



House of Representatives

General Assembly

File No. 73

February Session, 2016

Substitute House Bill No. 5376

House of Representatives, March 21, 2016

The Committee on Higher Education and Employment Advancement reported through REP. WILLIS, R. of the 64th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING AFFIRMATIVE CONSENT AND CONSENT FOR THE CARE AND TREATMENT OF COLLEGE STUDENTS WHO ARE THE VICTIM OF SEXUAL ASSAULT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 10a-55m of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2016*):

3 (a) For purposes of this section and sections 10a-55n to 10a-55q,
4 inclusive:

5 (1) "Affirmative consent" means an active, clear and voluntary
6 agreement by a person to engage in sexual activity with another
7 person that is sustained throughout the sexual activity and may be
8 revoked at any time by any such person;

9 ~~[(1)]~~ (2) "Awareness programming" means institutional action
10 designed to inform the campus community of the affirmative consent
11 standard used pursuant to subdivision (1) of subsection (b) of this

12 section, and communicate the prevalence of sexual assaults, stalking
13 and intimate partner violence, including the nature and number of
14 cases of sexual assault, stalking and intimate partner violence reported
15 at or disclosed to each institution of higher education in the preceding
16 three calendar years, including, but not limited to, poster and flyer
17 campaigns, electronic communications, films, guest speakers,
18 symposia, conferences, seminars or panel discussions;

19 [(2)] (3) "Bystander intervention" means the act of challenging the
20 social norms that support, condone or permit sexual assault, stalking
21 and intimate partner violence;

22 [(3)] (4) "Institution of higher education" means an institution of
23 higher education, as defined in section 10a-55, and a for-profit
24 institution of higher education licensed to operate in this state, but
25 shall not include Charter Oak State College for purposes of subsections
26 (c) and (f) of this section and sections 10a-55n to 10a-55p, inclusive;

27 [(4)] (5) "Intimate partner violence" means any physical or sexual
28 harm against an individual by a current or former spouse of or person
29 in a dating relationship with such individual that results from any
30 action by such spouse or such person that may be classified as a sexual
31 assault under section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-72b
32 or 53a-73a, stalking under section 53a-181c, 53a-181d or 53a-181e, or
33 family violence as designated under section 46b-38h;

34 [(5)] (6) "Primary prevention programming" means institutional
35 action and strategies intended to prevent sexual assault, stalking and
36 intimate partner violence before it occurs by means of changing social
37 norms and other approaches, including, but not limited to, poster and
38 flyer campaigns, electronic communications, films, guest speakers,
39 symposia, conferences, seminars or panel discussions;

40 [(6)] (7) "Sexual assault" means a sexual assault under section 53a-
41 70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a;

42 [(7)] (8) "Stalking" means stalking under section 53a-181c, 53a-181d

43 or 53a-181e; and

44 [(8)] (9) "Uniform campus crime report" means a campus crime
45 report prepared by an institution of higher education pursuant to
46 section 10a-55a.

47 (b) Each institution of higher education shall adopt and disclose in
48 such institution's annual uniform campus crime report one or more
49 policies regarding sexual assault, stalking and intimate partner
50 violence. Such policy or policies shall include provisions for: [(1)
51 detailing]

52 (1) Informing students and employees that, in the context of an
53 alleged violation of such policy or policies, (A) affirmative consent is
54 the standard used in determining whether consent to engage in sexual
55 activity was given by all persons who engaged in the sexual activity,
56 (B) it is the responsibility of each person to ensure that he or she has
57 the affirmative consent of all persons engaged in the sexual activity to
58 engage in the sexual activity, (C) it shall not be a valid excuse to an
59 alleged lack of affirmative consent that the student or employee
60 responding to the alleged violation believed that the student or
61 employee reporting or disclosing the alleged violation consented to the
62 sexual activity (i) because the responding student or employee was
63 intoxicated or reckless or failed to take reasonable steps to ascertain
64 whether the student or employee reporting or disclosing the alleged
65 violation affirmatively consented, or (ii) if the responding student or
66 employee knew or should have known that the student or employee
67 reporting or disclosing the alleged violation was unable to consent
68 because such student or employee was unconscious, asleep, unable to
69 communicate due to a mental or physical condition, or incapacitated
70 due to the influence of drugs, alcohol or medication, and (D) the
71 existence of a past or current dating or sexual relationship between the
72 student or employee reporting or disclosing the alleged violation and
73 the responding student or employee, in and of itself, shall not be
74 determinative of a finding of affirmative consent;

75 (2) Detailing the procedures that students and employees of the

76 institution who report or disclose being the victim of sexual assault,
77 stalking or intimate partner violence may follow after the commission
78 of such assault, stalking or violence, regardless of where such
79 incidences occurred, including persons or agencies to contact and
80 information regarding the importance of preserving physical evidence
81 of such assault, stalking or violence;

