

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE PRINCIPAL CLERK

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HOUSE DRH40365-LH-122 (03/11)

Short Title: Sexual Assault/Sexual Consent. (Public)

Sponsors: Representatives Meyer and B. Turner (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT IN ORDER TO RECEIVE STATE FUNDS FOR STUDENT
3 FINANCIAL ASSISTANCE PUBLIC AND PRIVATE INSTITUTIONS OF HIGHER
4 EDUCATION MUST ADOPT A POLICY ADDRESSING SEXUAL ASSAULT AND
5 RELATED OFFENSES INVOLVING STUDENTS AND PROVIDE SUPPORT
6 SERVICES AND OUTREACH PROGRAMS FOR THOSE STUDENTS.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. Chapter 115D of the General Statutes is amended by adding a new
9 section to read:

10 "§ 115D-5.5. Policy addressing sexual assault and related offenses; student resources and
11 outreach; reports.

12 (a) Policy Concerning Sexual Offenses and Victim Response. – In order to receive
13 State funds for student financial assistance, the State Board of Community Colleges shall adopt
14 a policy concerning sexual assault, domestic violence, dating violence, and stalking, as defined
15 in the Higher Education Act of 1965, 20 U.S.C. § 1092(f), involving a student, both on and off
16 a community college campus, in accordance with the requirements of this section. The State
17 Board shall require each community college to implement and comply with the policy by
18 December 1, 2016.

19 (b) Affirmative Consent Standard. – The policy required by subsection (a) of this
20 section shall include the following elements regarding the evaluation of complaints of sexual
21 assault:

22 (1) An affirmative consent standard shall be applied in the determination of
23 whether consent was given by all parties to sexual activity. The policy shall
24 define "affirmative consent" to mean an affirmative, conscious, and
25 voluntary agreement to engage in sexual activity. The affirmative consent
26 standard shall also include the following:

27 a. Each person involved in the sexual activity is responsible for
28 ensuring that he or she has the affirmative consent of the other or
29 others to engage in the sexual activity.

30 b. Lack of protest or resistance shall not indicate consent. Silence shall
31 not indicate consent.

32 c. Affirmative consent must be ongoing throughout a sexual activity
33 and can be revoked at any time.

34 d. The existence of a dating relationship between the persons involved,
35 or the fact of past sexual relations between them, shall never by itself
36 be assumed to be an indicator of consent.



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- 1 (2) It shall not be a valid excuse to alleged lack of affirmative consent that the
2 accused believed that the complainant consented to the sexual activity under
3 either of the following circumstances:
4 a. The accused's belief in affirmative consent arose from the
5 intoxication or recklessness of the accused.
6 b. The accused did not take reasonable steps, in the circumstances
7 known to the accused at the time, to ascertain whether the
8 complainant affirmatively consented.
9 (3) It shall not be a valid excuse that the accused believed that the complainant
10 affirmatively consented to the sexual activity if the accused knew or
11 reasonably should have known that the complainant was unable to consent to
12 the sexual activity because of any of the following circumstances:
13 a. The complainant was asleep or unconscious.
14 b. The complainant was incapacitated due to the influence of drugs,
15 alcohol, or medication, so that the complainant could not understand
16 the fact, nature, or extent of the sexual activity.
17 c. The complainant was unable to communicate due to a mental or
18 physical condition.
19 (4) The standard used in determining whether the elements of the complaint
20 against the accused have been demonstrated is the preponderance of the
21 evidence.

22 (c) Victim Response. – The policy required by subsection (a) of this section shall
23 include detailed procedures regarding sexual assault, domestic violence, dating violence, and
24 stalking involving a student that comport with best practices and current professional standards
25 and take into account the victim's circumstances. The procedures shall address at least the
26 following:

- 27 (1) Appropriate protections provided by the community college for the privacy
28 of individuals involved in incidences of sexual assault, domestic violence,
29 dating violence, and stalking, including the extent of confidentiality for those
30 individuals.
31 (2) Initial response by community college personnel to a report of an incident,
32 including requirements specific to assisting the victim, providing
33 information in writing about the importance of preserving evidence, and the
34 identification and location of witnesses.
35 (3) Response to stranger and nonstranger sexual assault.
36 (4) Preliminary victim interview, including the development of a victim
37 interview protocol, and a comprehensive follow-up victim interview, as
38 appropriate.
39 (5) Contact with and interview of the accused.
40 (6) Identification and location of witnesses.
41 (7) Written notification to the victim about the availability of, and contact
42 information for, on- and off-campus resources and services, and
43 coordination with law enforcement, as appropriate.
44 (8) Participation of victim advocates and other supporting people.
45 (9) Investigation of allegations that alcohol or drugs were involved in an
46 incident.
47 (10) No disciplinary sanctions shall be imposed on an individual who participates
48 as a complainant or witness in an investigation of sexual assault, domestic
49 violence, dating violence, or stalking for a violation of the community
50 college's student conduct policy at or near the time of an incident, unless the
51 community college determines that the violation was egregious, including an

1 action that places the health or safety of any other person at risk or involves
2 plagiarism, cheating, or academic dishonesty.

