
OLR Bill Analysis

sSB 3 (File 852, as amended by Senate "A")*

AN ACT COMBATTING SEXUAL ASSAULT AND SEXUAL HARASSMENT.

TABLE OF CONTENTS:

SUMMARY

§§ 1, 3 & 9 — SEXUAL HARASSMENT TRAINING AND INFORMATION REQUIREMENTS FOR EMPLOYERS

Expands requirements for employers on training employees about sexual harassment laws and providing related information, and requires CHRO to make related training materials available

§ 2 — DISCRIMINATORY PRACTICE DEFINITION

Expands the definition of "discriminatory practice" in the CHRO statutes to include, among other things, an employer's failure to provide sexual harassment training or post certain notices as required

§ 4 — CORRECTIVE ACTION IN EMPLOYER SEXUAL HARASSMENT CASES

Allows employers to modify the conditions of an alleged harassment victim's employment only with that person's consent

§ 5 — EQUAL EMPLOYMENT OPPORTUNITY OFFICERS

Limits the disclosure of investigation-related documents by state entities' equal employment opportunity officers

§ 6 — COMPLAINT FILING DEADLINE

Gives a claimant more time to file a complaint with CHRO alleging employment discrimination or various types of discrimination by state agencies

§ 7 — REMEDIES FOR DISCRIMINATORY EMPLOYMENT PRACTICES

Requires the CHRO presiding officer, among other things, to issue an order that makes the complainant whole and award attorney's fees after finding a discriminatory employment practice

§ 8 — DOCUMENT INSPECTION AND CONSEQUENCES OF NONCOMPLIANCE

Allows the presiding officer at CHRO administrative hearings to impose nonmonetary penalties on parties that do not comply with orders to produce relevant and material documents

§ 9 — PENALTY FOR FAILURE TO POST CERTAIN NOTICES

Increases the fine for employers and certain others for failing to post notices about nondiscrimination laws

§ 10 — PUNITIVE DAMAGES IN COURT AFTER RELEASE FROM CHRO JURISDICTION

Allows courts to award punitive damages in discrimination cases after release from CHRO jurisdiction

§ 11 — CHRO CIVIL ACTIONS IN THE PUBLIC INTEREST

Allows CHRO's executive director, within available appropriations, to assign CHRO legal counsel to bring a civil action, instead of an administrative hearing, in certain cases when doing so would be in the public interest and the parties agree to the case proceeding to court

§ 12 — EVIDENCE IN CIVIL SEXUAL MISCONDUCT CASES

Limits when evidence of the victim's sexual history may be admitted in civil proceedings involving alleged sexual assault or sexual harassment

§ 13 — CIVIL STATUTE OF LIMITATIONS FOR VICTIMS UNDER AGE 21

Extends the time to file a civil case related to sexual abuse or related conduct for victims under age 21

§ 14 — CIVIL STATUTE OF LIMITATIONS TASK FORCE

Establishes a task force to study whether to amend the civil statute of limitations for sexual abuse

§§ 15, 16 & 18 — SEXUAL ASSAULT OF AN INCAPACITATED PERSON

Increases the penalty for subjecting someone to sexual contact if the victim is mentally incapacitated and cannot consent

§§ 17 & 19-23 — STATUTE OF LIMITATIONS FOR SEXUAL ASSAULT AND RELATED CRIMES

Eliminates or extends the statute of limitations for various sexual assault and related crimes

BACKGROUND

Provides information on related bills

SUMMARY

This bill makes various changes concerning sexual harassment, sexual assault, discrimination complaints filed with the Commission on Human Rights and Opportunities (CHRO), and related matters. For example, it:

1. expands requirements for employers to train employees on sexual harassment laws (§ 1);

2. extends the time to file a CHRO complaint alleging employer discrimination, including sexual harassment (§ 6);
3. allows courts to order punitive damages in discrimination cases released from CHRO jurisdiction (§ 10);
4. extends the time to file a civil lawsuit related to sexual abuse or related conduct for victims under age 21 (§ 13); and
5. eliminates the criminal statute of limitations for sexual assault crimes against minors and extends it for such crimes against adults (§ 17).