82 [(2) providing] (3) Providing students and employees of the
83 institution who report or disclose being the victim of sexual assault,
84 stalking or intimate partner violence both concise, written contact
85 information for and, if requested, professional assistance in accessing
86 and utilizing campus, local advocacy, counseling, health and mental
87 health services, and concise information, written in plain language,
88 concerning the rights of such students and employees to (A) notify law
89 enforcement of such assault, stalking or violence and receive assistance
90 from campus authorities in making any such notification, and (B)
91 obtain a protective order, apply for a temporary restraining order or
92 seek enforcement of an existing protective or restraining order,
93 including, but not limited to, orders issued pursuant to section 46b-15,
94 46b-38c, 53a-40e, 54-1k, 54-82q or 54-82r, against the perpetrator of
95 such assault, stalking or violence;

96 [(3) notifying] (4) Notifying such students and employees of any
97 reasonably available options for and available assistance from such
98 institution in changing academic, living, campus transportation or
99 working situations in response to such assault, stalking or violence;

100 [(4) honoring] (5) Honoring any lawful protective or temporary
101 restraining orders, including, but not limited to, orders issued
102 pursuant to section 46b-15, 46b-38c, 53a-40e, 54-1k, 54-82q or 54-82r;

103 [(5) disclosing] (6) Disclosing a summary of such institution's
104 student investigation and disciplinary procedures, including clear
105 statements advising that (A) [victims] a student or employee who
106 reports or discloses being a victim of such assault, stalking or violence
107 shall have the opportunity to request that [disciplinary proceedings]
108 an investigation begin promptly, (B) the investigation and any

109 disciplinary proceedings shall be conducted by an official trained
110 annually in issues relating to sexual assault, stalking and intimate
111 partner violence and shall use the preponderance of the evidence
112 standard in making a determination concerning the alleged assault,
113 stalking or violence, (C) both the [victim of such] student or employee
114 who reports or discloses the alleged assault, stalking or violence and
115 the [accused] student responding to such report or disclosure (i) are
116 entitled to be accompanied to any meeting or proceeding relating to
117 the allegation of such assault, stalking or violence by an advisor or
118 support person of their choice, provided the involvement of such
119 advisor or support person does not result in the postponement or
120 delay of such meeting as scheduled, and (ii) shall have the opportunity
121 to present evidence and witnesses on their behalf during any
122 disciplinary proceeding, (D) both [such victim and accused] the
123 student or employee reporting or disclosing the alleged assault
124 stalking or violence and such responding student are entitled to be
125 informed in writing of the results of any disciplinary proceeding not
126 later than one business day after the conclusion of such proceeding,
127 [and] (E) the institution of higher education shall not disclose the
128 identity of [the victim or the accused] any party to an investigation or
129 disciplinary proceeding, except as necessary to carry out [a] the
130 investigation or disciplinary proceeding or as permitted under state or
131 federal law, and (F) a standard of affirmative consent is used in
132 determining whether consent to engage in sexual activity was given by
133 all persons who engaged in the sexual activity;

134 [(6) disclosing] (7) Disclosing a summary of such institution's
135 employee investigation and disciplinary procedures, including clear
136 statements advising that a standard of affirmative consent is used in
137 determining whether consent to engage in sexual activity was given by
138 all persons who engaged in the sexual activity; and

139 [(7) disclosing] (8) Disclosing the range of sanctions that may be
140 imposed following the implementation of such institution's student
141 and employee disciplinary procedures in response to such assault,
142 stalking or violence.

143 (c) Each institution of higher education shall provide (1) annual
144 sexual assault, stalking and intimate partner violence primary
145 prevention and awareness programming for all students and
146 employees that includes an explanation of the definition of affirmative
147 consent in sexual relationships, information concerning the reporting
148 of incidences of such assaults, stalking and violence and strategies for
149 bystander intervention and risk reduction; and (2) ongoing sexual
150 assault, stalking and intimate partner violence prevention and
151 awareness campaigns.

152 (d) Each institution of higher education may provide the option for
153 any student or employee of such institution who is the victim of a
154 sexual assault, stalking or intimate partner violence to report or
155 disclose such assault, stalking or violence to such institution
156 anonymously. Each such institution shall notify any such student or
157 employee of the institution's obligations under state or federal law, if
158 any, to (1) investigate or address such assault, stalking or violence and
159 (2) assess whether the report triggers the need for a timely warning or
160 emergency notification, as described in 34 CFR 668.46(e), which
161 obligations, in limited circumstances, may result in the learning of
162 such victim's identity.

