

Judiciary Committee

Public Testimony of Connecticut Women's Education and Legal Fund (CWEALF)

H.B. 5472: *An Act Concerning Sexual Assault and the Absence of Consent*

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The Connecticut Women's Education and Legal Fund (CWEALF) is a statewide nonprofit that advocates for and empowers women and girls in Connecticut, especially those who are underserved or marginalized. For forty-eight years, CWEALF has been a leading advocate for policies that enhance women's economic security, access to justice, and freedom from violence and harassment.

Through CWEALF's Legal Education Program, we provide information, education, referrals, and bilingual advocacy to the Connecticut community to ensure that all individuals in our state have access to legal justice. The majority of CWEALF's clients are low-income women with at least one dependent.

We urge the committee to support H.B. 5472: *An Act Concerning Sexual Assault and the Absence of Consent*, which will codify an explicit definition of consent in the criminal statutes CGS 53a-65 and include lack of consent to CGA 53a-71, 2nd degree sexual assault.

Connecticut currently does not have a statutory definition of consent and instead relies on a 1990 Supreme Court decision to use mens rea as the standard to determine culpability, or whether a reasonable person in the defendant's situation believed they received consent. This relies on physical cues to constitute consent and does not take into account the neurobiology of trauma, power-dynamics or disability.

The absence of a legal definition of consent may lead one of the parties involved to assume that consent was given when it was not. House Bill No. 5472's creation of a clear definition of consent is good policy because each party starts on an even playing field and the subjective nature of sexual assault investigations is removed.

Consent is always a critical factor when determining whether or not sexual assault is a crime; however, without a formal standard, law enforcement and prosecutors may have a very wide range as to what they would consider consensual, often based on a lack of understanding of trauma. This perpetuates rape culture and prevents survivors from equal access to the criminal justice system.

A definition of consent is important because it validates the trauma brought sexual violence. Tonic immobility, or the freeze response, affects many victims of sexual violence. According to research, 70% of victims of a sexual assault reported severe immobility and

48% experienced extreme immobility, leaving them unable to speak or fight back. Lack of response can be seen as consent by the courts and invalidate a survivor's experience.

Trends from other states that have implemented a statutory definition of consent do not show an increase in reports. Instead, the definition has been shown to lead to less victim-blaming and makes the process less difficult and traumatizing for those who choose to engage with the criminal justice system. This is especially true for survivors on the stand because it precludes them from needing to argue how or why they did not push back or what they should have done.

A definition of consent also provides a clearer standard in community education efforts and will instill better social norms around consent. A standardized consent definition is objective and developed by experts and advocates, rather than entities such as schools, churches, etc., where it is often a more subjective or political concept.

House Bill No. 5472 also creates a more equitable defense process and a better criminal justice system. Defining consent clearly in Connecticut statute better ensures that every defendant is held to the same standard of consent. It also gives defendants something more tangible to argue, instead of a vague concept with ambiguity that can profile and misconstrue the defendant's intent.

CWEALF was proud to advocate for the passage of legislation in 2016 that required Connecticut colleges and universities to adopt the definition of "affirmative consent." While that law requires a verbal response or enthusiastic yes, the proposed definition in H.B. 5472 allows for actions, both positive and negative, to speak to consent or lack thereof to a sexual encounter.

We urge the Committee and lawmakers this session to support H.B. 5472: *An Act Concerning Sexual Assault and the Absence of Consent* to improve our criminal justice system and support victims and survivors of sexual violence.