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TESTIMONY BEFORE THE JUDICIARY COMMITTEE
Senator Martin M. Looney
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In support of SB 132
An Act Combatting Sexual Harassment and Sexual Assault (the "Time's Up Act")

Good morning Senator Doyle, Senator Kissel, Representative Tong, Representative Rebimbas and other members of the Judiciary Committee. Thank you for the opportunity to testify in favor of Senate Bill 132, An Act Combatting Sexual Harassment and Sexual Assault.

As a society, we are in the midst of a national reckoning concerning sexual harassment, sexual assault and workplace discrimination of all kinds. We have seen sexual harassment exposed across all types of industries and have learned the heartbreaking stories of so many victims. Today, I am here to talk about the Time's Up Act – legislation that includes the largest overhaul of sexual harassment and sexual assault law in modern Connecticut history

Sexual Harassment and other Discrimination in the Workplace

We talk a lot about jobs in this building, and for good reason. A job gives an individual a sense of identity, independence, self-worth, and allows them to care for their family. I do not think however that, as policymakers, it is incumbent upon us only to help create jobs. I believe we must also do everything in our power to ensure that, when those whom we represent are at their jobs, they are treated fairly, respectfully and with common decency. We must have zero tolerance for employment discrimination or workplace harassment of any kind. We must do all within our power to protect those who depend on us and ensure safe work environments so that no one at their place of employment ever feels exposed to discrimination, harassment or retaliation of any kind.

We must recognize that workplace harassment and discrimination does exist in Connecticut, and I believe we must do everything we can to eradicate and prevent it.

The U.S. Equal Employment Opportunity Commission (EEOC) receives workplace complaints of sexual harassment, and notes that women file more than 80% of such complaints.[1] Studies show that around 70% to 80% of people who experience

[1] EEOC, Enforcement and Litigation Statistics, Charges Alleging Sexual Harassment FY2010-FY 2016, available at https://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment_new.cfm.

workplace harassment do not report it.[2] Perhaps this is for good reason, because those who do report general mistreatment at work experience retaliation 75% of the time.[3] Victims of harassment have rights, and the fact they suffer more when these rights are exercised is unacceptable. Harassment undercuts hardworking individuals who deserve the same opportunities as others, and it generates real mental and economic hardship. Further, it hurts a company's bottom line because it diminishes worker productivity and leads to staff turnover.

Here in Connecticut, the primary agency responsible for enforcing our laws against workplace discrimination and sexual harassment, as well as those against several other kinds of discriminatory practices, is the Commission on Human Rights and Opportunities ("CHRO"). Currently, CHRO is a mandatory administrative stop for enforcement of state remedies for sexual harassment and other employment discrimination. Indeed, a victim cannot sue immediately in Superior Court – they must go through CHRO first. During calendar year 2017, CHRO processed 4,600 total complaints and received 2,490 new complaints. Of those new complaints, more than two-thirds, over 1,800, were about employment discrimination. 158 were about sexual harassment. The sexual harassment complaints are trending significantly upwards on a year over year basis, with the last three months of 2017 seeing a 37% increase in filed complaints over the last quarter of 2016.

Because employment discrimination and harassment are demonstrated problems here in Connecticut, and the complaint process at CHRO is so critical to people exercising their rights, the first part of the bill centers on requiring more comprehensive workplace training and notification while also making the CHRO process more effective, efficient and protective.

Section 1 of the bill ensures employees are better informed of their rights. Under current law, only employers with 50 or more employees must provide training on sexual harassment, and even then only to supervisors. Under the bill, CHRO is authorized to require all employers with three or more employees to provide training, to all employees, not only supervisors. I believe that Victims and witnesses of sexual harassment should be better informed of their rights and protections, including the option to file a complaint with CHRO. I believe that no matter how large or small the workplace is, everyone should know that sexual harassment and workplace discrimination is wrong and there are options available if someone feels harassed or discriminated.

