

OFFICE OF LEGISLATIVE RESEARCH  
PUBLIC ACT SUMMARY



**PA 19-16—sSB 3**  
*Judiciary Committee*  
*Appropriations Committee*

**AN ACT COMBATTING SEXUAL ASSAULT AND SEXUAL HARASSMENT**

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

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

#### *Training and Education*

Under prior law, the Commission on Human Rights and Opportunities (CHRO) could require employers with at least 50 employees to provide their supervisory employees with two hours of training and education ("training") on federal and state sexual harassment laws and remedies available to victims. This act expands this requirement to cover (1) employers of any size and (2) non-supervisory employees for employers with at least three employees.

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

The act requires CHRO to develop and make available to employers a free,

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online training and education video or other interactive method that fulfills the act's training requirements (§ 3). As long as CHRO does so, the act's required employee training must take place within six months of the hiring date, starting October 1, 2019, for all new (1) nonsupervisory and supervisory employees hired by employers with at least three employees and (2) supervisory employees hired by smaller employers.

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

The act subjects employers to a fine of up to \$1,000 if they fail to provide the training as required (§ 9). (PA 19-93, § 5, reduces the maximum fine to \$750.)

As explained below, the act additionally classifies this inaction as a discriminatory practice.

### *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 act 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." If an employer has not provided email accounts to employees, it must post the information on its website, if it has one.

The act requires CHRO to develop and include on its website a link about the illegality of sexual harassment and the remedies available to victims (§ 3). 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 act 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 these family members (CGS § 46a-51(9)).

### *Ensuring Compliance (§ 9)*

Existing law allows CHRO to order employers and certain others to post notices describing any laws as CHRO directs, including employer notices of sexual harassment laws as set forth above. The act allows the CHRO executive director to assign a designated representative to enter an employer's business location, during normal business hours, to ensure compliance with these requirements.

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The designated representative may also examine the employer's 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 act requires designated representatives, when carrying out these duties, to ensure that they do not unduly disrupt the employers' business operations.

(PA 19-93, § 5, limits these provisions to (1) the 12-month period after an employee files a complaint against the employer or (2) when the CHRO executive director reasonably believes that the employer has violated these posting or training requirements. That act also prohibits the designated representatives from entering without the homeowner's express permission if the business location is a residential home.)

EFFECTIVE DATE: October 1, 2019, except July 1, 2019 for the provisions requiring CHRO to post information on its website and make 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*

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

1. employers, to (a) provide training and education to employees about the illegality of sexual harassment and available remedies and (b) post related notices and send copies to employees (see above); 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 act allows individuals aggrieved by any such violation, or CHRO itself, to file a complaint with CHRO alleging discrimination.

(PA 19-93, § 1, removes from the definition of "discriminatory practice" violations by employers of requirements to post notices and provide copies to employees about sexual harassment laws and available remedies.)

EFFECTIVE DATE: October 1, 2019

### § 4 — CORRECTIVE ACTION IN SEXUAL HARASSMENT CASES

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

The act 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 who made the claim, (2) assigning him or her to a different work schedule, or (3) making

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other substantive changes to the terms and conditions of employment.

(Under PA 19-93, § 8, even if the employer did not obtain the claimant's written consent, CHRO may find that the employer's corrective action was reasonable and not harmful to the claimant based on the evidence the parties presented.)

EFFECTIVE DATE: October 1, 2019

### § 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 a full- or part-time equal employment opportunity officer who is responsible for investigating discrimination complaints made against the applicable entity (with certain exceptions).

The act generally prohibits these officers from disclosing witness statements or documents received or compiled in conjunction with an investigation of discrimination within the entity until the investigation concludes. But it allows disclosures to (1) personnel charged with investigating or adjudicating the complaint or (2) CHRO.

EFFECTIVE DATE: October 1, 2019

### § 6 — COMPLAINT FILING DEADLINE

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

Prior law allowed a claimant to file a discriminatory practice complaint with CHRO within (1) 180 days after 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 act 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

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history.

EFFECTIVE DATE: October 1, 2019

### § 7 — REMEDIES FOR DISCRIMINATORY EMPLOYMENT PRACTICES

*Requires the CHRO presiding officer to, among other things, issue an order that makes the complainant whole after finding a discriminatory employment practice*

Under prior law, after a finding of a discriminatory employment practice, a CHRO hearing officer could 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 act 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 incurred as a result of the discrimination; and
3. allow reasonable attorney's fees and costs.

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

(PA 19-93, § 6, allows, rather than requires, CHRO presiding officers to issue such orders, determine the amount of damages, and allow reasonable attorney's fees. That act also requires the CHRO executive director to annually report to the Judiciary Committee on CHRO's awarding of reasonable attorney's fees and costs under these provisions.)

EFFECTIVE DATE: October 1, 2019

### § 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 act, CHRO and each party to a CHRO administrative hearing must have the opportunity to inspect and copy relevant and material records, papers, and documents not in the party's possession unless another state or federal law prohibits it. (PA 19-93, § 3, eliminates the reference to federal law.) The act allows the presiding officer to (1) order a party to produce these records, papers, and 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 in the order are established as set forth in the requesting party's claim,
2. prohibit the noncomplying party from introducing designated matters into evidence,
3. limit the noncomplying party's participation as to issues or facts relating

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to the order, and

4. draw an adverse inference against the noncomplying party.
- EFFECTIVE DATE: October 1, 2019

### § 9 — PENALTY FOR FAILURE TO POST CERTAIN NOTICES

*Increases the fine for employers and certain other individuals and entities 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 act increases the maximum fine for a failure to comply from \$250 to \$1,000. (PA 19-93, § 5, instead sets the maximum fine at \$750.)

