



General Assembly

February Session, 2016

Raised Bill No. 5376

LCO No. 1748



Referred to Committee on HIGHER EDUCATION AND
EMPLOYMENT ADVANCEMENT

Introduced by:
(HED)

AN ACT CONCERNING AFFIRMATIVE CONSENT.

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

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 Section 10a-55m of the general statutes is repealed and the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

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

5 (1) "Affirmative consent" means an active, clear and voluntary
6 agreement by a person to engage in sexual activity with another
7 person that is sustained throughout the sexual activity and may be
8 revoked at any time by any such person;

9 [(1)] (2) "Awareness programming" means institutional action
10 designed to inform the campus community of the affirmative consent
11 standard used pursuant to subdivision (1) of subsection (b) of this
12 section, and communicate the prevalence of sexual assaults, stalking
13 and intimate partner violence, including the nature and number of

14 cases of sexual assault, stalking and intimate partner violence reported
15 at or disclosed to each institution of higher education in the preceding
16 three calendar years, including, but not limited to, poster and flyer
17 campaigns, electronic communications, films, guest speakers,
18 symposia, conferences, seminars or panel discussions;

19 [(2)] (3) "Bystander intervention" means the act of challenging the
20 social norms that support, condone or permit sexual assault, stalking
21 and intimate partner violence;

22 [(3)] (4) "Institution of higher education" means an institution of
23 higher education, as defined in section 10a-55, and a for-profit
24 institution of higher education licensed to operate in this state, but
25 shall not include Charter Oak State College for purposes of subsections
26 (c) and (f) of this section and sections 10a-55n to 10a-55p, inclusive;

27 [(4)] (5) "Intimate partner violence" means any physical or sexual
28 harm against an individual by a current or former spouse of or person
29 in a dating relationship with such individual that results from any
30 action by such spouse or such person that may be classified as a sexual
31 assault under section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-72b
32 or 53a-73a, stalking under section 53a-181c, 53a-181d or 53a-181e, or
33 family violence as designated under section 46b-38h;

34 [(5)] (6) "Primary prevention programming" means institutional
35 action and strategies intended to prevent sexual assault, stalking and
36 intimate partner violence before it occurs by means of changing social
37 norms and other approaches, including, but not limited to, poster and
38 flyer campaigns, electronic communications, films, guest speakers,
39 symposia, conferences, seminars or panel discussions;

40 [(6)] (7) "Sexual assault" means a sexual assault under section 53a-
41 70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a;

42 [(7)] (8) "Stalking" means stalking under section 53a-181c, 53a-181d
43 or 53a-181e; and

44 [(8)] (9) "Uniform campus crime report" means a campus crime
45 report prepared by an institution of higher education pursuant to
46 section 10a-55a.

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

52 (1) Informing students and employees that, in the context of an
53 alleged violation of such policy or policies, (A) affirmative consent is
54 the standard used in determining whether consent to engage in sexual
55 activity was given by all persons who engaged in the sexual activity,
56 (B) it is the responsibility of each person to ensure that he or she has
57 the affirmative consent of all persons to engage in the sexual activity,
58 (C) it shall not be a valid excuse to an alleged lack of affirmative
59 consent that the student or employee responding to the alleged
60 violation believed that the student or employee reporting or disclosing
61 the alleged violation consented to the sexual activity (i) because the
62 responding student or employee was intoxicated or reckless or failed
63 to take reasonable steps to ascertain whether the student or employee
64 reporting or disclosing the alleged violation affirmatively consented,
65 or (ii) if the responding student or employee knew or should have
66 known that the student or employee reporting or disclosing the alleged
67 violation was unable to consent because such student or employee was
68 unconscious, asleep, unable to communicate due to a mental or
69 physical condition, or incapacitated due to the influence of drugs,
70 alcohol or medication, and (D) the existence of a past or current dating
71 or sexual relationship between the student or employee reporting or
72 disclosing the alleged violation and the responding student or
73 employee, in and of itself, shall not be determinative of a finding of
74 affirmative consent;

75 (2) Detailing the procedures that students and employees of the

76 institution who report or disclose being the victim of sexual assault,
77 stalking or intimate partner violence may follow after the commission
78 of such assault, stalking or violence, regardless of where such
79 incidences occurred, including persons or agencies to contact and
80 information regarding the importance of preserving physical evidence
81 of such assault, stalking or violence;

82 [(2) providing] (3) Providing students and employees of the
83 institution who report or disclose being the victim of sexual assault,
84 stalking or intimate partner violence both concise, written contact
85 information for and, if requested, professional assistance in accessing
86 and utilizing campus, local advocacy, counseling, health and mental
87 health services, and concise information, written in plain language,
88 concerning the rights of such students and employees to (A) notify law
89 enforcement of such assault, stalking or violence and receive assistance
90 from campus authorities in making any such notification, and (B)
91 obtain a protective order, apply for a temporary restraining order or
92 seek enforcement of an existing protective or restraining order,
93 including, but not limited to, orders issued pursuant to section 46b-15,
94 46b-38c, 53a-40e, 54-1k, 54-82q or 54-82r, against the perpetrator of
95 such assault, stalking or violence;

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

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

103 [(5) disclosing] (6) Disclosing a summary of such institution's
104 student investigation and disciplinary procedures, including clear
105 statements advising that (A) [victims] a student or employee who
106 reports or discloses being a victim of such assault, stalking or violence

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

134 [(6) disclosing] (7) Disclosing a summary of such institution's
135 employee investigation and disciplinary procedures, including clear
136 statements advising that a standard of affirmative consent is used in
137 determining whether consent to engage in sexual activity was given by
138 all persons who engaged in the sexual activity; and

139 [(7) disclosing] (8) Disclosing the range of sanctions that may be

140 imposed following the implementation of such institution's student
141 and employee disciplinary procedures in response to such assault,
142 stalking or violence.

143 (c) Each institution of higher education shall provide (1) annual
144 sexual assault, stalking and intimate partner violence primary
145 prevention and awareness programming for all students and
146 employees that includes an explanation of the definition of affirmative
147 consent in sexual relationships, information concerning the reporting
148 of incidences of such assaults, stalking and violence and strategies for
149 bystander intervention and risk reduction; and (2) ongoing sexual
150 assault, stalking and intimate partner violence prevention and
151 awareness campaigns.

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

163 (e) Each institution of higher education shall provide concise
164 notification, written in plain language, to each student and employee
165 of such institution who [has] reports or discloses having been the
166 victim of sexual assault, stalking or intimate partner violence,
167 immediately upon receiving a report or disclosure of such assault,
168 stalking or violence, of such [victim's] student's or employee's rights
169 and options under such institution's policy or policies regarding sexual
170 assault, stalking and intimate partner violence adopted in accordance
171 with subsection (b) of this section.

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

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

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| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>July 1, 2016</i> | 10a-55m |

Statement of Purpose:

To require the inclusion of affirmative consent as a standard in every institution of higher education's policy or policies regarding sexual assault, stalking and intimate partner violence.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]