In response to what we know about retaliation by employers, the bill creates new protections for those who want to report discrimination. Employers often attempt to resolve complaints by changing the complainant's responsibilities, or imposing other modifications to separate the complainant and the alleged offender. These actions disrupt the complainants' quality of work, relationships with peers, and career prospects. Section

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[2] U.S. Equal Employment Opportunity Commission, Select Task Force on the Study of Harassment in the Workplace, p 16 (June 2016); *see also* Huffington Post, *Poll of 1,000 Adults in United States on Workplace Sexual Harassment* (Aug. 2013).

[3] *Id.*

2 of the bill will prohibit an employer from taking corrective action that modifies the accuser's employment conditions, without her or his written consent.

The bill also strengthens many provisions within the realm of CHRO's adjudicatory system. To ensure employers take complaints more seriously, the bill prevents a defendant in a CHRO complaint from avoiding liability by arguing either the offense was not severe, the employer took corrective action without further sexual harassment occurring, the sexual harassment was not reported prior to the CHRO complaint, or a sexual harassment policy was in place. Also going forward, employees alleging sexual harassment or other employment discrimination will be able to seek attorney's fees and punitive damages, as is already true under our law for complainants filing non-workplace discrimination claims with CHRO. Finally, the bill will allow CHRO to petition the Court for protective injunctive relief on behalf of many more employees than its current authority allows. Under current law, CHRO can only apply for injunctive relief at employers with 50 or more employees. This on its face is both ludicrous and grossly unfair – I'm sure we can all agree that our constituents who work at smaller businesses aren't less worthy of our protection than those at larger ones. The bill proposes to remedy this, and lowers the CHRO injunctive relief threshold to 3 or more employees.

As previously noted, unless a victim files a discrimination complaint with CHRO, he or she has no redress in our courts under our state laws. Therefore, the current 180-day deadline to file a complaint is far too short, especially considering the justified fear of retaliation many employees have. Let this sink in: under current law, if a victim of sexual harassment or employment discrimination doesn't file a complaint with CHRO within 6 months of the actual harassment or discrimination, that victim is *forever barred from seeking legal redress for their mistreatment, either with CHRO or in Court.* That is outrageous, and it too is a grossly unfair aspect of our current law. The bill proposes to remedy this, by extending the deadline to file all sexual harassment or discrimination complaints to three years from the date of the offense.

In addition, we must also support employers who want to do the right thing. Under current law, if an hourly employee is accused of sexual harassment or violence, the employer may suspend the accused and withhold wages. The same is not true for salaried individuals. We should encourage companies that want to take corrective action by suspending these employees as investigations are carried out. Section 13 of this bill allows an employer to suspend, and withhold pay, from executives, administrators, and professionals accused of violence or sexual harassment until an investigation is complete.

Criminal Changes – Extending Statutes of Limitations and Mandatory Reporting

As with more reports of sexual harassment in the workplace, in the past few years we have heard more stories of heinous sex crimes – many of which occurred in the past, and are now coming to light. Perhaps there are no better examples than the high profile accusations against Bill Cosby and Harvey Weinstein. It has been anything but easy for the women to talk about what happened to them, and it has taken a long time. Cosby for example, has been accused by at least 60 women of rape, sexual assault, child abuse, or sexual harassment, 29 of the alleged offenses are from the 1960's and 70's. More than 80

women have accused Weinstein of rape, sexual assault, or sexual harassment going back to 1980. If the allegations of these two men had occurred in Connecticut, the overwhelming could not be prosecuted due to the statute of limitations.

The question often asked of sexual assault victims is, "why didn't they report the crime when it happened?" As we listen to the #MeToo movement, we should not dismiss the accusers. Not reporting sexual assault is a common response. According to statistics by the Department of Justice, victims report these crimes less than others because they are fearful of retaliation and do not think the police will believe them.[4] Our statute of limitations should reflect the fact that victims respond differently to sex crimes than victims of other crimes.

