

# OFFICE OF FISCAL ANALYSIS

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sSB-3

## AN ACT COMBATTING SEXUAL ASSAULT AND SEXUAL HARASSMENT.

### **OFA Fiscal Note**

#### **State Impact:**

Agency Affected	Fund-Effect	FY 20 \$	FY 21 \$
Human Rights & Opportunities, Com.	GF - Cost	281,534	335,642
State Comptroller - Fringe Benefits <sup>1</sup>	GF - Cost	102,783	126,718
Human Rights & Opportunities, Com.	GF - Potential Revenue Gain	Up to \$50,000	Up to \$50,000
Pub. Defender Serv. Com.	GF - Cost	See Below	See Below
Correction, Dept.; Judicial Dept. (Probation)	GF - Potential Cost	See Below	See Below
Resources of the General Fund	GF - Potential Revenue Gain	See Below	See Below
Various State Agencies	All Funds - Potential Cost	See Below	See Below

Note: GF=General Fund; All Funds=All Funds

#### **Municipal Impact:**

Municipalities	Effect	FY 20 \$	FY 21 \$
Various Municipalities	STATE MANDATE <sup>2</sup> - Potential Cost	See Below	See Below

<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 41.19% of payroll in FY 20 and FY 21.

<sup>2</sup> State mandate is defined in Sec. 2-32b(2) of the Connecticut General Statutes, "state mandate" means any state initiated constitutional, statutory or executive action that requires a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.

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**Explanation**

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

In order to handle the bill's provisions, CHRO will need to hire three Human Rights Attorney 1's and two Human Rights Trainees at a cost of \$249,534 in FY 20 and \$307,642 in FY 21. In addition, they will require Other Expense funding of \$32,000 in FY 20 and \$28,000 in FY 21.

**Sections 1, 3, and 10** expand requirements for employers on training employees regarding sexual harassment laws and providing related information, as well as require CHRO to make related training materials available.

The bill expands requirements for employers with more than three employees to train them on sexual harassment laws. No impact is anticipated to other state agencies or municipalities as CHRO is required to make available such training to employers under the bill. To the extent that an essential state or municipal employee's shift needs to be covered during training, there may be a potential cost to cover the work responsibilities of the employee. For example, the replacement cost of a State Police Trooper would be at least \$30/hour or possibly higher if overtime was used to cover the employee's shift.

The bill requires CHRO to develop and make available to employers an online training and education video or other interactive method that fulfills the bill's training requirements. It further requires CHRO to develop and include on its website a link about the illegality of sexual harassment and the remedies available to victims.

CHRO will need to hire one Human Rights Attorney 1 and one Human Rights Trainee at a cost of \$118,791 in FY 20 and FY 21, and associated fringe benefit costs of \$48,930 each year. The Attorney 1

will be responsible for developing and maintaining the training materials to ensure they comply with law, as well as responding to law related employer questions. The Human Rights Trainee will assist with the preparation of training materials, the development of the training module, and providing live responses to questions during training. CHRO will require one-time funding of \$4,000 in FY 20 in order to purchase equipment, such as a video editing computer and webcam/microphone to implement the interactive training. In addition, they will need \$3,000 in each fiscal year for webinar and other software related subscriptions.

**Section 10** of the bill also subjects employers to a fine of up to \$1,000 if they fail to provide the training and education as required. This section also increases the maximum fine to employers, from \$250 to \$1,000, for failure to post certain notices about nondiscrimination law. As the bill is written, it is not anticipated CHRO will have the authority to enforce these provisions as they would need access to the employer's premises to make determinations. No impact is anticipated as a result of this section.

**Section 2** of the bill expands the definition of "discriminatory practice" in the CHRO statutes, adding new violations under this definition and allowing individuals aggrieved by such violations to file a complaint with CHRO. No fiscal impact is anticipated as CHRO has the expertise to handle additional complaints as a result of this provision.

**Sec. 6** extends the time for filing certain complaints alleging discrimination that occurred on or after October 1, 2019, to 300 days. Current law allows a discriminatory practice complaint to be filed with CHRO within 180 days of the alleged discrimination or 30 days for complaints alleging discrimination based on denial of state employment or occupational licensure due to criminal history.

It is anticipated that extending such deadline would result in up to 100 additional complaints filed each year. In order to process the additional complaints, CHRO will require one additional Human

Rights Trainee at a cost of \$33,737 in FY 20 (partial year) and \$48,731 in FY 21 (full year), with associated fringe benefit costs of \$13,896 and \$20,072, respectively.

**Section 8** allows CHRO to file certain court petitions in cases involving employers with at least three employees, rather than 50 employees as under current law. CHRO will require the addition of one Human Rights Attorney 1 at a cost of \$48,503 in FY 20 (partial year) and \$70,060 in FY 21 (full year), and associated fringe benefit costs of \$19,978 and \$28,858, respectively.

