



Substitute House Bill No. 5376

Public Act No. 16-106

AN ACT CONCERNING AFFIRMATIVE CONSENT.

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

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 Section 10a-55m of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2016*):

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

(1) "Affirmative consent" means an active, clear and voluntary agreement by a person to engage in sexual activity with another person;

[[1]] (2) "Awareness programming" means institutional action designed to inform the campus community of the affirmative consent standard used pursuant to subdivision (1) of subsection (b) of this section, and communicate the prevalence of sexual assaults, stalking and intimate partner violence, including the nature and number of cases of sexual assault, stalking and intimate partner violence reported at or disclosed to each institution of higher education in the preceding three calendar years, including, but not limited to, poster and flyer campaigns, electronic communications, films, guest speakers, symposia, conferences, seminars or panel discussions;

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

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

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

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

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

[(7)] (8) "Stalking" means stalking under section 53a-181c, 53a-181d or 53a-181e; and

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

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

(1) Informing students and employees that, in the context of an alleged violation of the policy or policies regarding sexual assault and intimate partner violence, (A) affirmative consent is the standard used in determining whether consent to engage in sexual activity was given by all persons who engaged in the sexual activity, (B) affirmative consent may be revoked at any time during the sexual activity by any person engaged in the sexual activity, (C) it is the responsibility of each person to ensure that he or she has the affirmative consent of all persons engaged in the sexual activity to engage in the sexual activity and that the affirmative consent is sustained throughout the sexual activity, (D) it shall not be a valid excuse to an alleged lack of affirmative consent that the student or employee responding to the alleged violation believed that the student or employee reporting or disclosing the alleged violation consented to the sexual activity (i) because the responding student or employee was intoxicated or reckless or failed to take reasonable steps to ascertain whether the student or employee reporting or disclosing the alleged violation affirmatively consented, or (ii) if the responding student or employee knew or should have known that the student or employee reporting or disclosing the alleged violation was unable to consent because such student or employee was unconscious, asleep, unable to communicate due to a mental or physical condition, or incapacitated due to the influence of drugs, alcohol or medication, and (E) the existence of a past or current dating or sexual relationship between the student or employee reporting or disclosing the alleged violation and the responding student or employee, in and of itself, shall not be determinative of a finding of affirmative consent;

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

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

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

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

[(5) disclosing] (6) Disclosing a summary of such institution's student investigation and disciplinary procedures, including clear

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statements advising that (A) [victims] a student or employee who reports or discloses being a victim of such assault, stalking or violence shall have the opportunity to request that [disciplinary proceedings] an investigation begin promptly, (B) the investigation and any disciplinary proceedings shall be conducted by an official trained annually in issues relating to sexual assault, stalking and intimate partner violence and shall use the preponderance of the evidence standard in making a determination concerning the alleged assault, stalking or violence, (C) both the [victim of such] student or employee who reports or discloses the alleged assault, stalking or violence and the [accused] student responding to such report or disclosure (i) are entitled to be accompanied to any meeting or proceeding relating to the allegation of such assault, stalking or violence by an advisor or support person of their choice, provided the involvement of such advisor or support person does not result in the postponement or delay of such meeting as scheduled, and (ii) shall have the opportunity to present evidence and witnesses on their behalf during any disciplinary proceeding, (D) both [such victim and accused] the student or employee reporting or disclosing the alleged assault stalking or violence and such responding student are entitled to be informed in writing of the results of any disciplinary proceeding not later than one business day after the conclusion of such proceeding, [and] (E) the institution of higher education shall not disclose the identity of [the victim or the accused] any party to an investigation or disciplinary proceeding, except as necessary to carry out [a] the investigation or disciplinary proceeding or as permitted under state or federal law, and (F) a standard of affirmative consent is used in determining whether consent to engage in sexual activity was given by all persons who engaged in the sexual activity;

[(6) disclosing] (7) Disclosing a summary of such institution's employee investigation and disciplinary procedures, including clear statements advising that a standard of affirmative consent is used in

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determining whether consent to engage in sexual activity was given by all persons who engaged in the sexual activity; and

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

(c) Each institution of higher education shall provide (1) annual 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 affirmative consent in sexual relationships, information concerning the reporting of incidences of such assaults, stalking and violence and strategies for bystander intervention and risk reduction; and (2) ongoing sexual assault, stalking and intimate partner violence prevention and awareness campaigns.

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

(e) Each institution of higher education shall provide concise notification, written in plain language, to each student and employee of such institution who [has] reports or discloses having been the victim of sexual assault, stalking or intimate partner violence,

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immediately upon receiving a report or disclosure of such assault, stalking or violence, of such [victim's] student's or employee's rights and options under such institution's policy or policies regarding sexual assault, stalking and intimate partner violence adopted in accordance with subsection (b) of this section.

(f) Not later than October 1, 2015, and annually thereafter, each institution of higher education shall report to the joint standing committee of the General Assembly having cognizance of matters relating to higher education, in accordance with the provisions of section 11-4a, concerning, for the immediately preceding calendar year, (1) a copy of its most recent policies regarding sexual assault, stalking and intimate partner violence adopted in accordance with subsection (b) of this section, or any revisions thereto, (2) a copy of its most recent concise written notification of [a victim's] the rights and options [under] of a student or employee who reports or discloses an alleged violation of its sexual assault, stalking and intimate partner violence policy or policies required pursuant to subsection (e) of this section, (3) the number and type of sexual assault, stalking and intimate partner violence prevention, awareness and risk reduction programs at the institution, (4) the type of sexual assault, stalking and intimate partner violence prevention and awareness campaigns held by the institution, (5) the number of incidences of sexual assault, stalking and intimate partner violence reported or disclosed to such institution, (6) the number of confidential or anonymous reports or disclosures to the institution of sexual assault, stalking and intimate partner violence, (7) the number of disciplinary cases at the institution related to sexual assault, stalking and intimate partner violence, and (8) the final outcome of all disciplinary cases at the institution related to sexual assault, stalking and intimate partner violence, including, but not limited to, the outcome of any appeals of such final outcome, to the extent reporting on such outcomes does not conflict with federal law.

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

(h) Nothing in this section shall be interpreted as requiring an institution of higher education to adopt, verbatim, the definition of "affirmative consent" set forth in subsection (a) of this section, provided the institution of higher education, in the exercise of its sole authority to adopt a definition of "affirmative consent", uses a definition of "affirmative consent" that has the same meaning as or a meaning that is substantially similar to the definition set forth in subsection (a) of this section.

Approved June 2, 2016