



Senate

General Assembly

File No. 551

January Session, 2015

Substitute Senate Bill No. 636

Senate, April 8, 2015

The Committee on Higher Education and Employment Advancement reported through SEN. BARTOLOMEO of the 13th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING AFFIRMATIVE CONSENT.

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 Section 10a-55m of the general statutes is repealed and the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, 2015*):

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

5 (1) "Affirmative consent" means an active, unambiguous and
6 voluntary agreement by a person to engage in sexual activity with
7 another person that is sustained throughout the sexual activity and
8 may be revoked at any time by any 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 each institution of higher education in the preceding three calendar
16 years, including, but not limited to, poster and flyer campaigns,
17 electronic communications, films, guest speakers, symposia,
18 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 (A) affirmative consent is
53 the standard used in determining whether consent to engage in sexual
54 activity was given by all persons who engaged in the sexual activity,
55 (B) it is the responsibility of each person to ensure that he or she has
56 the affirmative consent of all persons to engage in the sexual activity,
57 (C) the existence of a dating relationship or past sexual relationship
58 between persons shall not constitute consent to engage in the sexual
59 activity, and (D) it shall not be a valid excuse to an alleged lack of
60 affirmative consent that the accused believed that the victim consented
61 to the sexual activity (i) because the accused was intoxicated or
62 reckless or failed to take reasonable steps to ascertain whether the
63 victim affirmatively consented, or (ii) if the accused knew or should
64 have known that the victim was unable to consent because the victim
65 was unconscious, asleep, unable to communicate due to a mental or
66 physical condition, or incapacitated due to the influence of drugs,
67 alcohol or medication and, as a result, was unable to understand the
68 fact, nature or extent of the sexual activity;

69 (2) Detailing the procedures that students and employees of the
70 institution who report or disclose being the victim of sexual assault,
71 stalking or intimate partner violence may follow after the commission
72 of such assault, stalking or violence, regardless of where such
73 incidences occurred, including persons or agencies to contact and
74 information regarding the importance of preserving physical evidence
75 of such assault, stalking or violence;

76 [(2) providing] (3) Providing students and employees of the

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

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

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

97 [(5) disclosing] (6) Disclosing a summary of such institution's
98 student investigation and disciplinary procedures, including clear
99 statements advising that (A) victims of such assault, stalking or
100 violence shall have the opportunity to request that [disciplinary
101 proceedings] an investigation begin promptly, (B) the investigation
102 and any disciplinary proceedings shall be conducted by an official
103 trained annually in issues relating to sexual assault, stalking and
104 intimate partner violence and shall use the preponderance of the
105 evidence standard in making a determination concerning the alleged
106 assault, stalking or violence, (C) both the victim of such assault,
107 stalking or violence and the accused (i) are entitled to be accompanied
108 to any meeting or proceeding relating to the allegation of such assault,
109 stalking or violence by an advisor or support person of their choice,

110 provided the involvement of such advisor or support person does not
111 result in the postponement or delay of such meeting as scheduled, and
112 (ii) shall have the opportunity to present evidence and witnesses on
113 their behalf during any disciplinary proceeding, (D) both such victim
114 and accused are entitled to be informed in writing of the results of any
115 disciplinary proceeding not later than one business day after the
116 conclusion of such proceeding, [and] (E) the institution of higher
117 education shall not disclose the identity of the victim or the accused,
118 except as necessary to carry out [a] an investigation or disciplinary
119 proceeding or as permitted under state or federal law, and (F) a
120 standard of affirmative consent is used in determining whether
121 consent to engage in sexual activity was given by all persons who
122 engaged in the sexual activity;

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

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

132 (c) Each institution of higher education shall provide (1) annual
133 sexual assault, stalking and intimate partner violence primary
134 prevention and awareness programming for all students and
135 employees that includes an explanation of the definition of affirmative
136 consent in sexual relationships, information concerning the reporting
137 of incidences of such assaults, stalking and violence and strategies for
138 bystander intervention and risk reduction; and (2) ongoing sexual
139 assault, stalking and intimate partner violence prevention and
140 awareness campaigns.