The bill also makes technical and conforming changes.

*Senate Amendment "A" replaces the underlying bill. It removes provisions (1) expanding the range of court orders that CHRO may seek against employers in certain situations; (2) giving claimants more time to file a court case after being released from CHRO's jurisdiction; (3) allowing employers to deduct pay for executive, administrative, or professional employees who miss work due to disciplinary suspensions; (4) requiring school superintendents to immediately suspend employees accused in a sexual harassment complaint; and (5) allowing the chief human rights referee, in certain circumstances, to appoint magistrates to preside over CHRO proceedings.

It modifies the underlying bill's provisions on the civil statute of limitations, allowing victims under age 21 to file suit at any time before their 51st birthday instead of 56th birthday as in the underlying bill, and establishing a task force on this issue.

Among other things, the amendment also makes several changes to the underlying bill's provisions on the criminal statute of limitations for sexual assault. For example, it sets a 20-year statute of limitations for certain crimes committed against individuals age 21 and older, rather than eliminating the statute of limitations for some such crimes.

EFFECTIVE DATE: October 1, 2019, except as otherwise noted below.

§§ 1, 3 & 9 — SEXUAL HARASSMENT TRAINING AND INFORMATION REQUIREMENTS FOR EMPLOYERS

Expands requirements for employers on training employees about sexual harassment laws and providing related information, and requires CHRO to make related training materials available

Training (§§ 1 & 3)

Under current law, CHRO may require employers with at least 50 employees to provide their supervisory employees with two hours of training on federal and state sexual harassment laws and remedies available to victims. The bill expands this requirement to cover (1) employers of any size and (2) non-supervisory employees for employers with at least three employees.

The bill requires the new training to occur within one year of October 1, 2019, except that any employer who provided the bill's training after October 1, 2018, is not required to provide it a second time.

The bill requires CHRO to develop and make available to employers a free, online training and education video or other interactive method that fulfills the bill's training requirements. As long as CHRO does so, the bill's required employee training must take place within six months of the hiring date, starting October 1, 2019, for (1) all new hires by employers with at least three employees and (2) all new supervisory hires by smaller employers.

Under the bill, the employers required to provide this training must provide supplemental training at least every 10 years to update employees on the content of the training and education.

Information (§§ 1 & 3)

Existing law gives CHRO the power to require employers with three or more employees to post in a prominent and accessible place a notice stating that sexual harassment is illegal and the remedies available to victims. The bill requires these employers to also send a copy of this information to employees by email within three months of their hire if the (1) employer has provided an email account to the employee or (2) employee has provided the employer with an email address. The

email's subject line must be similar to "Sexual Harassment Policy."

Under the bill, if an employer has not provided email accounts to employees, it must post the information on its website, if it has one.

The bill requires CHRO to develop and include on its website a link about the illegality of sexual harassment and the remedies available to victims. An employer can comply with the requirement above by providing this link to employees by email, text message, or in writing.

Covered Employees (§ 1)

The bill specifies that for the above provisions on sexual harassment training and information, "employee" includes anyone employed by an employer, including someone employed by his or her parent, spouse, or child. This is an exception to the general definition of employee in the CHRO statutes, which excludes such family members (CGS § 46a-51(9)).

Penalty (§ 9)

The bill subjects employers to a fine of up to \$1,000 if they fail to provide the training and education as required. As explained below, the bill additionally classifies this inaction as a discriminatory practice.

Ensuring Compliance (§ 9)

Existing law allows CHRO to order employers and certain others to post notices describing any laws as CHRO directs. The bill allows the CHRO executive director to assign designated representatives to enter an employer's business location, during normal business hours, to ensure compliance with these requirements and requirements for employers to post notices on sexual harassment (see above).

The designated representatives may also examine the employers' records, policies, procedures, postings, and sexual harassment training materials to ensure compliance with these posting requirements and the sexual harassment training requirements described above.

The bill requires these designated representatives, when carrying out these duties, to ensure that they do not unduly disrupt the

employers' business operations.

EFFECTIVE DATE: October 1, 2019, except the provisions requiring CHRO to post information on its website and make training materials available take effect July 1, 2019.

