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**Testimony of  
Permanent Commission on the Status of Women  
Before the  
Higher Education and Employment Advancement Committee  
March 1, 2016**

**Re: H.B. 5376, AN ACT CONCERNING AFFIRMATIVE CONSENT**

Senators Bartolomeo and Witkos and Representatives Willis and Betts, and distinguished members of the Higher Education and Employment Advancement Committee, my name is Carolyn Treiss and I am the Executive Director of the Permanent Commission on the Status of Women (PCSW). Thank you for this opportunity to provide testimony today in support of H.B. 5376, An Act Concerning Affirmative Consent.

H.B. 5376 amends public policy that was enacted in 2014 – legislation that was passed under this Committee’s leadership and passed with unanimous support of the General Assembly – to address the epidemic of campus sexual assault and in response to a Title IX lawsuit filed by nine brave students at the University of Connecticut. That legislation, Public Act 14-11, requires all institutions of higher education in the state of Connecticut to adopt policies regarding sexual assault, disclose those policies, which must include a summary of such institution’s disciplinary proceedings, and provide annual sexual assault primary prevention and awareness programming.

H.B. 5376 amends the law passed in 2014, to state that when a student reports a sexual assault at any institution of higher education in Connecticut an affirmative consent standard will be used in determining whether consent to engage in sexual activity was given by all persons who engaged in the sexual activity.

As is the case today, and will remain the case if H.B. 5376 is signed into law, when a student reports an alleged sexual assault to the university or college, an investigation process begins. A meeting is held with the reporting student to get their statement and the responding student is notified about the investigation. The responding student is invited to meet with the investigator so that the process can be explained to the student. If the responding student is willing to participate in the investigation, that student is then called in for a second meeting with the investigator where they are asked to give their statement. The investigator then reaches out to all potential witnesses mentioned by the reporting and responding students in their statements. After all of the evidence – which can include for example, witnesses before and after the alleged assault, texts and social media posts – is collected, the investigator then compiles a report on the findings of the investigation.

In 2011, the Office of Civil Rights issued guidance strongly recommending that the "preponderance of the evidence" standard is the appropriate standard to use in campus investigations of sexual assault. In P.A. 14-11, the general assembly codified this standard in Connecticut law as well and it is considered a best practice across the country. The preponderance of the evidence standard means that a finding against the responding student can only be made when the evidence suggests that it is more likely than not that an assault occurred.

Currently, because a campus investigation is not a criminal or civil proceeding, the burden of proof does not lie with either the responding or reporting students; rather, during the investigation the burden of proof falls on the finder of fact (the institution) to determine if it is more likely than not that the alleged violation of the student conduct code – in this case a sexual assault – took place. This bill will not change the preponderance of evidence standard nor shift the burden of proof as opponents of this bill would have you believe.

What H.B. 5376 does do is broaden the focus of the investigation from solely the question of whether or not the student alleging the sexual assault said “no” or resisted, but also on what were the affirmative words or actions that led the respondent to believe consent had been obtained. Further, it ensures consistency and best practices for all institutions of higher education in the state. Most Connecticut institutions have already adopted an affirmative consent standard, including the University of Connecticut, but the standards vary in content and scope based on the college or university.<sup>1</sup> Having the state establish a clear and consistent policy for all institutions to follow is good public policy and does not represent a sea change. Rather it strengthens the law you enacted in 2014 by ensuring the continued, consistent commitment to confronting the culture of sexual violence against women on college campuses.

A common refrain that I have heard when discussing the topic of affirmative consent is that somehow by enacting this standard, scores of young men will have their lives ruined by women making false accusations. In reality, 1 in 4 young women will be the victim of sexual assault on a college campus at some point in their college career. Most of those young women won't report the sexual assault. In fact, sexual assault is one of the most underreported crimes; it is estimated that 80 percent of sexual assaults go unreported, according to the National Research Council.<sup>2</sup> It is a brave act for a woman (or man) to come forward and report a sexual assault. The data simply does not support the contention that women regularly make false reports of rape. And the affirmative consent standard does not make it any more likely that a woman will falsely report or that a man will be unfairly found in violation of the student code pertaining to sexual assault.

According to the report submitted by the University of Connecticut as required by PA 14-11 in 2014, under the affirmative consent standard, there were 59 incidents of sexual assault reported to the university. Of those, some were alleged to have been committed by a non-UConn student and thus the university did not have the authority to conduct a disciplinary proceeding. In other instances, the student who reported chose not to pursue a disciplinary proceeding. Of the 59 incidents, only 13 resulted in disciplinary proceedings and of those, seven students were found by a preponderance of the evidence to have been responsible for violating the university's policy pertaining to sexual assault. Six of those seven students were expelled; the seventh disenrolled prior to the conclusion of the proceeding.

When making a decision whether or not to support H.B. 5376, please think of the thousands of young women who will be the victims of sexual assault who will not report the assault, who will suffer in

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<sup>1</sup> Office of Legislative Research. Higher Education Institutions' Definitions of Sexual Consent. January 22, 2016.

<sup>2</sup> <http://www.usatoday.com/story/news/nation/2013/11/19/study-sexual-assaults-greatly-underreported-/3648197/>

silence because the message that the potential harm experienced by a young man accused of sexual assault far outweighs any harm experienced from actually being sexually assaulted, was made loud and clear by this body. I challenge you to ask yourselves – what about those 1 in 4 women who will struggle as they try to cope, for the rest of their lives, with the violation committed against their bodies as they ask themselves the question, what did I do wrong? We need to create a culture where women who have been assaulted do not ever ask that question again.

And that is where affirmative consent is most powerful – in education and prevention. By teaching generations of students about what consent in the context of a healthy sexual encounter looks like, we take the first steps toward changing cultural attitudes about women's autonomy over their own bodies by defining sexual consent by the presence of permission rather than the absence of objection. We hope you will support this policy and continue Connecticut's leadership in preventing campus sexual assault and confronting the culture of violence against women.

Thank you for your thoughtful consideration of this important issue.