a dead human body, or any contact of the intimate parts of the actor with an animal or a dead human body, for the purpose of sexual gratification of the actor.

Statement of Purpose:

To clarify the requirements of sexual assault in the fourth degree with an animal or dead body.