§ 2 — DISCRIMINATORY PRACTICE DEFINITION

Expands the definition of "discriminatory practice" in the CHRO statutes to include, among other things, an employer's failure to provide sexual harassment training or post certain notices as required

The bill expands the definition of "discriminatory practice" in the CHRO statutes to include violations of the following requirements for:

1. employers to provide training and information to employees (as specified above) about sexual harassment and available remedies and
2. state agencies to provide diversity training and education to employees, annually report on the training, and submit information demonstrating compliance as part of their affirmative action plans.

By adding these violations to the definition of discriminatory practice, the bill allows individuals aggrieved by any such violation, or CHRO itself, to file a complaint with CHRO alleging discrimination.

§ 4 — CORRECTIVE ACTION IN EMPLOYER SEXUAL HARASSMENT CASES

Allows employers to modify the conditions of an alleged harassment victim's employment only with that person's consent

The bill prohibits an employer, when taking immediate corrective action in response to an employee's sexual harassment claim, from modifying the claimant's conditions of employment unless the claimant agrees in writing to the modification. This includes actions such as (1) relocating the employee, (2) assigning him or her to a different work schedule, or (3) making other substantive changes to the terms and conditions of employment.

§ 5 — EQUAL EMPLOYMENT OPPORTUNITY OFFICERS

Limits the disclosure of investigation-related documents by state entities' equal employment opportunity officers

By law, each state agency, department, board, or commission must designate an equal employment opportunity officer. Among other things, they are responsible for investigating discrimination complaints made against the applicable entity with certain exceptions.

The bill prohibits these officers from disclosing witness statements or documents received or compiled in conjunction with such an investigation until the investigation concludes, except for disclosures to (1) personnel charged with investigating or adjudicating the complaint or (2) CHRO.

§ 6 — COMPLAINT FILING DEADLINE

Gives a claimant more time to file a complaint with CHRO alleging employment discrimination or various types of discrimination by state agencies

Under current law, a discriminatory practice complaint with CHRO may be filed within (1) 180 days of the alleged discrimination or (2) 30 days for complaints alleging discrimination based on denial of state employment or occupational licensure due to criminal history.

The bill extends to 300 days the time for filing complaints alleging discrimination that allegedly occurred on or after October 1, 2019, in any of the following areas:

1. employment (including sexual harassment);
2. equal employment in state agencies and the Judicial Branch;
3. state agency practices (including permitting certain types of discrimination, such as in housing or public accommodations);
4. state agency job placement services or state licensing;
5. state agency educational and vocational guidance and apprenticeship programs;
6. allocation of state benefits;
7. state agency cooperation with CHRO;

8. required state agency annual reporting to the governor on nondiscrimination efforts; and
9. denial of state employment or occupational licensure due to criminal history.

§ 7 — REMEDIES FOR DISCRIMINATORY EMPLOYMENT PRACTICES

Requires the CHRO presiding officer, among other things, to issue an order that makes the complainant whole and award attorney's fees after finding a discriminatory employment practice

Under current law, after a finding of a discriminatory employment practice, a CHRO hearing officer may order that (1) the complainant be hired or reinstated with or without back pay or (2) his or her membership in any respondent labor organization be restored.

The bill instead requires the officer to:

1. issue an order eliminating the discriminatory practice and making the complainant whole, including restoring labor organization membership;
2. determine the amount of damages, including the complainant's actual costs as a result of the discrimination; and
3. allow reasonable attorney's fees and costs.

The amount of attorney's fees cannot be contingent upon the amount of damages requested by or awarded to the complainant.

§ 8 — DOCUMENT INSPECTION AND CONSEQUENCES OF NONCOMPLIANCE

Allows the presiding officer at CHRO administrative hearings to impose nonmonetary penalties on parties that do not comply with orders to produce relevant and material documents

Under the bill, CHRO and each party to a CHRO administrative hearing must have the opportunity to inspect and copy relevant and material records, papers, and other documents not in the party's possession unless another state or federal law prohibits it. The bill allows the presiding officer to (1) order a party to produce these

documents and (2) issue a nonmonetary order against a party who fails to comply within 30 days.

