



General Assembly

**Amendment**

January Session, 2019

LCO No. 10699



Offered by:

SEN. FLEXER, 29<sup>th</sup> Dist.

SEN. WINFIELD, 10<sup>th</sup> Dist.

SEN. KISSEL, 7<sup>th</sup> Dist.

REP. STAFSTROM, 129<sup>th</sup> Dist.

REP. REBIMBAS, 70<sup>th</sup> Dist.

To: Senate Bill No. 1111

File No. 807

Cal. No. 399

(As Amended by Senate Amendment Schedule "A")

**"AN ACT CONCERNING A STUDY OF CRIMINAL LAWS OF THIS STATE."**

1 Strike everything after the enacting clause and substitute the  
2 following in lieu thereof:

3 "Section 1. Subdivision (8) of section 46a-51 of the general statutes,  
4 as amended by section 2 of substitute senate bill 3 of the current  
5 session, as amended by Senate Amendment Schedule "A", is repealed  
6 and the following is substituted in lieu thereof (*Effective October 1,*  
7 *2019*):

8 (8) "Discriminatory practice" means a violation of section 4a-60, 4a-  
9 60a, 4a-60g, 31-40y, [subdivisions (15) to (17), inclusive, of section 46a-  
10 54,] subparagraph (C) of subdivision (15) of section 46a-54, as

11 amended by section 1 of substitute senate bill 3 of the current session,  
12 as amended by Senate Amendment Schedule "A", subdivisions (16)  
13 and (17) of section 46a-54, as amended by section 1 of substitute senate  
14 bill 3 of the current session, as amended by Senate Amendment  
15 Schedule A, section 46a-58, 46a-59, 46a-60, as amended by [this act]  
16 substitute senate bill 3 of the current session, 46a-64, 46a-64c, 46a-66,  
17 46a-68, as amended by [this act] substitute senate bill 3 of the current  
18 session, 46a-68c to 46a-68f, inclusive, or 46a-70 to 46a-78, inclusive,  
19 subsection (a) of section 46a-80 or sections 46a-81b to 46a-81o,  
20 inclusive;

21 Sec. 2. Subsection (c) of section 46a-55 of the general statutes, as  
22 amended by section 11 of substitute senate bill 3 of the current session,  
23 as amended by Senate Amendment Schedule "A", is repealed and the  
24 following is substituted in lieu thereof (*Effective October 1, 2019*):

25 (c) The executive director, through the supervising attorney, may,  
26 within available appropriations, assign a commission legal counsel to  
27 bring a civil action concerning an alleged discriminatory practice, in  
28 accordance with this subsection, in lieu of an administrative hearing  
29 pursuant to section 46a-84, as amended by this act, when the executive  
30 director determines that a civil action is in the public interest and if the  
31 parties to the administrative hearing mutually agree, in writing, to the  
32 bringing of such civil action by commission legal counsel. The  
33 commission legal counsel shall bring such a civil action in the Superior  
34 Court not later than ninety days following the date the commission  
35 legal counsel notifies the parties of the executive director's  
36 determination. Such civil action may be served by certified mail and  
37 shall not be subject to the provisions of section 46a-100, 46a-101 or 46a-  
38 102. The jurisdiction of the Superior Court in an action brought under  
39 this subsection shall be limited to such claims, counterclaims, defenses  
40 or the like that could be presented at an administrative hearing before  
41 the commission, had the complaint remained with the commission for  
42 disposition. A complainant may intervene as a matter of right without  
43 permission of the court or the parties. The civil action shall be tried to  
44 the court without a jury. If the commission legal counsel determines

45 that the interests of the state will not be adversely affected, the  
46 complainant or attorney for the complainant shall present all or part of  
47 the case in support of the complaint. The court may grant any relief  
48 available under section 46a-104, as amended by [this act] substitute  
49 senate bill 3 of the current session. Where the Superior Court finds that  
50 a respondent has committed a discriminatory practice, the court shall  
51 grant the commission its fees and costs and award the commission a  
52 civil penalty, not exceeding ten thousand dollars, provided such  
53 discriminatory practice has been established by clear and convincing  
54 evidence, which shall be payable to the commission and used by the  
55 commission to advance the public interest in eliminating  
56 discrimination.

