



General Assembly

Amendment

February Session, 2016

LCO No. 4555



Offered by:

REP. HADDAD, 54th Dist.
SEN. FLEXER, 29th Dist.
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To: Subst. House Bill No. 5376

File No. 73

Cal. No. 90

"AN ACT CONCERNING AFFIRMATIVE CONSENT AND CONSENT FOR THE CARE AND TREATMENT OF COLLEGE STUDENTS WHO ARE THE VICTIM OF SEXUAL ASSAULT."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

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 Section 10a-55m of the general statutes is repealed and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

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

7 (1) "Affirmative consent" means an active, clear and voluntary
8 agreement by a person to engage in sexual activity with another
9 person;

10 ~~[(1)]~~ (2) "Awareness programming" means institutional action

11 designed to inform the campus community of the affirmative consent
12 standard used pursuant to subdivision (1) of subsection (b) of this
13 section, and communicate the prevalence of sexual assaults, stalking
14 and intimate partner violence, including the nature and number of
15 cases of sexual assault, stalking and intimate partner violence reported
16 at or disclosed to each institution of higher education in the preceding
17 three calendar years, including, but not limited to, poster and flyer
18 campaigns, electronic communications, films, guest speakers,
19 symposia, conferences, seminars or panel discussions;

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

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

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

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

41 [(6)] (7) "Sexual assault" means a sexual assault under section 53a-
42 70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a;

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

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

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

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

76 past or current dating or sexual relationship between the student or
77 employee reporting or disclosing the alleged violation and the
78 responding student or employee, in and of itself, shall not be
79 determinative of a finding of affirmative consent;

80 (2) Detailing the procedures that students and employees of the
81 institution who report or disclose being the victim of sexual assault,
82 stalking or intimate partner violence may follow after the commission
83 of such assault, stalking or violence, regardless of where such
84 incidences occurred, including persons or agencies to contact and
85 information regarding the importance of preserving physical evidence
86 of such assault, stalking or violence;

87 [(2) providing] (3) Providing students and employees of the
88 institution who report or disclose being the victim of sexual assault,
89 stalking or intimate partner violence both concise, written contact
90 information for and, if requested, professional assistance in accessing
91 and utilizing campus, local advocacy, counseling, health and mental
92 health services, and concise information, written in plain language,
93 concerning the rights of such students and employees to (A) notify law
94 enforcement of such assault, stalking or violence and receive assistance
95 from campus authorities in making any such notification, and (B)
96 obtain a protective order, apply for a temporary restraining order or
97 seek enforcement of an existing protective or restraining order,
98 including, but not limited to, orders issued pursuant to section 46b-15,
99 46b-38c, 53a-40e, 54-1k, 54-82q or 54-82r, against the perpetrator of
100 such assault, stalking or violence;

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

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

108 [(5) disclosing] (6) Disclosing a summary of such institution's
109 student investigation and disciplinary procedures, including clear
110 statements advising that (A) [victims] a student or employee who
111 reports or discloses being a victim of such assault, stalking or violence
112 shall have the opportunity to request that [disciplinary proceedings]
113 an investigation begin promptly, (B) the investigation and any
114 disciplinary proceedings shall be conducted by an official trained
115 annually in issues relating to sexual assault, stalking and intimate
116 partner violence and shall use the preponderance of the evidence
117 standard in making a determination concerning the alleged assault,
118 stalking or violence, (C) both the [victim of such] student or employee
119 who reports or discloses the alleged assault, stalking or violence and
120 the [accused] student responding to such report or disclosure (i) are
121 entitled to be accompanied to any meeting or proceeding relating to
122 the allegation of such assault, stalking or violence by an advisor or
123 support person of their choice, provided the involvement of such
124 advisor or support person does not result in the postponement or
125 delay of such meeting as scheduled, and (ii) shall have the opportunity
126 to present evidence and witnesses on their behalf during any
127 disciplinary proceeding, (D) both [such victim and accused] the
128 student or employee reporting or disclosing the alleged assault
129 stalking or violence and such responding student are entitled to be
130 informed in writing of the results of any disciplinary proceeding not
131 later than one business day after the conclusion of such proceeding,
132 [and] (E) the institution of higher education shall not disclose the
133 identity of [the victim or the accused] any party to an investigation or
134 disciplinary proceeding, except as necessary to carry out [a] the
135 investigation or disciplinary proceeding or as permitted under state or
136 federal law, and (F) 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;

139 [(6) disclosing] (7) Disclosing a summary of such institution's
140 employee investigation and disciplinary procedures, including clear
141 statements advising that a standard of affirmative consent is used in

142 determining whether consent to engage in sexual activity was given by
143 all persons who engaged in the sexual activity; and

144 [(7) disclosing] (8) Disclosing the range of sanctions that may be
145 imposed following the implementation of such institution's student
146 and employee disciplinary procedures in response to such assault,
147 stalking or violence.

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

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

168 (e) Each institution of higher education shall provide concise
169 notification, written in plain language, to each student and employee
170 of such institution who [has] reports or discloses having been the
171 victim of sexual assault, stalking or intimate partner violence,
172 immediately upon receiving a report or disclosure of such assault,
173 stalking or violence, of such [victim's] student's or employee's rights

174 and options under such institution's policy or policies regarding sexual
175 assault, stalking and intimate partner violence adopted in accordance
176 with subsection (b) of this section.

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

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

208 (h) Nothing in this section shall be interpreted as requiring an
209 institution of higher education to adopt, verbatim, the definition of
210 "affirmative consent" set forth in subsection (a) of this section,
211 provided the institution of higher education uses a definition of
212 "affirmative consent" that has the same meaning as or a meaning that is
213 substantially similar to the definition set forth in subsection (a) of this
214 section."

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