3 (11) Role of the community college's staff supervision.

4 (12) Comprehensive, trauma-informed training program for campus officials
5 involved in investigating and adjudicating sexual assault, domestic violence,
6 dating violence, and stalking cases.

7 (13) Confidential reporting by third parties.

8 (d) Victim Support Services and Student Outreach. – The State Board of Community
9 Colleges shall direct each community college to do all of the following to provide assistance to
10 students involved in incidences of sexual assault, domestic violence, dating violence, and
11 stalking: to the extent feasible, enter into memoranda of understanding, agreements, or
12 collaborative partnerships with existing on-campus and community-based organizations,
13 including rape crisis centers, to provide support services and resources for both the victim and
14 the accused, as appropriate, including counseling, health care, victim advocacy, and legal
15 assistance.

16 (e) Student Prevention and Outreach Programs. – The State Board of Community
17 Colleges shall direct each community college to develop prevention strategies and outreach
18 programs to be included as part of every incoming student's orientation and to continue to be
19 offered throughout the academic year. The prevention strategies shall include all of the
20 following: awareness raising campaigns, primary prevention, bystander intervention, and risk
21 reduction. Outreach programs shall be provided to make students aware of the community
22 college's policy on sexual assault, domestic violence, dating violence, and stalking. At a
23 minimum, an outreach program shall include a process for contacting and informing the student
24 body, campus organizations, affirmative consent standard, and the rights and responsibilities of
25 students under the policy.

26 (f) Annual Compliance Review. – The State Board of Community Colleges shall
27 annually review the support services and outreach activities provided to students by each
28 community college in the prior academic year as required by subsections (d) and (e) of this
29 section and shall also assess the actions taken by the community college to protect students
30 against offenses of sexual assault, domestic violence, dating violence, and stalking.

31 (g) Report to State Education Assistance Authority and Joint Legislative Education
32 Oversight Committee. – The State Board of Community Colleges shall report to the State
33 Education Assistance Authority and the Joint Legislative Education Oversight Committee by
34 September 1 each year on compliance by the community colleges with the requirements of this
35 section."

36 **SECTION 2.** Part 2 of Article 1 of Chapter 116 of the General Statutes is amended
37 by adding a new section to read:

38 **§ 116-11.3. Policy addressing sexual assault and related offenses; student resources and**
39 **outreach; reports.**

40 (a) Policy Concerning Sexual Offenses and Victim Response. – In order to receive
41 State funds for student financial assistance, the Board of Governors of The University of North
42 Carolina shall adopt a policy concerning sexual assault, domestic violence, dating violence, and
43 stalking, as defined in the Higher Education Act of 1965, 20 U.S.C. § 1092(f), involving a
44 student, both on and off the institution's campus, in accordance with the requirements of this
45 section. The Board of Governors shall require each institution to implement and comply with
46 the policy by December 1, 2016.

47 (b) Affirmative Consent Standard. – The policy required by subsection (a) of this
48 section shall include the following elements regarding the evaluation of complaints of sexual
49 assault:

50 (1) An affirmative consent standard shall be applied in the determination of
51 whether consent was given by all parties to sexual activity. The policy shall

1 define "affirmative consent" to mean an affirmative, conscious, and
2 voluntary agreement to engage in sexual activity. The affirmative consent
3 standard shall also include the following:

4 a. Each person involved in the sexual activity is responsible for
5 ensuring that he or she has the affirmative consent of the other or
6 others to engage in the sexual activity.

7 b. Lack of protest or resistance shall not indicate consent. Silence shall
8 not indicate consent.

9 c. Affirmative consent must be ongoing throughout a sexual activity
10 and can be revoked at any time.

11 d. The existence of a dating relationship between the persons involved,
12 or the fact of past sexual relations between them, shall never by itself
13 be assumed to be an indicator of consent.

14 (2) It shall not be a valid excuse to alleged lack of affirmative consent that the
15 accused believed that the complainant consented to the sexual activity under
16 either of the following circumstances:

17 a. The accused's belief in affirmative consent arose from the
18 intoxication or recklessness of the accused.

19 b. The accused did not take reasonable steps, in the circumstances
20 known to the accused at the time, to ascertain whether the
21 complainant affirmatively consented.

