



**RE: Affirmative Consent Bill No. 5376 Is Unconstitutional and Does Nothing to Stop Forcible Rape**

March 1, 2016

Connecticut State Legislature  
Committee on Higher Education and Employment Advancement  
300 Capitol Ave  
Hartford, CT 06106

Dear Connecticut State Committee on Higher Education and Employment Advancement:

SAVE is a national 501(c)(3) organization established to develop evidence-based solutions to domestic violence and sexual assault. We are writing to express our profound reservations about the proposed affirmative consent bill ([https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill\\_num=HB05376&which\\_year=2016](https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=HB05376&which_year=2016)) and to urge you to not implement such a vague and unworkable law.

**Affirmative Consent Is Unworkable**

The bill attempts to create a new definition of consent called “affirmative consent” and outlines the new requirement in sections 1(a) and sections 9(b)(1) as “affirmative, clear, and voluntary agreement 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. It is the responsibility of each person to ensure that he or she has the affirmative consent of all persons to engage in the sexual activity. It shall not be a valid excuse to an alleged lack of affirmative consent that the student or employee” believed consent existed if “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.”

Affirmative consent is a dangerous new trend in sexual assault legislation and the Connecticut legislature should not implement it. While it may have the admirable goal of attempting to clarify sexual assault laws, it in effect makes a mockery of sexual assault and rape by defining consensual activity as sexual assault. Additionally, by defining what most would conclude is consensual activity, such definitions create confusion—the reverse outcome that those proposing it intend.



Additionally, the requirement that ongoing clear consent be sustained throughout sexual activity is impractical and unworkable. Humans are rarely unambiguous in their activity, and humans usually progress through interaction with each other without receiving affirmative consent for each activity. To require what most individuals don't do in their healthy sexual activities mandates a strict and overbearing requirement as to how students in your state have to engage in sexual activity. Instead, there are many ways that students do voluntarily engage in sexual activity without meeting this definition.

### **Affirmative Consent Does Not Stop Forcible Sexual Assault**

While affirmative consent may sound reasonable, as we all agree that consent needs to occur for any sexual activity, and “affirmative” sounds positive, in reality, “affirmative consent” is also a dangerous new policy because it does nothing to stop forcible sexual assault. We wish to highlight three recent cases covered in the media, which will demonstrate that “affirmative consent” does not stop sexual assault.

One such case is the devastating case of Hannah Graham, an eighteen-year-old student at the University of Virginia. Hannah Graham was murdered on September 13, 2014. Police believe she was abducted by a man named Jesse Matthew, Jr., who within the last 24 hours has decided to enter a guilty plea in her case. In October 2015, he has already been found guilty of sexual assault and attempted murder of another woman in Virginia. Please ask: would affirmative consent have saved Hannah? No, having better police protections would have avoided her abduction.

Another case known to many is that of a University of Illinois-Chicago girl who was sexually assaulted in her dorm shower in March 2014. She was not asked for her consent; would affirmative consent have prevented her from getting sexually assaulted? No, to have protected her we should have invested and improved dormitory security.

Another case occurred on February 18<sup>th</sup> of this year. A female student reported at the University of Iowa that an intruder has been filming her in the shower. The campus police came, saw a man hiding in a bathroom stall, tried to arrest him, but he ran away. As a response, the University of Iowa issued a report about the incident with a “trigger warning” so that students could avoid reading the report if it made them upset. This response in effect elevated a concern of making students upset over their safety. Once again, an affirmative consent definition would not have stopped this crime.



Stop Abusive and Violent Environments

P.O. Box 1221 • Rockville, MD 20849

Tel: 301.801.0608

[www.saveservices.org](http://www.saveservices.org)

---

Universities' "feel good" but in effect meaningless responses to campus sexual assault, such as affirmative consent, have got to end. It is time to look at these cases and determine real ways to prevent sexual assault from occurring on college campuses. It is time to get serious about campus sexual assault as a serious crime.

### **Conclusion**

We urge you to not implement an affirmative consent definition as Connecticut law. Such definitions are used to determine whether someone has committed a heinous act, which means there should be a strong consensus on the definition before it is enacted. We look forward to working with you to create a more meaningful and effective sexual assault law.

Sincerely,

Gina R. Lauterio, Esq.

Policy Project Director