In addition, this section of the bill allows CHRO to seek a civil penalty of up to \$10,000, payable to CHRO for such cases. It is anticipated that this provision will generate up to \$25,000 per year.

**Sections 9, 11 and 12** allow a complainant to file a court case within two years after being released from CHRO jurisdiction. Current law allows a complainant released from CHRO jurisdiction to bring a court case against the respondent within two years after filing the complaint with CHRO, and no later than 90 days after receiving the release of jurisdiction.

It is anticipated that the extension of the deadline to file a court case after being released from CHRO's jurisdiction will require the addition of one Human Rights Attorney 1 at a cost of \$48,503 in FY 20 (partial year) and \$70,060 in FY 21 (full year), and associate fringe benefit costs of \$19,978 and \$28,858, respectively. The Human Rights Attorney 1 will be responsible for intervening in cases where complaints are released and a civil action may be commenced in court, as well as processing and litigation of additional complaints.

**Section 14** allows employers to deduct the pay of certain employees under enumerated circumstances and allows the Labor Commissioner to adopt related regulations. This does not result in any fiscal impact as current regulations limit employers' ability to withhold such employees' pay under these circumstances.

**Section 15** makes procedural changes after an employee files a sexual harassment complaint against a school administrator, and does not result in a fiscal impact to local and regional boards of education.

**Section 16** allows the CHRO executive director, through the supervising attorney and within available appropriations, to assign CHRO legal counsel to bring a civil action concerning an alleged discriminatory practice instead of a case proceeding to an administrative hearing under certain circumstances. Under the bill, if the court finds the respondent committed a discriminatory practice, the respondent must pay CHRO its fees and costs in addition to a civil penalty of up to \$10,000. It is anticipated CHRO will generate up to approximately \$25,000 in civil penalties a year.

**Sec. 17** creates a process for magistrates to also preside over CHRO hearings under certain circumstances. It allows the chief human rights referee to request such an appointment when there are more than 100 CHRO complaints pending for public hearings. The CHRO executive director can approve the request if it is determined the appointment would be within available appropriations. Currently, CHRO does not have the funding to utilize this provision and would require approximately \$25,000 per year in order to pay the magistrate stipend.

**Sections 18, 19, & 20** make changes to civil proceedings and do not result in a fiscal impact.

**Section 21, 22, & 25** increase the penalty for sexual assault in the third degree when the victim is mentally incapacitated and unable to consent and results in a potential cost for incarceration or probation supervision and a potential revenue gain from fines. On average, the marginal cost to the state for incarcerating an offender for the year is \$1,800<sup>3</sup> while the average marginal cost for supervision in the

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<sup>3</sup> Inmate marginal cost is based on increased consumables (e.g. food, clothing, water, sewage, living supplies, etc.) This does not include a change in staffing costs or utility expenses because these would only be realized if a unit or facility opened.

community is less than \$700<sup>4</sup> each year.

**Sections 23 & 24** eliminate the statute of limitation for specified felony sexual assault crimes from five years to 10 years and results in a potential cost to the Division of Public Defenders. While the majority of new cases would be assigned to state public defenders, any cases that present a conflict of interest would be assigned to outside counsel, at a cost of approximately \$7,000 per case. In addition, any cases that require offender evaluation or expert witnesses would result in a cost of approximately \$3,000 per case.

To the extent that additional offenders are convicted due to the elimination of the statute of limitation, the bill results in a potential cost to the Department of Correction and Judicial Department for incarceration and probation supervision. On average, the marginal cost to the state for incarcerating an offender for the year is \$1,800<sup>5</sup> while the average marginal cost for supervision in the community is less than \$700<sup>6</sup> each year. In addition, the increased convictions may result in revenue from fines.

**Sections 4, 5, 7, 13 and 26** have no fiscal impact.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation, webinar and software subscriptions, magistrate stipends, and the number of cases.

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<sup>4</sup> Probation marginal cost is based on services provided by private providers and only includes costs that increase with each additional participant. This does not include a cost for additional supervision by a probation officer unless a new offense is anticipated to result in enough additional offenders to require additional probation officers.

<sup>5</sup> Inmate marginal cost is based on increased consumables (e.g. food, clothing, water, sewage, living supplies, etc.) This does not include a change in staffing costs or utility expenses because these would only be realized if a unit or facility opened.

<sup>6</sup> Probation marginal cost is based on services provided by private providers and only includes costs that increase with each additional participant. This does not include a cost for additional supervision by a probation officer unless a new offense is anticipated to result in enough additional offenders to require additional probation officers.