57 Sec. 3. Subsection (h) of section 46a-84 of the general statutes, as  
58 amended by section 8 of substitute senate bill 3 of the current session,  
59 as amended by Senate Amendment Schedule "A", is repealed and the  
60 following is substituted in lieu thereof (*Effective October 1, 2019*):

61 (h) The complainant, the respondent and the commission shall be  
62 afforded the opportunity to inspect and copy relevant and material  
63 records, papers and documents not in the possession of such party,  
64 except as otherwise provided by applicable state [or federal] law. The  
65 presiding officer may order a party to produce such records, papers  
66 and documents, and if a party fails to comply with such order within  
67 thirty days of the date of such order, the presiding officer may issue a  
68 nonmonetary order that the presiding officer deems just and  
69 appropriate, including, but not limited to, an order (1) finding that the  
70 matters that are the subject of the order are established in accordance  
71 with the claim of the party requesting such order, (2) prohibiting the  
72 party who has failed to comply with such order from introducing  
73 designated matters into evidence, (3) limiting the participation of the  
74 noncomplying party with regard to issues or facts relating to the order,  
75 and (4) drawing an adverse inference against the noncomplying party.

76 Sec. 4. Section 46a-84 of the general statutes, as amended by section  
77 8 of substitute senate bill 3 of the current session, as amended by

78 Senate Amendment Schedule "A", is amended by adding subsection (i)  
79 as follows (*Effective October 1, 2019*):

80 (NEW) (i) When the executive director of the commission has  
81 determined that there are available appropriations and otherwise  
82 approves a request, the Chief Human Rights Referee may appoint any  
83 magistrate, who is on the list of available magistrates maintained by  
84 the Chief Court Administrator, to act as a presiding officer at any  
85 proceeding conducted pursuant to this section, subsection (l) of section  
86 46a-83, subsection (c) or (d) of section 46a-56 or subsection (e) of  
87 section 4-61dd. Any magistrate so appointed shall have the same  
88 powers and duties as a human rights referee appointed pursuant to  
89 section 46a-57 and be compensated in accordance with the provisions  
90 of section 51-193r from such funds as may be available to the  
91 commission. The Chief Human Rights Referee may request the  
92 appointment of a magistrate whenever the total number of complaints  
93 pending in the commission's office of public hearings exceeds one  
94 hundred.

95 Sec. 5. Section 46a-97 of the general statutes, as amended by section  
96 9 of substitute senate bill 3 of the current session, as amended by  
97 Senate Amendment Schedule "A", is repealed and the following is  
98 substituted in lieu thereof (*Effective October 1, 2019*):

99 (a) Any employer, employment agency or labor organization which  
100 fails to post such notices of statutory provisions as the commission  
101 may require pursuant to [subsection] subdivision (13) of section 46a-  
102 54, as amended by, [this act] section 1 of substitute senate bill 3 of the  
103 current session, as amended by Senate Amendment Schedule "A", shall  
104 be fined not more than [one thousand] seven hundred fifty dollars.

105 (b) Any person who fails to post such notices of statutory provisions  
106 as the commission may require pursuant to [subsection] subdivision  
107 (14) of section 46a-54, as amended by [this act] section 1 of substitute  
108 senate bill 3 of the current session, as amended by Senate Amendment  
109 Schedule "A", shall be fined not more than [one thousand] seven

110 hundred fifty dollars.

111 (c) Any employer who fails to provide the training and education  
112 concerning the illegality of sexual harassment and the remedies  
113 available to victims of sexual harassment, as required pursuant to  
114 subdivision (15) of section 46a-54, as amended by [this act] section 1 of  
115 substitute senate bill 3 of the current session, as amended by Senate  
116 Amendment Schedule "A", shall be fined not more than [one thousand]  
117 seven hundred fifty dollars.