163 (e) Each institution of higher education shall provide concise
164 notification, written in plain language, to each student and employee
165 of such institution who [has] reports or discloses having been the
166 victim of sexual assault, stalking or intimate partner violence,
167 immediately upon receiving a report or disclosure of such assault,
168 stalking or violence, of such [victim's] student's or employee's rights
169 and options under such institution's policy or policies regarding sexual
170 assault, stalking and intimate partner violence adopted in accordance
171 with subsection (b) of this section.

172 (f) Not later than October 1, 2015, and annually thereafter, each
173 institution of higher education shall report to the joint standing
174 committee of the General Assembly having cognizance of matters
175 relating to higher education, in accordance with the provisions of

176 section 11-4a, concerning, for the immediately preceding calendar year,
177 (1) a copy of its most recent policies regarding sexual assault, stalking
178 and intimate partner violence adopted in accordance with subsection
179 (b) of this section, or any revisions thereto, (2) a copy of its most recent
180 concise written notification of [a victim's] the rights and options
181 [under] of a student or employee who reports or discloses an alleged
182 violation of its sexual assault, stalking and intimate partner violence
183 policy or policies required pursuant to subsection (e) of this section, (3)
184 the number and type of sexual assault, stalking and intimate partner
185 violence prevention, awareness and risk reduction programs at the
186 institution, (4) the type of sexual assault, stalking and intimate partner
187 violence prevention and awareness campaigns held by the institution,
188 (5) the number of incidences of sexual assault, stalking and intimate
189 partner violence reported or disclosed to such institution, (6) the
190 number of confidential or anonymous reports or disclosures to the
191 institution of sexual assault, stalking and intimate partner violence, (7)
192 the number of disciplinary cases at the institution related to sexual
193 assault, stalking and intimate partner violence, and (8) the final
194 outcome of all disciplinary cases at the institution related to sexual
195 assault, stalking and intimate partner violence, including, but not
196 limited to, the outcome of any appeals of such final outcome, to the
197 extent reporting on such outcomes does not conflict with federal law.

198 (g) Nothing in this section shall be interpreted to prohibit Charter
199 Oak State College from providing, either in person or electronically,
200 optional sexual assault, stalking and intimate partner violence
201 prevention and awareness programming for all students and
202 employees of said college.

203 Sec. 2. Section 19a-112g of the 2016 supplement to the general
204 statutes is repealed and the following is substituted in lieu thereof
205 (*Effective July 1, 2016*):

206 (a) As used in this section:

207 (1) "Sexual assault forensic examiner" means a registered nurse or
208 advanced practice registered nurse licensed pursuant to chapter 378 or

209 a physician licensed pursuant to chapter 370; and

210 (2) "Health care facility" means a facility (A) operated by an
211 institution of higher education, (B) licensed by the Department of
212 Public Health as an infirmary operated by an educational institution or
213 as an outpatient clinic, and (C) accredited by the Joint Commission or
214 the Accreditation Association for Ambulatory Health Care.

215 (b) A sexual assault forensic examiner may provide immediate care
216 and treatment to a victim of sexual assault who is a patient in an acute
217 care hospital or in a health care facility and collect evidence pertaining
218 to the investigation of any sexual assault. Except as otherwise
219 provided in this section, such care, treatment and collection of
220 evidence shall be in accordance with the State of Connecticut Technical
221 Guidelines for Health Care Response to Victims of Sexual Assault,
222 published by the Commission on the Standardization of the Collection
223 of Evidence in Sexual Assault Investigations pursuant to section 19a-
224 112a. No sexual assault forensic examiner shall be required to notify or
225 obtain the consent of a parent or guardian prior to providing
226 immediate care or treatment to a victim of sexual assault who is (1) a
227 patient in an acute care hospital or in a health care facility, (2) a student
228 of an institution of higher education in the state, and (3) under
229 eighteen years of age, or prior to collecting evidence pertaining to the
230 investigation of such sexual assault. Services provided by a sexual
231 assault forensic examiner shall be: [(1)] (A) In accordance with the
232 policies and accreditation standards of the acute care hospital or health
233 care facility; and [(2)] (B) pursuant to a written agreement entered into
234 by the [(A)] (i) acute care hospital or health care facility, [(B)] (ii)
235 Department of Public Health, and [(C)] (iii) Office of Victim Services
236 concerning the participation of the acute care hospital or health care
237 facility in the sexual assault forensic examiners program. Nothing in
238 this section shall be construed as altering the scope of the practice of
239 nursing as set forth in section 20-87a.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>July 1, 2016</i>	10a-55m
Sec. 2	<i>July 1, 2016</i>	19a-112g

HED *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill results in no fiscal impact as it is procedural and technical in nature

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sHB 5376*****AN ACT CONCERNING AFFIRMATIVE CONSENT AND CONSENT FOR THE CARE AND TREATMENT OF COLLEGE STUDENTS WHO ARE THE VICTIM OF SEXUAL ASSAULT.*****SUMMARY:**

By law, higher education institutions in Connecticut must adopt and disclose one or more policies on sexual assault, stalking, and intimate partner violence. Among other things, the policies must include provisions about (1) providing, to students and employees who report or disclose being victims of such violence, information about their options for assistance; (2) disciplinary procedures; and (3) possible sanctions.

