

TO: MEMBERS OF THE JUDICIARY COMMITTEE
FROM: CTLA EMPLOYMENT LAW COMMITTEE
DATE: APRIL 01, 2019

**RE: SUPPORT OF PROPOSED SENATE BILL 003 AA COMBATTING
SEXUAL HARASSMENT IN THE WORKPLACE**

In order to escape accountability for his crimes, the perpetrator does everything in his power to promote forgetting. Secrecy and silence are the perpetrator's first line of defense. If secrecy fails, the perpetrator attacks the credibility of his victim. If he cannot silence her absolutely, he tries to make sure that no one listens. To this end, he marshals an impressive array of arguments, from the most blatant denial to the most sophisticated and elegant rationalization. After every atrocity one can expect to hear the same predictable apologies: it never happened; the victim lies; the victim exaggerates; the victim brought it upon herself; and in any case it is time to forget the past and move on. The more powerful the perpetrator, the greater is his prerogative to name and define reality, and the more completely his arguments prevail.

- Judith Lewis Henry

Members of the Judiciary Committee:

My name is Lewis Chimes, and I am the Chairperson for the Connecticut Trial Lawyers Employment Law Committee. The Connecticut Trial Lawyers Association strongly supports the goals of this bill. This statement addresses two sections of SB 003, "An Act Combatting Sexual Assault and Sexual Harassment:" Sections 13, and Sections 18.

SECTION 18 – APPLICATION OF RAPE SHIELD STATUTE IN CIVIL CASES

Studies have shown that the number of women who have experienced sexual violence and sexual harassment is pervasive. My sense having done these types of cases for a long time is that no man can begin to understand what literally every woman has experienced in school, the workplace, anywhere in society. Sexual harassment and sexual violence are profound social issues. They are also complex issues for courts to grapple with, and efforts to change our culture have to be balanced against due process.

Section 18 of this bill addresses a concern that everyone can agree upon: Women who have been victimized should be encouraged to seek remedy through the civil and criminal justice processes. Women who have been victimized should be treated fairly and with dignity. Women who have been victimized should not have to undergo a second assault in the courtroom.

Rape shield laws evolved to encourage victims of sexual violence to report their crimes, and to protect them once their case enters the judicial process. Connecticut's current Rape Shield Law, Conn. Gen. Stat. §54-86f only applies in criminal cases. In contrast, the federal courts and nineteen other state jurisdictions have applied their rape shield protections in civil sexual harassment and sexual assault cases. Many other states are also considering amending their rape shield laws to cover civil litigation.

Historically, sexual assaults against minors have rarely been reported to law enforcement. Many acquaintance sexual assault cases are never prosecuted criminally. Sexual assault in the workplace is rarely prosecuted and treated as a civil matter. Sexual harassment in the workplace is almost exclusively a civil matter. Over the past twenty years, the civil justice system has become as significant a forum as the criminal system where issues of sexual violence against women has played out.

There is no reason why victims of sexual violence or sexual harassment should not be encouraged to seek justice in the civil courts and protected from further humiliation and a second assault on their dignity in the courtroom when they elect to do so.

When women pursue acquaintance sexual assault/sexual harassment claims criminally or civilly they have historically had their credibility viciously attacked in a manner that simply does not occur in connection with victims of other crimes and torts. It continues to happen because many judges and jurors still adhere to gender stereotypes and blame the victims. Lawyers defending these cases know that attacking the victim in sexual assault and sexual harassment still works.

- A woman bringing a civil lawsuit can expect to be attacked as a whore or a slut.
- A woman bringing a civil lawsuit can be expected to have her private life investigated and used to portray her as promiscuous and inviting the sexual conduct.
- A woman bringing a civil lawsuit can be expected to have her social media searched for evidence that she is a “bad girl,” and portrayed as such.

But none of this evidence of outside is relevant to her consent to conduct with a harasser/sexual assailant.

1. A woman's prior behavior outside the workplace does not change her expectations or entitlement to a workplace free of harassment.
2. A woman's speech, dress, or behavior outside the workplace has nothing to do with how she must be treated in the workplace.
3. A woman is entitled to dress in the workplace in a manner that makes her feel good about herself. It does not invite lewd behavior or unwanted sexual advances.
4. A woman's relationships outside the workplace, the number of relationships, the types of relationships that she has had have no relevance to how she has the right to be treated in the workplace.
5. A woman's social relationships with other employees has no bearing on whether she has consented to or invited inappropriate behavior by a harasser.
6. The fact that a woman has dated another co-worker has no bearing on the issue of consent with the harasser, or whether she welcomed the conduct of the harasser.

These statements should be obvious, but any victim of workplace sexual harassment can expect to be scrutinized and attacked for irrelevant conduct.

SB 3, Section 18, establishes a presumption that other sexual conduct and a victim's sexual reputation is irrelevant in cases involving sexual misconduct or sexual harassment. It requires the defendant seeking to offer any such evidence to provide notice in advance of trial, and a hearing as to its admissibility. In doing so, it prevents surprise. A victim will know in advance what can be asked about her in open court before she takes the stand, and irrelevant salacious questioning will be prevented.

Extension of the rape shield statute to civil cases is an obvious, fair, and an important step in encouraging victims of sexual misconduct to come forward and protect them as they pursue their remedy in court.

SECTION 13: PUNITIVE DAMAGES UNDER DISCRIMINATION CASE

Section 13 of this bill seeks to reinstate punitive damages for willful and deliberate disregard of the rights of victims of discrimination under Connecticut's Fair Employment Practices Act. In 2016, the Connecticut Supreme Court ruled in *Tomick v. United Parcel Service* that Connecticut's discrimination laws do not authorize punitive damages as a remedy. I believe that this 4-2 decision was wrongly decided and inconsistent with the legislative history and intent of Connecticut's Fair Employment Practices Act.

Section 13 seeks to reinstate an individual's right to punitive damages when a defendant willfully and deliberately deprives that individual of their rights under the statute. Most other federal and state discrimination laws provide for some form of punitive or liquidated damages for willful acts of discrimination.

Reinstating the right to punitive damages also is consistent with the broad remedial purpose of discrimination laws. Specifically:

1. It provides a strong deterrent against discrimination and sexual harassment by employers and encourages them to prevent discrimination and harassment in the workplace;
2. It allows for the litigation of significant discrimination violations in those cases where other damages (economic and emotional distress) are low. There are certain egregious violations of the discrimination laws where there the discriminatory statutes should provide a remedy, even if the damages are low or nominal. This is particularly true in the case of low wage earners, who are often the victims of the most overt discrimination but have minimal remedies.

Including punitive damages are an important part of the statutory framework to remedy discrimination and sexual harassment.

We urge you to adopt Section 13 and reinstate punitive damages as a potential remedy in discrimination and harassment cases.