

Dear Higher Education and Employment Advancement Committee:

H.B 5376, An Act Concerning Affirmative Consent would infringe on the Constitutional rights of college students who face date rape charges in university disciplinary hearings. The accused student has the Constitutional right to the presumption of innocence that he would have in criminal court even if he fails to say that the alleged victim said “yes” and even if he says nothing at all. Also, all the ways that the alleged victim appeared to consent or withhold consent is valuable evidence, not just evidence that she said or didn’t say “yes.”

The “affirmative consent” bill would NOT shift the burden of proof from the alleged victim to the accused student, as Senator Flexer mistakenly claims, by requiring the accused student to explain if the alleged victim consented to sex by saying “yes.” The university has the burden of proving that an accused person is guilty in a university disciplinary hearing just like a prosecutor has in a criminal court case. An alleged victim doesn’t have to prove that an accused person is guilty and an accused person doesn’t have to prove that he is not guilty. An alleged victim doesn’t have to prove that she said “no,” and an accused student doesn’t have to prove that an alleged victim said “yes.” **The accused student has a Constitutional right to the presumption of innocence even if he fails to say that the alleged victim said “yes” and even if he says nothing.**

The bill’s proponents believe that asking the accused student if he obtained the alleged victim’s verbal consent to engage in sex is preferable to asking the alleged victim if she said “no.” No law can require people to say “yes.” The outcomes of these “he said/she said” date rape cases usually hinge on the credibility of the two students, so evidence of all the ways the alleged victim gave or withheld consent should be heard. People are more likely to consent to sex by other verbal and nonverbal ways than by saying “yes,” Evidence about the alleged victim’s words and behavior that indicate she did not want to engage in sex, including saying “no,” is also crucial for determining if the sexual encounter was a date rape.

It is an admirable goal to change campus norms so that women always say “yes” when they are consenting to sex, but this cultural change cannot be legislated.

Cynara Stites
12C Sycamore Drive
Storrs Mansfield, CT 06268
860-429-3272
cynarastites@gmail.com