



House of Representatives

File No. 760

General Assembly

February Session, 2016

(Reprint of File No. 73)

Substitute House Bill No. 5376
As Amended by House Amendment
Schedules "A" and "B"

Approved by the Legislative Commissioner
April 29, 2016

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 Section 10a-55m of the general statutes is repealed and the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;

8 [(1)] (2) "Awareness programming" means institutional action
9 designed to inform the campus community of the affirmative consent
10 standard used pursuant to subdivision (1) of subsection (b) of this
11 section, and communicate the prevalence of sexual assaults, stalking
12 and intimate partner violence, including the nature and number of
13 cases of sexual assault, stalking and intimate partner violence reported
14 at or disclosed to each institution of higher education in the preceding

15 three calendar years, including, but not limited to, poster and flyer
16 campaigns, electronic communications, films, guest speakers,
17 symposia, conferences, seminars or panel discussions;

18 [(2)] (3) "Bystander intervention" means the act of challenging the
19 social norms that support, condone or permit sexual assault, stalking
20 and intimate partner violence;

21 [(3)] (4) "Institution of higher education" means an institution of
22 higher education, as defined in section 10a-55, and a for-profit
23 institution of higher education licensed to operate in this state, but
24 shall not include Charter Oak State College for purposes of subsections
25 (c) and (f) of this section and sections 10a-55n to 10a-55p, inclusive;

26 [(4)] (5) "Intimate partner violence" means any physical or sexual
27 harm against an individual by a current or former spouse of or person
28 in a dating relationship with such individual that results from any
29 action by such spouse or such person that may be classified as a sexual
30 assault under section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-72b
31 or 53a-73a, stalking under section 53a-181c, 53a-181d or 53a-181e, or
32 family violence as designated under section 46b-38h;

33 [(5)] (6) "Primary prevention programming" means institutional
34 action and strategies intended to prevent sexual assault, stalking and
35 intimate partner violence before it occurs by means of changing social
36 norms and other approaches, including, but not limited to, poster and
37 flyer campaigns, electronic communications, films, guest speakers,
38 symposia, conferences, seminars or panel discussions;

39 [(6)] (7) "Sexual assault" means a sexual assault under section 53a-
40 70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a;

41 [(7)] (8) "Stalking" means stalking under section 53a-181c, 53a-181d
42 or 53a-181e; and

43 [(8)] (9) "Uniform campus crime report" means a campus crime
44 report prepared by an institution of higher education pursuant to

45 section 10a-55a.

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

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

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

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

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

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

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

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

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

142 [(7) disclosing] (8) Disclosing the range of sanctions that may be
143 imposed following the implementation of such institution's student

144 and employee disciplinary procedures in response to such assault,
145 stalking or violence.

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

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

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

175 (f) Not later than October 1, 2015, and annually thereafter, each

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

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

206 (h) Nothing in this section shall be interpreted as requiring an
207 institution of higher education to adopt, verbatim, the definition of
208 "affirmative consent" set forth in subsection (a) of this section,
209 provided the institution of higher education, in the exercise of its sole

210 authority to adopt a definition of "affirmative consent", uses a
211 definition of "affirmative consent" that has the same meaning as or a
212 meaning that is substantially similar to the definition set forth in
213 subsection (a) of this section.

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

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill results in no fiscal impact as it is procedural and technical in nature.

House "A" (LCO 4555) and House "B" (LCO 5354) are both technical and procedural in nature and result in no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 5376 (as amended by House "A" and "B")******AN ACT CONCERNING AFFIRMATIVE CONSENT AND CONSENT FOR THE CARE AND TREATMENT OF COLLEGE STUDENTS WHO ARE THE VICTIM OF SEXUAL ASSAULT.*****SUMMARY:**

By law, higher education institutions in Connecticut must adopt and disclose one or more policies on sexual assault, stalking, and intimate partner violence. Among other things, the policies must include provisions about (1) providing, to students and employees who report or disclose being victims of such violence, information about their options for assistance; (2) disciplinary procedures; and (3) possible sanctions.

This bill requires institutions to use a standard of affirmative consent when determining, in the context of these policies, whether sexual activity is consensual. The policies must include clear statements advising students and employees of the affirmative consent standard. Additionally, the bill specifies that the policies must describe the institutions' investigation procedures for students and employees. (Existing law requires that the policies describe the institutions' disciplinary procedures.) The also requires that an official trained annually in issues relating to sexual assault, stalking, and intimate partner violence conduct investigations in which the respondents are students. (Existing law applies this requirement to disciplinary proceedings in which the respondents are students.)

The bill requires higher education institutions (except for Charter Oak State College) to include, in the awareness programming they offer to students and employees, an explanation of the affirmative consent standard. It also replaces references to "victim" and "accused"

in current law. Generally, it replaces references to (1) “victim” with “student or employee who reports or discloses the alleged violation” and (2) “accused” with “student or employee responding to such report or disclosure.”

Lastly, the bill makes technical and conforming changes.

*House Amendment “A” (1) modifies the definition of affirmative consent and makes conforming changes, (2) specifies that higher education institutions are not required to adopt the bill’s definition verbatim, and (3) removes a provision in the underlying bill (File 73) that allowed sexual assault forensic examiners to treat or provide immediate care to certain sexual assault victims younger than age 18.

*House Amendment “B” specifies that higher education institutions have sole authority to adopt a definition of “affirmative consent.”

EFFECTIVE DATE: July 1, 2016

AFFIRMATIVE CONSENT

The bill defines “affirmative consent” as an active, clear, and voluntary agreement by a person to engage in sexual activity with another person. It specifies that higher education institutions, in exercising their sole authority to adopt a definition of “affirmative consent,” are not required to adopt the bill’s definition verbatim but must use a definition that has the same or a substantially similar meaning.

Institutional Policies

The bill requires that institutions' sexual assault, stalking, and intimate partner violence policies include provisions for informing students and employees that, in the context of the policies regarding sexual assault and intimate partner violence,

1. affirmative consent (a) is the standard used to determine whether sexual activity was consensual and (b) may be revoked at any time during the sexual activity;

2. each person is responsible for ensuring that (a) he or she has affirmative consent from all people engaged in the sexual activity and (b) the affirmative consent is sustained throughout the sexual activity; and
3. a past or current dating or sexual relationship, by itself, is not determinative of a finding of affirmative consent.

The policies must also provide that an alleged lack of affirmative consent is not excused by the respondent's belief that the student or employee complainant consented because the respondent was intoxicated, reckless, or failed to take reasonable steps to ascertain whether the complainant affirmatively consented. It is similarly not excused if the respondent knew or should have known that the complainant was unable to consent because the complainant was unconscious, asleep, unable to communicate due to a mental or physical condition, or was incapacitated due to the influence of drugs, alcohol, or medication.

Awareness Programming

The bill requires higher education institutions (except for Charter Oak State College) to include, in the awareness programming they offer to students and employees, an explanation of the affirmative consent standard. Under existing law, higher education institutions (except for Charter Oak State College) must offer, within existing budgetary resources, sexual assault, stalking, and intimate partner violence primary prevention and awareness programming for all students and employees that includes an explanation of the definition of consent in sexual relationships.

COMMITTEE ACTION

Higher Education and Employment Advancement Committee

Joint Favorable Substitute

Yea 14 Nay 3 (03/03/2016)