118 (d) [The] During the twelve-month period following the date on  
119 which a complaint against an employer has been filed with the  
120 commission by an employee or, if the executive director of the  
121 commission reasonably believes that an employer is in violation of the  
122 provisions of subdivision (13), (14) or (15) of section 46a-54, as  
123 amended by section 1 of substitute senate bill 3 of the current session,  
124 as amended by Senate Amendment Schedule "A", the executive  
125 director of the commission may assign a designated representative of  
126 the commission to enter an employer's place of business during normal  
127 business hours for purposes of: (1) Ensuring compliance with the  
128 posting requirements prescribed in subdivisions (13), (14) and (15) of  
129 section 46a-54, as amended by [this act] section 1 of substitute senate  
130 bill 3 of the current session, as amended by Senate Amendment  
131 Schedule "A", and (2) examining records, policies, procedures, postings  
132 and sexual harassment training materials maintained by the employer  
133 in connection with the requirements of subdivisions (13), (14) and (15)  
134 of section 46a-54, as amended by [this act] section 1 of substitute senate  
135 bill 3 of the current session, as amended by Senate Amendment  
136 Schedule "A". A designated representative of the commission, who is  
137 carrying out the duties set forth in this subsection, shall ensure that  
138 such activities do not unduly disrupt the business operations of the  
139 employer. If the employer's place of business is a residential home, the  
140 designated representative of the commission shall not enter such  
141 residential home without the express permission of such homeowner.

142 Sec. 6. Subsection (b) of section 46a-86 of the general statutes, as

143 amended by section 7 of substitute senate bill 3 of the current session,  
144 as amended by Senate Amendment Schedule "A", is repealed and the  
145 following is substituted in lieu thereof (*Effective October 1, 2019*):

146 (b) In addition to any other action taken under this section, upon a  
147 finding of a discriminatory employment practice, the presiding officer  
148 shall (1) issue an order to eliminate the discriminatory employment  
149 practice complained of and to make the complainant whole, including  
150 restoration to membership in any respondent labor organization, and  
151 (2) may (A) determine the amount of damages suffered by the  
152 complainant, including the actual costs incurred by the complainant as  
153 a result of the discriminatory employment practice, and (B) allow  
154 reasonable attorney's fees and costs. The amount of attorney's fees  
155 allowed shall not be contingent upon the amount of damages  
156 requested by or awarded to the complainant. Liability for back pay  
157 shall not accrue from a date more than two years prior to the filing or  
158 issuance of the complaint. Interim earnings, including unemployment  
159 compensation and welfare assistance or amounts which could have  
160 been earned with reasonable diligence on the part of the person to  
161 whom back pay is awarded shall be deducted from the amount of back  
162 pay to which such person is otherwise entitled. The amount of any  
163 deduction for interim unemployment compensation or welfare  
164 assistance shall be paid by the respondent to the commission which  
165 shall transfer such amount to the appropriate state or local agency. Not  
166 later than October 1, 2020, and annually thereafter, the executive  
167 director of the commission shall report, in accordance with the  
168 provisions of section 11-4a, to the joint standing committee of the  
169 General Assembly having cognizance of matters relating to the  
170 judiciary on the commission's award of reasonable attorney's fees and  
171 costs under this section. Such report shall include, but not be limited  
172 to: (i) The awards of reasonable attorney's fees and a comparison of  
173 such awards to awards of damages; (ii) the category of complaint for  
174 which damages and attorney's fees are awarded; (iii) the commission's  
175 methodology for calculating awards of reasonable attorney's fees and  
176 costs, if such methodology may be ascertained; (iv) data on the number

177 of employees employed by respondents who were subject to awards of  
178 reasonable attorney's fees and costs; and (v) the percentage of  
179 complainants and respondents represented by counsel in matters in  
180 which awards of reasonable attorney's fees and costs are made.

