

Testimony of Austin Longendyke
SUPPORTING
H.B. 5376: An Act Concerning Affirmative Consent

Tuesday, March 1, 2016

Senator Bartolomeo, Representative Willis, and distinguished members of the Higher Education and Employment Advancement Committee:

My name is Austin Longendyke and I am a resident of Norwich, Connecticut. I am also currently a graduate student at the UConn School of Social Work. **I am testifying today in support of H.B. 5376: An Act Concerning Affirmative Consent.**

When I was an undergraduate student at UConn Storrs a few years ago, I had the privilege to be a peer educator for the UConn Violence Against Women Prevention Program (VAWPP). As a peer educator I facilitated educational workshops for students and student organizations that focused on consent, sexual and interpersonal violence, and healthy relationships. VAWPP also organized multiple events on the UConn Storrs campus that raised awareness around sexual violence.

Perhaps the most powerful of these events is Take Back the Night – a rally and speak out that gives survivors of sexual assault a safe place to tell their stories. Seeing so many members of the UConn community – close friends, classmates, people I had seen around campus – telling their stories as survivors of sexual assault was incredibly sobering. Recognizing how much sexual violence impacted the people in my life made me all the more committed to working toward its elimination on our college and university campuses.

H.B. 5376 enhances comprehensive legislation that was passed by the Connecticut General Assembly in 2014 that strengthened the prevention efforts and institutional response to sexual assaults at colleges and universities in Connecticut.ⁱ The proposed bill creates a standard definition of consent to be used in the anti-sexual assault educational programming and institutional investigations that are both required by law. H.B. 5376 defines affirmative consent as “an active, clear and voluntary agreement by a person to engage in sexual activity with another person that is sustained throughout the sexual activity and may be revoked at any time by any such person.”ⁱⁱ Under this standard, consent can be granted either verbally or non-verbally.

As a student, I feel safer with an affirmative consent standard. Older definitions of consent – ones that relied on a “no means no” framework – can potentially be problematic, as such a standard can suggest that the absence of a vocalized “no” constitutes consent. Yet that is not the case. It is possible that an individual is feeling pressured, threatened or coerced into a sexual activity, and may be frightened to say no – yet that individual is *not* consenting. Affirmative consent protects students in such a situation, as in an investigation using the new standard, the absence of a no could not be confused as granting consent to the sexual activity.

There is a significant amount of misinformation spreading about this proposed legislation, so I would like to take this opportunity to clarify some important aspects of the bill:

1. **This legislation is not creating any new form of investigation.** In actuality, institutional investigations of alleged sexual assaults are already happening. In fact, if the institution is receiving any federal funding, they are *required* to investigate reported sexual assaults under federal law.

Title IX, a federal anti-sex discrimination law, requires any school receiving federal funding to investigate any situations or events that create a hostile learning environment on the basis of sex.ⁱⁱⁱ In 2011, the U.S. Department of Education Office for Civil Rights (OCR) released a “Dear Colleague” letter that explicitly stated that one reported sexual assault creates a hostile learning environment that must be investigated and, if necessary, rectified.^{iv} What this means is that if an investigation decides that a hostile environment has been created based on a preponderance of evidence – that is, that a sexual assault more than likely did occur – then that hostile environment must be rectified through the disciplining of the individual(s) who committed the assault.

2. **This legislation is not shifting the burden of proof onto the responding student.** The burden of proof in sexual assault investigations conducted by institutions of higher education is and always has been on the institution. During an investigation, the investigator (working for the institution) takes statements from both the reporting student(s) and the responding individual(s). Based off of the information contained in these statements, the investigator then follows up with any potential witnesses, visits the site of the alleged assault, collects telephone/text message/social media records, etc. It is this evidence that *the investigator is collecting* that is used when making a decision – the students are not responsible for collecting evidence to “prove” their statement, so the burden of proof is not on either of them.
3. **This legislation does not presume the guilt of the responding student.** When a sexual assault is reported, the institution investigates the alleged sexual assault by taking statements from both the reporting individual(s) and the responding individual(s), by collecting evidence and following up with possible witnesses, and by making a decision based off of a preponderance of the evidence standard. This means that a decision is made when the evidence collected indicates that the sexual assault *more than likely did or more than likely did not* occur. In other words, a decision can only be made when 51% or more of the evidence supports it.

Students who are accused of sexual assault are not punished by the institution before the alleged event has been investigated by the Title IX investigator. If it is decided that the preponderance of evidence indicates that a sexual assault more than likely occurred, then the case is referred to the institution’s mechanism for handling violations to the student conduct code. It should be noted that discipline in this process cannot be any more severe than expulsion from the institution – a severe outcome for the responding individual, but one which ensures that the campus remains a safe learning environment for all students. Regardless of the outcome of an institutional investigation into an alleged sexual assault, a responding individual *will not* have a criminal record or be placed on the sex-offender

registry. The investigation and any associated discipline only applies to the institution of higher education.

4. **This bill is building off of legislation that was unanimously passed in 2014.** In 2014, the CGA unanimously passed legislation that strengthened college and university policies for responding to cases of sexual assault, stalking, and intimate partner violence.^v H.B. 5376 is enhancing the 2014 legislation by creating a standard definition of consent to be used in anti-sexual assault prevention programming and institutional investigations. This ensures that all college and university students in Connecticut – regardless of the school they attend – will learn about and be held to the same standard of consent.
5. **Affirmative consent standards are already being utilized by most colleges and universities in Connecticut.** A 2015 OLR report found that most colleges and universities in Connecticut are already using affirmative consent standards in their student misconduct policies.^{vi} Therefore, this legislation will not drastically change definitions of consent at most institutions in the state.

What this legislation *will* do, however, is ensure that all students in Connecticut are being taught and are being held to the same standard of affirmative consent. This means that no student in Connecticut who is sexually assaulted will need to worry about their absence of a vocalized “no” – due to fear, intimidation, or inebriation – being construed in the investigation as consent.

I therefore respectfully ask all legislators to support H.B. 5376 and continue the good work being done in Connecticut to address sexual violence on college and university campuses. The affirmative consent standard ensures that Connecticut campuses remain safe learning environments for everyone regardless of their biological sex, gender identity, and/or sexual orientation. Every student deserves to be able to learn in a safe environment.

I thank you for your consideration and the opportunity to submit this testimony.

Austin Longendyke
Norwich, Connecticut

ⁱ Connecticut Public Act 14-11, *An Act Concerning Sexual Assault, Stalking and Intimate Partner Violence on Campus*

ⁱⁱ CGA 2016 Session, Raised Bill 5076

ⁱⁱⁱ U.S. Department of Education, Office for Civil Rights, Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties <
<http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>>, p. 12-13

^{iv} U.S. Department of Education, Office for Civil Rights, “Dear Colleague” (April 4, 2011) <
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>>

^v Connecticut Public Act 14-11, *An Act Concerning Sexual Assault, Stalking and Intimate Partner Violence on Campus*

^{vi} CGA Office of Legislative Research, Higher Education Institutions’ Definitions of Sexual Consent, Report 2016-R-0006