141 (d) Each institution of higher education may provide the option for
142 any student or employee of such institution who is the victim of a

143 sexual assault, stalking or intimate partner violence to report or
144 disclose such assault, stalking or violence to such institution
145 anonymously. Each such institution shall notify any such student or
146 employee of the institution's obligations under state or federal law, if
147 any, to (1) investigate or address such assault, stalking or violence and
148 (2) assess whether the report triggers the need for a timely warning or
149 emergency notification, as described in 34 CFR 668.46(e), which
150 obligations, in limited circumstances, may result in the learning of
151 such victim's identity.

152 (e) Each institution of higher education shall provide concise
153 notification, written in plain language, to each student and employee
154 of such institution who has been the victim of sexual assault, stalking
155 or intimate partner violence, immediately upon receiving a report of
156 such assault, stalking or violence, of such victim's rights and options
157 under such institution's policy or policies regarding sexual assault,
158 stalking and intimate partner violence adopted in accordance with
159 subsection (b) of this section.

160 (f) Not later than October 1, 2015, and annually thereafter, each
161 institution of higher education shall report to the joint standing
162 committee of the General Assembly having cognizance of matters
163 relating to higher education, in accordance with the provisions of
164 section 11-4a, concerning, for the immediately preceding calendar year,
165 (1) a copy of its most recent policies regarding sexual assault, stalking
166 and intimate partner violence adopted in accordance with subsection
167 (b) of this section, or any revisions thereto, (2) a copy of its most recent
168 concise written notification of a victim's rights and options under its
169 sexual assault, stalking and intimate partner violence policy or policies
170 required pursuant to subsection (e) of this section, (3) the number and
171 type of sexual assault, stalking and intimate partner violence
172 prevention, awareness and risk reduction programs at the institution,
173 (4) the type of sexual assault, stalking and intimate partner violence
174 prevention and awareness campaigns held by the institution, (5) the
175 number of incidences of sexual assault, stalking and intimate partner
176 violence reported to such institution, (6) the number of confidential or

177 anonymous reports or disclosures to the institution of sexual assault,
 178 stalking and intimate partner violence, (7) the number of disciplinary
 179 cases at the institution related to sexual assault, stalking and intimate
 180 partner violence, and (8) the final outcome of all disciplinary cases at
 181 the institution related to sexual assault, stalking and intimate partner
 182 violence, including, but not limited to, the outcome of any appeals of
 183 such final outcome, to the extent reporting on such outcomes does not
 184 conflict with federal law.

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2015	10a-55m

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 to the state as it is clarifying/procedural in nature.

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

OLR Bill Analysis**sSB 636*****AN ACT CONCERNING AFFIRMATIVE CONSENT.*****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 for (1) providing information to students and employees about their options for assistance if they are victims of such violence, (2) disciplinary procedures, and (3) possible sanctions.

This bill requires institutions to use a standard of affirmative consent when determining whether sexual activity is consensual. It defines “affirmative consent” as an active, unambiguous, 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. The bill requires the institutions’ policies to include clear statements advising students and employees of the affirmative consent standard.

The bill also 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 definition of affirmative consent in sexual relationships. 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, including an explanation of the definition of consent in sexual relationships.

Additionally, the bill specifies that the institutions’ sexual assault, stalking, and intimate partner violence policies must describe the

institutions' investigation procedures for students and employees. (Current law requires that the policies describe the institutions' disciplinary procedures only.) It also requires that an investigation concerning students be conducted by an official trained annually in issues relating to sexual assault, stalking, and intimate partner violence. (Under current law, this requirement applies to student disciplinary proceedings only.)

EFFECTIVE DATE: July 1, 2015

AFFIRMATIVE CONSENT

The bill requires institutions' policies to include provisions for informing students and employees that:

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 to engage in the sexual activity, and
3. a dating relationship or past sexual relationship does not constitute consent.

The policies must also provide that an alleged lack of affirmative consent is not excused the accused's belief that the victim consented:

1. because the accused was intoxicated, reckless, or failed to take reasonable steps to ascertain whether the victim affirmatively consented or
2. if the accused knew or should have known that the victim was unable to consent because the victim 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, resulting in an inability to understand the fact, nature, or extent of the sexual activity.

COMMITTEE ACTION

Higher Education and Employment Advancement Committee

Joint Favorable Substitute

Yea 14 Nay 3 (03/24/2015)