

Proposed Senate Bill 003
Public Hearing: 4-01-19

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 Combating 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.

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.