181 Sec. 7. Subsection (b) of section 14 of substitute senate bill 3 of the  
182 current session, as amended by Senate Amendment Schedule "A", is  
183 repealed and the following is substituted in lieu thereof (*Effective from*  
184 *passage*):

185 (b) The task force shall consist of the following members:

186 (1) One appointed by the speaker of the House of Representatives,  
187 who is an attorney who has represented two or more plaintiffs in a  
188 civil action concerning sexual abuse, sexual exploitation or sexual  
189 assault;

190 (2) One appointed by the president pro tempore of the Senate, who  
191 is a victim of sexual abuse, sexual exploitation or sexual assault;

192 (3) One jointly appointed by the president pro tempore of the Senate  
193 and the speaker of the House of Representatives;

194 (4) One appointed by the majority leader of the House of  
195 Representatives, who is (A) a representative of an entity named as a  
196 defendant in a civil action for sexual abuse, sexual exploitation or  
197 sexual assault; or (B) a lawyer who has represented two or more clients  
198 named as a defendant in a civil action for sexual abuse, sexual  
199 exploitation or sexual assault;

200 (5) One appointed by the majority leader of the Senate who is a  
201 representative of the Connecticut Alliance to End Sexual Violence;

202 (6) One appointed by the minority leader of the House of  
203 Representatives, who is (A) a representative of an entity named as a  
204 defendant in a civil action for sexual abuse, sexual exploitation or  
205 sexual assault; or (B) a lawyer who has represented two or more clients  
206 named as a defendant in a civil action for sexual abuse, sexual

207 exploitation or sexual assault;

208 (7) One appointed by the minority leader of the Senate; and

209 [(8) The executive director of the Connecticut Trial Lawyers  
210 Association, or said executive director's designee; and]

211 [(9)] (8) One appointed by the Chief Court Administrator, who is a  
212 judge of the Superior Court or who previously served as a judge of the  
213 Superior Court.

214 Sec. 8. Subdivision (8) of subsection (b) of section 46a-60 of the  
215 general statutes, as amended by section 4 of substitute senate bill 3 of  
216 the current session, as amended by Senate Amendment Schedule "A",  
217 is repealed and the following is substituted in lieu thereof (*Effective*  
218 *October 1, 2019*):

219 (8) For an employer, by the employer or the employer's agent, for an  
220 employment agency, by itself or its agent, or for any labor  
221 organization, by itself or its agent, to harass any employee, person  
222 seeking employment or member on the basis of sex or gender identity  
223 or expression. If an employer takes immediate corrective action in  
224 response to an employee's claim of sexual harassment, such corrective  
225 action shall not modify the conditions of employment of the employee  
226 making the claim of sexual harassment unless such employee agrees,  
227 in writing, to any modification in the conditions of employment.  
228 "Corrective action" taken by an employer, includes, but is not limited  
229 to, employee relocation, assigning an employee to a different work  
230 schedule or other substantive changes to an employee's terms and  
231 conditions of employment. Notwithstanding an employer's failure to  
232 obtain a written agreement from an employee concerning a  
233 modification in the conditions of employment, the commission may  
234 find that corrective action taken by an employer was reasonable and  
235 not of detriment to the complainant based on the evidence presented  
236 to the commission by the complainant and respondent. As used in this  
237 subdivision, "sexual harassment" means any unwelcome sexual  
238 advances or requests for sexual favors or any conduct of a sexual



239 nature when (A) submission to such conduct is made either explicitly  
240 or implicitly a term or condition of an individual's employment, (B)  
241 submission to or rejection of such conduct by an individual is used as  
242 the basis for employment decisions affecting such individual, or (C)  
243 such conduct has the purpose or effect of substantially interfering with  
244 an individual's work performance or creating an intimidating, hostile  
245 or offensive working environment;

246 Sec. 9. Section 53a-72a of the general statutes, as amended by section  
247 15 of substitute senate bill 3 of the current session, as amended by  
248 Senate Amendment Schedule "A", is repealed and the following is  
249 substituted in lieu thereof (*Effective October 1, 2019*):

250 (a) A person is guilty of sexual assault in the third degree when  
251 such person (1) compels another person to submit to sexual contact (A)  
252 by the use of force against such other person or a third person, or (B)  
253 by the threat of use of force against such other person or against a third  
254 person, which reasonably causes such other person to fear physical  
255 injury to himself or herself or a third person, or (2) subjects another  
256 person to sexual contact and such other person is mentally  
257 incapacitated or impaired because of mental disability or disease to the  
258 extent that such other person is unable to consent to such sexual  
259 contact, or (3) engages in sexual intercourse with another person  
260 whom the actor knows to be related to him or her within any of the  
261 degrees of kindred specified in section 46b-21.