The nonmonetary order must be deemed just and appropriate by the officer and may:

1. find that the matters that are the subject of the order are established as set forth in the other party's claim,
2. prohibit the noncomplying party from introducing designated matters into evidence,
3. limit that party's participation as to issues or facts relating to the order, and
4. draw an adverse inference against that party.

§ 9 — PENALTY FOR FAILURE TO POST CERTAIN NOTICES

Increases the fine for employers and certain others for failing to post notices about nondiscrimination laws

By law, CHRO can require the following individuals or entities to post notices describing any laws as it directs: employers, employment agencies, labor organizations, or complaint respondents or other people subject to the public accommodations or housing discrimination laws. The bill increases the maximum fine for a failure to comply from \$250 to \$1,000.

§ 10 — PUNITIVE DAMAGES IN COURT AFTER RELEASE FROM CHRO JURISDICTION

Allows courts to award punitive damages in discrimination cases after release from CHRO jurisdiction

The bill allows courts to award punitive damages in discrimination cases that were released from CHRO jurisdiction. In 2016, the state Supreme Court ruled that the current statute does not authorize courts to award punitive damages (*Tomick v. United Parcel Service, Inc.*, 324 Conn. 470 (2016)).

Under existing law for these cases, courts may award the legal and equitable relief they deem appropriate, including injunctive relief,

attorney's fees, and court costs.

§ 11 — CHRO CIVIL ACTIONS IN THE PUBLIC INTEREST

Allows CHRO's executive director, within available appropriations, to assign CHRO legal counsel to bring a civil action, instead of an administrative hearing, in certain cases when doing so would be in the public interest and the parties agree to the case proceeding to court

Under existing law, certain cases within CHRO's jurisdiction proceed to an administrative hearing phase (e.g., if the investigator finds reasonable cause to believe that discrimination occurred and the parties cannot reach a settlement). The bill allows the CHRO executive director, through the supervising attorney and within available appropriations, to assign CHRO legal counsel to bring a civil action about an alleged discriminatory practice, instead of a case proceeding to an administrative hearing, if she determines that (1) this would be in the public interest and (2) the parties mutually agree, in writing, to the case proceeding in this way.

The legal counsel must bring the case in Superior Court within 90 days after notifying the parties of the executive director's determination. The action may be served by certified mail. The bill exempts these cases from certain conditions that apply to civil actions brought after CHRO has released a case from its jurisdiction (such as specific provisions on venue and the statute of limitations).

The bill limits the court's jurisdiction to the claims, counterclaims, defenses, or other matters that could be presented at a CHRO administrative hearing had the complaint remained with CHRO. It allows the complainant to intervene as a matter of right without permission from the court, CHRO, or the other party. The case must be tried without a jury.

Under the bill, the complainant or his or her attorney must present all or part of the case in support of the complaint if CHRO legal counsel determines that this will not adversely affect the state's interest.

The bill allows a court to grant the same relief that would be

available in a civil action after a case was released from CHRO jurisdiction. If the court finds that the respondent committed a discriminatory practice, the bill requires the court to order the respondent to pay CHRO its fees and costs in addition to a civil penalty of up to \$10,000. CHRO must use the funds from the penalty to advance the public interest in eliminating discrimination.

§ 12 — EVIDENCE IN CIVIL SEXUAL MISCONDUCT CASES

Limits when evidence of the victim's sexual history may be admitted in civil proceedings involving alleged sexual assault or sexual harassment

The bill limits the circumstances in which evidence of a victim's or an alleged victim's (hereinafter "victim") sexual history may be admitted in civil proceedings involving alleged sexual assault or sexual harassment. It generally prohibits offering evidence to prove (1) that a victim engaged in other sexual behavior or (2) the victim's sexual predisposition. But it allows the court to admit this evidence if the probative value substantially outweighs the danger of (1) harm to any victim and (2) unfair prejudice to any party. It allows the court to admit evidence of a victim's reputation only if the victim has placed his or her reputation in controversy.

Under the bill, if a party intends to offer such evidence, the party must:

1. file a motion, by lodging a record pursuant to Practice Book requirements, specifically describing the evidence and stating its purpose, at least 14 days before the hearing unless the court, for good cause shown, prescribes a different deadline;
2. serve the motion on all parties pursuant to court rules; and
3. notify the victim or, when appropriate, the victim's guardian or representative.