As a matter of comparison, the statute of limitations for rape in Connecticut is one of the shortest in the country.[5] *Twenty-six states have no statute of limitations for rape.*[6] Twenty states have a limit that exceeds Connecticut's five-year limit, and only two states have shorter limits. If Connecticut increases the statute of limitations for rape to 10 years, as proposed by other legislation before this committee, then 36 states will still have longer limits than Connecticut.

Consider the following:

- A college student raped in 2012 by a classmate.
- A then 16 year old, raped in 1985 by a family friend.
- A women molested by her date after a New Year's party in 2017.
- A person, forced at gunpoint, to touch the offender in a sexual manner in 2013.

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[4] *See* Rape Abuse and Incest National Network, The Criminal Justice System: Statistics, available at https://www.rainn.org/statistics/criminal-justice-system.

[5] "Rape," for purposes of comparing state laws in this testimony, is considered forced sexual intercourse with an adult when the crime was not reported at the time of the offense, DNA was not collected at the time of the offense, there was no threat of death or serious bodily injury, the victim was not related to the offender, a weapon was not used or in possession at the time of the offense, and the offender acted alone. A variation of these factors can change the statute of limitations. "Forced sexual intercourse" of an adult in Connecticut is a Class B felony under CGS § 53a-70.

[6] Ala Code §13A-6-61, Ala Code §15-3-1, 15-3-5; Alaska Stat §11.41.410, Alaska Stat §12.10.010; Ariz. Rev. Stat § 13-1406, Ariz. Rev. Stat. § 13-107; Cal. Penal Code § 261, Cal Penal Code §799; 11 Del. C § 773, 11 Del. C § 205; Haw Rev Stat § 707-730; 731, Haw Rev Stat § 701-108; Idaho Code § 18-6101, Idaho Code § 19-401; Kan. Stat. Ann § 21-5503, Kan Stat Ann 21-5107; KY Rev Stat § 510.040, KY Rev Stat § 500.050; La. Rev. Stat. § 14.42.1, La Code Crim Proc arts § 571, 571.1, 572; MD Code § 3-303; 304, Massey v. State, 579 A.2d 265, 267 (Md. 1990); State v. Renfro, 223 Md. App. 779 (2015) (no statute of limitations for felonies); Mich. Comp. Laws § 750.520b, Mich Comp. Laws § 767.24; Miss. Code Ann § 97-3-65, Miss. Code Ann. § 99-1-5; Mo. Rev. Stat. § 566.030, Mo. Rev. Stat. § 556.036; Neb. Rev. Stat. § 28-319, Neb. Rev. Stat. § 29-110; N. J. Stat. Ann 2C:14-2, N. J. Stat. Ann 2C:1-6; N.Y. Penal Law § 130.35, N.Y. Crim. Pro Law § 30.10; N.C.G.S.A. § 14-27-26, State v. Hardin, 201 S.E. 2d 74 74 (N.C. Ct. App. 1973); R.I. Gen. Laws § 11-37-2, R.I. Gen. Laws § 12-12-17.

All of these are time-barred in Connecticut. I sincerely hope that this year we can eliminate the statute of limitations for rape and other sexual assault crimes.

Mandated Reporters

The heinous case of Larry Nasser has prompted us to review our own mandated reporter laws. Section 11 of the bill would add licensed and board certified behavior analysts to the list of professionals required to report child abuse, and this provision is consistent with SB 244, which received bipartisan support from members of the Human Services Committee. That bill also received support from the state Office of the Child Advocate, the Board of Directors and the Legislative Committee of the Connecticut Association of Behavior Analysis, and other groups advocating for the welfare of children and those with disabilities. In addition, Section 11 of the bill removes an exemption from the mandated reporter laws for certain day care facilities.

Thank you for your time. I hope the Committee can support this critical legislation, and I look forward to working with all of you to make it even better. Our constituents are in need of our protection.