262 (b) Sexual assault in the third degree is a class D felony or, if the  
263 victim of the offense is under sixteen years of age, a class C felony.

264 Sec. 10. Section 53a-73a of the general statutes, as amended by  
265 section 16 of substitute senate bill 3 of the current session, as amended  
266 by Senate Amendment Schedule "A", is repealed and the following is  
267 substituted in lieu thereof (*Effective October 1, 2019*):

268 (a) A person is guilty of sexual assault in the fourth degree when: (1)  
269 Such person subjects another person to sexual contact who is (A) under  
270 thirteen years of age and the actor is more than two years older than

271 such other person, or (B) thirteen years of age or older but under  
272 fifteen years of age and the actor is more than three years older than  
273 such other person, or (C) [impaired because of mental disability or  
274 disease to the extent that such other person is unable to consent to such  
275 sexual contact, or (D)] physically helpless, or [(E)] (D) less than  
276 eighteen years old and the actor is such other person's guardian or  
277 otherwise responsible for the general supervision of such other  
278 person's welfare, or [(F)] (E) in custody of law or detained in a hospital  
279 or other institution and the actor has supervisory or disciplinary  
280 authority over such other person; or (2) such person subjects another  
281 person to sexual contact without such other person's consent; or (3)  
282 such person engages in sexual contact with an animal or dead body; or  
283 (4) such person is a psychotherapist and subjects another person to  
284 sexual contact who is (A) a patient of the actor and the sexual contact  
285 occurs during the psychotherapy session, or (B) a patient or former  
286 patient of the actor and such patient or former patient is emotionally  
287 dependent upon the actor, or (C) a patient or former patient of the  
288 actor and the sexual contact occurs by means of therapeutic deception;  
289 or (5) such person subjects another person to sexual contact and  
290 accomplishes the sexual contact by means of false representation that  
291 the sexual contact is for a bona fide medical purpose by a health care  
292 professional; or (6) such person is a school employee and subjects  
293 another person to sexual contact who is a student enrolled in a school  
294 in which the actor works or a school under the jurisdiction of the local  
295 or regional board of education which employs the actor; or (7) such  
296 person is a coach in an athletic activity or a person who provides  
297 intensive, ongoing instruction and subjects another person to sexual  
298 contact who is a recipient of coaching or instruction from the actor and  
299 (A) is a secondary school student and receives such coaching or  
300 instruction in a secondary school setting, or (B) is under eighteen years  
301 of age; or (8) such person subjects another person to sexual contact and  
302 (A) the actor is twenty years of age or older and stands in a position of  
303 power, authority or supervision over such other person by virtue of  
304 the actor's professional, legal, occupational or volunteer status and  
305 such other person's participation in a program or activity, and (B) such

306 other person is under eighteen years of age; or (9) such person subjects  
 307 another person to sexual contact who is placed or receiving services  
 308 under the direction of the Commissioner of Developmental Services in  
 309 any public or private facility or program and the actor has supervisory  
 310 or disciplinary authority over such other person.

311 (b) Sexual assault in the fourth degree is a class A misdemeanor or,  
 312 if the victim of the offense is under sixteen years of age, a class D  
 313 felony."

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2019	46a-51(8)
Sec. 2	October 1, 2019	46a-55(c)
Sec. 3	October 1, 2019	46a-84(h)
Sec. 4	October 1, 2019	46a-84
Sec. 5	October 1, 2019	46a-97
Sec. 6	October 1, 2019	46a-86(b)
Sec. 7	from passage	SB 3 (current session), Sec. 14(b)
Sec. 8	October 1, 2019	46a-60(b)(8)
Sec. 9	October 1, 2019	53a-72a
Sec. 10	October 1, 2019	53a-73a