



General Assembly

Amendment

February Session, 2016

LCO No. 5824



Offered by:
SEN. MARKLEY, 16th Dist.

To: Subst. House Bill No. 5376 File No. 760 Cal. No. 541

(As Amended by House Amendment Schedule "A")

"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 Section 10a-55m of the general statutes is repealed and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) "Awareness programming" means institutional action designed
8 to communicate the prevalence of sexual assaults, stalking and
9 intimate partner violence, including the nature and number of cases of
10 sexual assault, stalking and intimate partner violence reported at each
11 institution of higher education in the preceding three calendar years,
12 including, but not limited to, poster and flyer campaigns, electronic

13 communications, films, guest speakers, symposia, conferences,
14 seminars or panel discussions;

15 (2) "Bystander intervention" means the act of challenging the social
16 norms that support, condone or permit sexual assault, stalking and
17 intimate partner violence;

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

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

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

36 (6) "Sexual assault" means a sexual assault under section 53a-70,
37 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a;

38 (7) "Stalking" means stalking under section 53a-181c, 53a-181d or
39 53a-181e; and

40 (8) "Uniform campus crime report" means a campus crime report
41 prepared by an institution of higher education pursuant to section 10a-
42 55a.

43 (b) Each institution of higher education shall adopt and disclose in
44 such institution's annual uniform campus crime report one or more
45 policies regarding sexual assault, stalking and intimate partner
46 violence. Such policy or policies shall include provisions for (1)
47 detailing the procedures that students and employees of the institution
48 who report or disclose being the victim of sexual assault, stalking or
49 intimate partner violence may follow after the commission of such
50 assault, stalking or violence, regardless of where such incidences
51 occurred, including persons or agencies to contact and information
52 regarding the importance of preserving physical evidence of such
53 assault, stalking or violence; (2) providing students and employees of
54 the institution who report or disclose being the victim of sexual
55 assault, stalking or intimate partner violence both concise, written
56 contact information for and, if requested, professional assistance in
57 accessing and utilizing campus, local advocacy, counseling, health and
58 mental health services, and concise information, written in plain
59 language, concerning the rights of such students and employees to (A)
60 notify law enforcement of such assault, stalking or violence and
61 receive assistance from campus authorities in making any such
62 notification, and (B) obtain a protective order, apply for a temporary
63 restraining order or seek enforcement of an existing protective or
64 restraining order, including, but not limited to, orders issued pursuant
65 to section 46b-15, 46b-38c, 53a-40e, 54-1k, 54-82q or 54-82r, against the
66 perpetrator of such assault, stalking or violence; (3) notifying such
67 students and employees of any reasonably available options for and
68 available assistance from such institution in changing academic, living,
69 campus transportation or working situations in response to such
70 assault, stalking or violence; (4) honoring any lawful protective or
71 temporary restraining orders, including, but not limited to, orders
72 issued pursuant to section 46b-15, 46b-38c, 53a-40e, 54-1k, 54-82q or 54-
73 82r; [(5) disclosing a summary of such institution's student disciplinary
74 procedures, including clear statements advising that (A) victims of
75 such assault, stalking or violence shall have the opportunity to request
76 that disciplinary proceedings begin promptly, (B) disciplinary
77 proceedings shall be conducted by an official trained annually in

78 issues relating to sexual assault, stalking and intimate partner violence
79 and shall use the preponderance of the evidence standard in making a
80 determination concerning the alleged assault, stalking or violence, (C)
81 both the victim of such assault, stalking or violence and the accused (i)
82 are entitled to be accompanied to any meeting or proceeding relating
83 to the allegation of such assault, stalking or violence by an advisor or
84 support person of their choice, provided the involvement of such
85 advisor or support person does not result in the postponement or
86 delay of such meeting as scheduled, and (ii) shall have the opportunity
87 to present evidence and witnesses on their behalf during any
88 disciplinary proceeding, (D) both such victim and accused are entitled
89 to be informed in writing of the results of any disciplinary proceeding
90 not later than one business day after the conclusion of such
91 proceeding, and (E) the institution of higher education shall not
92 disclose the identity of the victim or the accused, except as necessary to
93 carry out a disciplinary proceeding or as permitted under state or
94 federal law; (6)] (5) disclosing a summary of such institution's
95 employee disciplinary procedures; and [(7)] (6) disclosing the range of
96 sanctions that may be imposed following the implementation of such
97 institution's student and employee disciplinary procedures in response
98 to such assault, stalking or violence.