This bill requires institutions to use a standard of affirmative consent when determining, in the context of these policies, whether sexual activity is consensual. The policies must include clear statements advising students and employees of the affirmative consent standard. Additionally, the bill specifies that the policies must describe the institutions' investigation procedures for students and employees. (Existing law requires that the policies describe the institutions' disciplinary procedures.) It also requires that an official trained annually in issues relating to sexual assault, stalking, and intimate partner violence conduct investigations in which the respondents are students. (Existing law applies this requirement to disciplinary proceedings in which the respondents are students.)

The bill requires higher education institutions (except for Charter Oak State College) to include, in the awareness programming they offer to students and employees, an explanation of the affirmative consent standard. It also replaces references to "victim" and "accused" in current law. Generally, it replaces references to (1) "victim" with

“student or employee who reports or discloses the alleged violation” and (2) “accused” with “student or employee responding to such report or disclosure.”

The bill allows sexual assault forensic examiners (SAFEs) to treat or provide immediate care to a sexual assault victim, and collect evidence pertaining to an investigation, if the victim is (1) a patient in a “health care facility” operated by a higher education institution, or an acute care hospital; (2) a student at a Connecticut higher education institution; and (3) younger than age 18.

Lastly, the bill makes technical and conforming changes.

EFFECTIVE DATE: July 1, 2016

AFFIRMATIVE CONSENT

The bill defines “affirmative consent” as an active, clear, and voluntary agreement by a person to engage in sexual activity with another person. The agreement must be sustained throughout the sexual activity and may be revoked at any time by any person.

Institutional Policies

The bill requires that institutions' sexual assault, stalking, and intimate partner violence policies include provisions for informing students and employees that, in the context of the policies,

1. affirmative consent is the standard used to determine whether sexual activity was consensual;
2. each person is responsible for ensuring that he or she has affirmative consent from all people engaged in the sexual activity; and
3. a past or current dating or sexual relationship, by itself, is not determinative of a finding of affirmative consent.

The policies must also provide that an alleged lack of affirmative consent is not excused by the respondent’s belief that the student or

employee complainant consented because the respondent was intoxicated, reckless, or failed to take reasonable steps to ascertain whether the complainant affirmatively consented. It is similarly not excused if the respondent knew or should have known that the complainant was unable to consent because the complainant was unconscious, asleep, unable to communicate due to a mental or physical condition, or was incapacitated due to the influence of drugs, alcohol, or medication.

Awareness Programming

The bill requires higher education institutions (except for Charter Oak State College) to include, in the awareness programming they offer to students and employees, an explanation of the affirmative consent standard. Under existing law, higher education institutions (except for Charter Oak State College) must offer, within existing budgetary resources, sexual assault, stalking, and intimate partner violence primary prevention and awareness programming for all students and employees that includes an explanation of the definition of consent in sexual relationships.

SEXUAL ASSAULT FORENSIC EXAMINERS

Under the State of Connecticut Technical Guidelines for Health Care Response to Victims of Sexual Assault (see BACKGROUND), a parent or guardian generally must provide consent before a sexual assault victim younger than age 18 is examined by a SAFE. The bill allows SAFEs to treat or provide immediate care to a sexual assault victim who is younger than age 18, and collect evidence pertaining to an investigation, if the victim is a (1) patient in a “health care facility” or acute care hospital and (2) student at a Connecticut higher education institution.

Under existing law, a “health care facility” is a facility, operated by a higher education institution, that is (1) licensed by the Department of Public Health as an infirmary operated by an educational institution or as an outpatient clinic and (2) accredited by the Joint Commission or the Accreditation Association for Ambulatory Health Care. SAFEs are

state-licensed registered nurses, advanced practice registered nurses, or physicians.

BACKGROUND

Technical Guidelines for Health Care Response to Victims of Sexual Assault

The state's Commission on the Standardization of the Collection of Evidence in Sexual Assault Investigations publishes these guidelines (CGS § 19a-112a).

COMMITTEE ACTION

Higher Education and Employment Advancement Committee

Joint Favorable Substitute

Yea 14 Nay 3 (03/03/2016)