The bill requires the court, before admitting this evidence, to conduct an *in camera* (i.e., in chambers) hearing and give the parties and the victim the right to attend and be heard. Unless the court orders otherwise, the motion, related materials, and hearing record must be

sealed and remain sealed.

§ 13 — CIVIL STATUTE OF LIMITATIONS FOR VICTIMS UNDER AGE 21

Extends the time to file a civil case related to sexual abuse or related conduct for victims under age 21

Under current law, if a victim was a minor (i.e., under age 18) when sexual assault, sexual abuse, or sexual exploitation occurred, the victim has until his or her 48th birthday to file a personal injury lawsuit for damages, including emotional distress, caused by the conduct.

The bill extends this provision in two ways. First, it applies it to victims who were under age 21, rather than 18, at the time of the conduct. Second, it allows any such victim to file the lawsuit at any time before his or her 51st birthday.

Under existing law, regardless of the victim’s age, there is no limitation on bringing a personal injury lawsuit for damages caused by sexual assault when the offender has been convicted of 1st degree or 1st degree aggravated sexual assault for such conduct (CGS § 52-577e).

EFFECTIVE DATE: October 1, 2019, and applicable to any case arising from an incident committed on or after that date.

§ 14 — CIVIL STATUTE OF LIMITATIONS TASK FORCE

Establishes a task force to study whether to amend the civil statute of limitations for sexual abuse

The bill establishes a nine-member task force to study whether the statutes of limitations for personal injury to minors and adults caused by sexual abuse, sexual exploitation, or sexual assault should be amended. The group must examine the applicable statutes of limitations in Connecticut and other states, including a review of reviving claims that are otherwise time barred.

Table 1 lists the criteria for task force appointments.

Table 1: Task Force Members

<i>Appointing Authority</i>	<i>Appointee Criteria</i>
House speaker	One appointee (unspecified qualifications)

Senate president pro tempore	A victim of sexual abuse, exploitation, or assault
House speaker and Senate president pro tempore jointly	One appointee (unspecified qualifications)
House majority leader	One appointee who is a (1) representative of an entity named as a defendant in a civil action for sexual abuse, sexual exploitation, or sexual assault or (2) lawyer who has represented two or more clients named as a defendant in such cases
Senate majority leader	A representative from the Connecticut Alliance to End Sexual Violence
House minority leader	One appointee who is a (1) representative of an entity named as a defendant in a civil action for sexual abuse, sexual exploitation, or sexual assault or (2) lawyer who has represented two or more clients named as a defendant in such cases
Senate minority leader	One appointee (unspecified qualifications)
n/a	Connecticut Trial Lawyers Association executive director, or the director's designee
Chief Court Administrator	Superior Court judge or someone who previously served as such a judge

Under the bill, the task force members appointed by the House speaker, Senate president, House speaker and Senate president jointly, or House minority leader may be legislators.

The bill requires task force appointments to be made within 30 days after the bill's passage. The appointing authority fills any vacancy.

The member appointed jointly by the House speaker and Senate president serves as the task force chairperson. The chairperson must schedule the first task force meeting, which must be held no later than 60 days after the bill's passage. The Judiciary Committee's administrative staff serves in that capacity for the task force.

By January 15, 2020, the task force must report to the Judiciary Committee on its findings and recommendations. The task force terminates on the date it submits the report or January 15, 2020, whichever is later.

EFFECTIVE DATE: Upon passage

§§ 15, 16 & 18 — SEXUAL ASSAULT OF AN INCAPACITATED PERSON

Increases the penalty for subjecting someone to sexual contact if the victim is mentally incapacitated and cannot consent

Under current law, it is 4th degree sexual assault to subject someone to sexual contact if the victim is mentally incapacitated to the extent that he or she cannot consent to the contact. The bill instead classifies this conduct as 3rd degree sexual assault, thus increasing the maximum prison term and criminal fine as shown in Table 2.