99 (c) Each institution of higher education shall provide (1) annual
100 sexual assault, stalking and intimate partner violence primary
101 prevention and awareness programming for all students and
102 employees that includes an explanation of the definition of consent in
103 sexual relationships, information concerning the reporting of
104 incidences of such assaults, stalking and violence and strategies for
105 bystander intervention and risk reduction; and (2) ongoing sexual
106 assault, stalking and intimate partner violence prevention and
107 awareness campaigns.

108 (d) Each institution of higher education may provide the option for
109 any student or employee of such institution who is the victim of a
110 sexual assault, stalking or intimate partner violence to report or
111 disclose such assault, stalking or violence to such institution

112 anonymously. Each such institution shall notify any such student or
113 employee of the institution's obligations under state or federal law, if
114 any, to (1) investigate or address such assault, stalking or violence and
115 (2) assess whether the report triggers the need for a timely warning or
116 emergency notification, as described in 34 CFR 668.46(e), which
117 obligations, in limited circumstances, may result in the learning of
118 such victim's identity.

119 (e) Each institution of higher education shall provide concise
120 notification, written in plain language, to each student and employee
121 of such institution who has been the victim of sexual assault, stalking
122 or intimate partner violence, immediately upon receiving a report of
123 such assault, stalking or violence, of such victim's rights and options
124 under such institution's policy or policies regarding sexual assault,
125 stalking and intimate partner violence adopted in accordance with
126 subsection (b) of this section.

127 (f) Not later than October 1, 2015, and annually thereafter, each
128 institution of higher education shall report to the joint standing
129 committee of the General Assembly having cognizance of matters
130 relating to higher education, in accordance with the provisions of
131 section 11-4a, concerning, for the immediately preceding calendar year,
132 (1) a copy of its most recent policies regarding sexual assault, stalking
133 and intimate partner violence adopted in accordance with subsection
134 (b) of this section, or any revisions thereto, (2) a copy of its most recent
135 concise written notification of a victim's rights and options under its
136 sexual assault, stalking and intimate partner violence policy or policies
137 required pursuant to subsection (e) of this section, (3) the number and
138 type of sexual assault, stalking and intimate partner violence
139 prevention, awareness and risk reduction programs at the institution,
140 (4) the type of sexual assault, stalking and intimate partner violence
141 prevention and awareness campaigns held by the institution, (5) the
142 number of incidences of sexual assault, stalking and intimate partner
143 violence reported to such institution, (6) the number of confidential or
144 anonymous reports or disclosures to the institution of sexual assault,
145 stalking and intimate partner violence, (7) the number of disciplinary

146 cases at the institution related to sexual assault, stalking and intimate
147 partner violence, and (8) the final outcome of all disciplinary cases at
148 the institution related to sexual assault, stalking and intimate partner
149 violence, including, but not limited to, the outcome of any appeals of
150 such final outcome, to the extent reporting on such outcomes does not
151 conflict with federal law.

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

157 (h) Officials of each institution of higher education who investigate
158 allegations of sexual assault, intimate partner violence and stalking
159 shall:

160 (1) Discharge their duties with objectivity and impartiality;

161 (2) Make reasonable efforts to contact all potential witnesses, not
162 just those recommended by the reporting student or employee or
163 responding student or employee;

164 (3) Seek to identify both inculpatory and exculpatory evidence;

165 (4) Thoroughly document or videotape all communications with
166 potential witnesses, evidence collected and interviews conducted,
167 which shall be made available to the reporting student or employee
168 and accused prior to any institutional disciplinary hearing;

169 (5) Compile and evaluate evidence in an impartial manner before
170 rendering an opinion; and

171 (6) Not serve as victim advocate, prosecutor, adjudicator or
172 appellate adjudicator for the same case.