EFFECTIVE DATE: October 1, 2019

### § 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 act allows courts to award punitive damages in discrimination cases that were released from CHRO jurisdiction. In 2016, the state Supreme Court ruled that the existing statute did 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.

EFFECTIVE DATE: October 1, 2019

### § 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 act 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. The executive director may do so 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 act 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 act 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 act, 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 act 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 act 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. (PA 19-93, § 2, limits such orders to cases where a discriminatory practice was established by clear and convincing evidence.) CHRO must use the funds from the penalty to advance the public interest in eliminating discrimination.

EFFECTIVE DATE: October 1, 2019

## § 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 alleged sexual harassment*

The act limits the circumstances in which evidence of a victim's or an alleged victim's ("victim") sexual history may be admitted in civil proceedings involving alleged sexual assault or alleged 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 (1) this evidence if the probative value substantially outweighs the danger of harm to any victim and unfair prejudice to any party and (2) evidence of a victim's reputation if the victim has placed his or her reputation in controversy.

Under the act, 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, sets 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 act requires the court, before admitting this evidence, to conduct an 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 and remain sealed.



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EFFECTIVE DATE: October 1, 2019

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

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

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

The act 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 up to the date of his or her 51<sup>st</sup> 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 1<sup>st</sup> degree sexual assault or 1<sup>st</sup> 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 act establishes a task force to study whether the state should amend the statutes of limitations for personal injury to minors and adults caused by sexual abuse, sexual exploitation, or sexual assault. 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. The table below lists the criteria for task force appointments.

**Task Force Members**

<b>Appointing Authority</b>	<b>Appointee Criteria</b>
House speaker	One appointee (This act does not specify the requisite qualifications; PA 19-93, § 7, requires that this appointee be an attorney who has represented multiple plaintiffs in civil lawsuits concerning sexual abuse, exploitation, or assault)
Senate president pro tempore	A victim of sexual abuse, exploitation, or assault
House speaker and Senate president pro tempore jointly	One appointee (unspecified qualifications)

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<b>Appointing Authority</b>	<b>Appointee Criteria</b>
House majority leader	One appointee who is a (1) representative of an entity named as a defendant in a lawsuit for sexual abuse, sexual exploitation, or sexual assault or (2) lawyer who has represented two or more clients named as defendants 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 lawsuit for sexual abuse, sexual exploitation, or sexual assault or (2) lawyer who has represented two or more clients named as defendants in such cases
Senate minority leader	One appointee (unspecified qualifications)
N/A	Connecticut Trial Lawyers Association executive director, or the director's designee (PA 19-93, § 7, eliminates this member)
Chief Court Administrator	Current or former Superior Court judge

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

Task force appointments must be made within 30 days after the act's passage and the appointing authority must fill 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 act'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 prior law, it was 4<sup>th</sup> degree sexual assault to subject someone to sexual contact if the victim was mentally incapacitated because of mental disability or disease to the extent that he or she could not consent to the contact.

The act instead makes it 3<sup>rd</sup> degree sexual assault to subject someone to sexual contact if the victim was mentally incapacitated to the extent that he or she cannot consent. The act thus increases the penalties as follows:

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1. from a class D felony to a class C felony if the victim is under age 16 and
2. from a class A misdemeanor to a class D felony if the victim is age 16 or older (see [Table on Penalties](#)).

(PA 19-93, §§ 9 & 10, similarly increases the penalty for subjecting someone to sexual contact if the victim is mentally impaired to the extent that he or she cannot consent, and specifies that the increased penalty applies to contact with someone incapacitated or impaired due to mental disability or disease, consistent with the underlying law.)

EFFECTIVE DATE: October 1, 2019

### §§ 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 prior law, the statute of limitations for sexual assault crimes was generally five years. But there was:

1. no statute of limitations for sexual assault crimes that are class A felonies (including aggravated sexual assault of a minor and certain cases of 1<sup>st</sup> degree sexual assault or 1<sup>st</sup> degree aggravated sexual assault);
2. no statute of limitations for certain sexual assault crimes involving DNA evidence (CGS § 54-193b); and
3. 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 48<sup>th</sup> birthday or five years from the date the victim reported the crime).

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

#### *Victims Who Are Minors*

The act 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 act extends the statute of limitations until the victim's 51<sup>st</sup> birthday, unless there would be no statute of limitations (e.g., the crime is a class A felony).

#### *Other Felony Sexual Assault Crimes*

The act 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 the act or existing law as

described above.

This applies to:

1. 1<sup>st</sup> degree sexual assault and 1<sup>st</sup> 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 (see Background, *Related Acts*);
3. 2<sup>nd</sup> degree sexual assault and 3<sup>rd</sup> degree sexual assault with a firearm in cases where either crime is a class C felony (i.e., the victim is age 16 or older; if the victim is under age 16, there is also no statute of limitations as described above); and
4. 3<sup>rd</sup> degree sexual assault in cases where the crime is a class D felony (i.e., the victim is age 16 or older; if the victim is under age 16, there is also no statute of limitations as described above).

#### *Misdemeanor 4<sup>th</sup> Degree Sexual Assault*

The act extends the statute of limitations to 10 years for 4<sup>th</sup> degree sexual assault in cases where the crime is a class A misdemeanor and the victim is age 21 or older. Previously, the statute of limitations for these cases was one year.

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

##### *Related Acts*

PA 19-93 makes various changes to PA 19-16 as described above, and adds a provision allowing the chief human rights referee, under certain conditions, to appoint a magistrate to preside over a CHRO proceeding if there is a backlog.

PA 19-189 repeals the law that specifically criminalized sexual assault in a spousal or cohabiting relationship, but simultaneously subjects married individuals to penalties for other sexual assault offenses.