Table 2: Penalties for 3rd and 4th Degree Sexual Assault

Victim Age	4th Degree Sexual Assault	3rd Degree Sexual Assault
Under 16	Class D felony (Up to five years in prison, a fine of up to \$5,000, or both)	Class C felony (Up to 10 years in prison, a fine of up to \$10,000, or both)
16 or older	Class A misdemeanor (Up to one year in prison, a fine of up to \$2,000, or both)	Class D felony (Up to five years in prison, a fine of up to \$5,000, or both)

§§ 17 & 19-23 — STATUTE OF LIMITATIONS FOR SEXUAL ASSAULT AND RELATED CRIMES

Eliminates or extends the statute of limitations for various sexual assault and related crimes

Under current law, there is generally a five-year statute of limitations for felonies, including most sexual assault crimes. But there is:

1. no statute of limitations for (a) crimes that are class A felonies, including certain sexual assault crimes, or (b) certain sexual assault crimes involving DNA evidence (CGS § 54-193b) and
2. an extended statute of limitations in other cases involving sexual abuse, sexual exploitation, or sexual assault of minors (in most cases, until the earlier of the victim's 48th birthday or five years from the date the victim reports the crime).

The bill makes the following changes to the statute of limitations for sexual assault crimes.

Victims Who Are Minors

The bill eliminates the statute of limitations for any offense involving sexual abuse, sexual exploitation, or sexual assault of a minor, including risk of injury to a minor involving intimate contact with a victim under age 16.

Victims Age 18, 19, or 20

For any offense involving sexual abuse, sexual exploitation, or sexual assault of a person age 18, 19, or 20, the bill extends the statute of limitations until the victim's 51st birthday, unless there would be no statute of limitations (e.g., the crime is a class A felony).

Other Felony Sexual Assault Crimes

The bill extends, from five to 20 years, the default statute of limitations for felony sexual assault crimes for cases in which the victim is age 21 or older, unless there would be no statute of limitations under other law as described above.

This applies to:

1. 1st degree sexual assault and 1st degree aggravated sexual assault in cases where either crime is a class B felony (there is already no limitation on prosecuting other cases of these crimes, which are class A felonies);
2. sexual assault in a spousal or cohabiting relationship;
3. 2nd degree sexual assault and 3rd degree sexual assault with a firearm in cases where either crime is a class C felony (i.e., the victim is aged 16 or older; if the victim is under age 16, there is also no statute of limitations under the provision above on any offense involving minors); and
4. 3rd degree sexual assault in cases where the crime is a class D felony (i.e., the victim is aged 16 or older; if the victim is under

age 16, there is also no statute of limitations as described above).

Misdemeanor 4th Degree Sexual Assault

The bill extends the statute of limitations to 10 years for 4th degree sexual assault in cases where the crime is a class A misdemeanor and the victim is age 21 or older. Currently, there is generally a one-year statute of limitations for these cases.

EFFECTIVE DATE: October 1, 2019, and provisions eliminating or extending statutes of limitations are applicable to (1) offenses committed on or after that date and (2) offenses committed before then if the statute of limitations in effect when the offense was committed has not expired as of October 1, 2019.

BACKGROUND

Provides information on related bills

Related Bills

sSB 697 (File 446), reported favorably by the Labor and Public Employees Committee, prohibits employers from entering into contracts with employees that contain a nondisclosure provision that prevents the employee from disclosing or discussing workplace sexual harassment or sexual assault.

sSB 913 (File 797), reported favorably by the Judiciary Committee, extends the criminal statute of limitations for certain sexual assault crimes from five years to 10 years.

sHB 7044, reported favorably by the Labor and Public Employees and Judiciary committees, contains various provisions on sexual harassment, including a provision prohibiting employers from taking immediate corrective action that modifies the complainant's terms and conditions of employment without the complainant's express written agreement.

sHB 7396 (File 851), reported favorably by the Judiciary Committee, repeals the law that specifically criminalizes sexual assault in a spousal or cohabiting relationship but simultaneously subjects married individuals to penalties for other sexual assault offenses.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 26 Nay 14 (04/10/2019)

Appropriations Committee

Joint Favorable

Yea 32 Nay 13 (05/13/2019)