173 (i) (1) Institutional investigative procedures and disciplinary
174 proceedings shall afford the presumption of innocence to the

175 responding student or employee.

176 (2) The institutional policy regarding the presumption of innocence
177 shall be stated in the student handbook.

178 (3) For all allegations that include physical injury, attempted
179 physical violence or threats of physical violence, the institution of
180 higher education shall inform the reporting student or employee of the
181 option to obtain an order through the local court system that may
182 restrict the contact between the reporting student or employee and the
183 responding student or employee if there is an immediate and present
184 danger to the reporting student or employee.

185 (j) No institution of higher education may impose any sanction on
186 any student in response to an alleged sexual assault, intimate partner
187 violence or stalking that is reported to the institution, unless the
188 sanction is imposed under a formal adjudicatory proceeding, in
189 accordance with institutional policies that meet each of the following
190 requirements:

191 (1) The reporting student or employee and the responding student
192 or employee shall have the right to be treated with dignity, respect,
193 and sensitivity throughout the investigation and disciplinary hearing.

194 (2) Institutions shall give the responding student or employee
195 written notice of all allegations being made against the student or
196 employee not later than forty-eight hours after the decision is rendered
197 to pursue disciplinary proceedings. Such notice shall delineate the
198 nature of the alleged offense and factual information about the
199 underlying incident.

200 (3) The institution shall provide all parties to the proceeding with
201 adequate written notice of the allegation not later than two weeks prior
202 to the start of any formal hearing or similar adjudicatory proceeding.
203 The notice shall include a description of all rights and responsibilities
204 under the proceeding, a statement of all relevant details of the
205 allegation including the nature of the alleged offense and factual

206 information underlying the incident, and a specific statement of the
207 sanctions that may be imposed.

208 (4) The institution shall provide each responding student or
209 employee with a meaningful opportunity to admit or contest the
210 allegation at the proceeding or similar adjudicatory proceeding.

211 (5) The institution shall ensure that all parties to the proceeding
212 have reasonable access to all material evidence, including both
213 inculpatory and exculpatory evidence, not later than two weeks prior
214 to the start of any formal hearing or similar adjudicatory proceeding.
215 Such evidence may include, but is not limited to, statements of the
216 reporting student or employee, third-party witness statements,
217 electronically stored information, written communications, social
218 media posts and demonstrative evidence.

219 (6) The institution shall permit each party to the proceeding to be
220 represented, at the sole expense of the party, by an attorney or other
221 nonattorney advocate for the duration of the proceeding, including
222 during the investigation of the allegation, interviews of the reporting
223 or responding student or employee, and other preliminary stages prior
224 to a formal adjudicatory proceeding. The institution shall permit the
225 attorney or other advocate to ask questions in the proceeding, file
226 relevant papers, examine evidence and examine witnesses.

227 (7) The reporting student or employee and responding student or
228 employee shall be informed of the right to remain silent, and that any
229 statements made to investigators prior to the proceeding, or made
230 during the course of the proceeding, may be used against the
231 responding student or employee in a court of law if criminal charges
232 are filed.

233 (8) The institution shall permit each party to the proceeding to
234 safely confront witnesses, including the reporting student or employee
235 and responding student or employee, in an appropriate manner,
236 including by submitting written questions to be asked by the person
237 servng as the adjudicator in any formal hearing or similar

238 adjudicatory proceeding.

239 (9) The institution shall ensure that the proceeding is carried out
240 free from conflicts of interest by ensuring that there is no commingling
241 of administrative or adjudicative roles. For purposes of this
242 subdivision, an institution shall be considered to commingle such roles
243 if any individual carries out more than one of the following roles with
244 respect to the proceeding:

245 (A) Victim counselor and victim advocate.

246 (B) Confidential advisor.

247 (C) Investigator.

248 (D) Prosecutor.

249 (E) Adjudicator.

250 (F) Appellate adjudicator.

251 (k) An institution of higher education may establish and apply such
252 standard of proof as it considers appropriate for purposes of any
253 adjudication carried out as part of an institutional disciplinary
254 proceeding under this section. Said standard of proof shall be
255 commensurate with the severity of the allegation and the potential
256 penalties."

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