22 (3) It shall not be a valid excuse that the accused believed that the complainant
23 affirmatively consented to the sexual activity if the accused knew or
24 reasonably should have known that the complainant was unable to consent to
25 the sexual activity because of any of the following circumstances:

26 a. The complainant was asleep or unconscious.

27 b. The complainant was incapacitated due to the influence of drugs,
28 alcohol, or medication, so that the complainant could not understand
29 the fact, nature, or extent of the sexual activity.

30 c. The complainant was unable to communicate due to a mental or
31 physical condition.

32 (4) The standard used in determining whether the elements of the complaint
33 against the accused have been demonstrated is the preponderance of the
34 evidence.

35 (c) Victim Response. – The policy required by subsection (a) of this section shall
36 include detailed procedures regarding sexual assault, domestic violence, dating violence, and
37 stalking involving a student that comport with best practices and current professional standards
38 and take into account the victim's circumstances. The procedures shall address at least the
39 following:

40 (1) Appropriate protections provided by the constituent institution for the
41 privacy of individuals involved in incidences of sexual assault, domestic
42 violence, dating violence, and stalking, including the extent of
43 confidentiality for those individuals.

44 (2) Initial response by constituent institution personnel to a report of an incident,
45 including requirements specific to assisting the victim, providing
46 information in writing about the importance of preserving evidence, and the
47 identification and location of witnesses.

48 (3) Response to stranger and nonstranger sexual assault.

49 (4) Preliminary victim interview, including the development of a victim
50 interview protocol, and a comprehensive follow-up victim interview, as
51 appropriate.

"§ 116-229.20. Policy addressing sexual assault and related offenses; student resources and outreach; reports.

(a) Policy Concerning Sexual Offenses and Victim Response. – In order to receive State funds for student financial assistance, the governing board of a nonprofit postsecondary institution of higher education shall adopt a policy concerning sexual assault, domestic violence, dating violence, and stalking, as defined in the Higher Education Act of 1965, 20 U.S.C. § 1092(f), involving a student, both on and off the institution's campus, in accordance with the requirements of this section. The institution shall implement and comply with the policy by December 1, 2016.

(b) Affirmative Consent Standard. – The policy required by subsection (a) of this section shall include the following elements regarding the evaluation of complaints of sexual assault:

(1) An affirmative consent standard shall be applied in the determination of whether consent was given by all parties to sexual activity. The policy shall define "affirmative consent" to mean an affirmative, conscious, and voluntary agreement to engage in sexual activity. The affirmative consent standard shall also include the following:

- a. Each person involved in the sexual activity is responsible for ensuring that he or she has the affirmative consent of the other or others to engage in the sexual activity.
- b. Lack of protest or resistance shall not indicate consent. Silence shall not indicate consent.
- c. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time.
- d. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, shall never by itself be assumed to be an indicator of consent.

(2) It shall not be a valid excuse to alleged lack of affirmative consent that the accused believed that the complainant consented to the sexual activity under either of the following circumstances:

- a. The accused's belief in affirmative consent arose from the intoxication or recklessness of the accused.
- b. The accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain whether the complainant affirmatively consented.

(3) It shall not be a valid excuse that the accused believed that the complainant affirmatively consented to the sexual activity if the accused knew or reasonably should have known that the complainant was unable to consent to the sexual activity because of any of the following circumstances:

- a. The complainant was asleep or unconscious.
- b. The complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the complainant could not understand the fact, nature, or extent of the sexual activity.
- c. The complainant was unable to communicate due to a mental or physical condition.

(4) The standard used in determining whether the elements of the complaint against the accused have been demonstrated is the preponderance of the evidence.

(c) Victim Response. – The policy required by subsection (a) of this section shall include detailed procedures regarding sexual assault, domestic violence, dating violence, and stalking involving a student that comport with best practices and current professional standards

1 and take into account the victim's circumstances. The procedures shall address at least the
2 following:

- 3 (1) Appropriate protections provided by the institution for the privacy of
4 individuals involved in incidences of sexual assault, domestic violence,
5 dating violence, and stalking, including the extent of confidentiality for those
6 individuals.
- 7 (2) Initial response by institution personnel to a report of an incident, including
8 requirements specific to assisting the victim, providing information in
9 writing about the importance of preserving evidence, and the identification
10 and location of witnesses.
- 11 (3) Response to stranger and nonstranger sexual assault.
- 12 (4) Preliminary victim interview, including the development of a victim
13 interview protocol, and a comprehensive follow-up victim interview, as
14 appropriate.
- 15 (5) Contact with and interview of the accused.
- 16 (6) Identification and location of witnesses.
- 17 (7) Written notification to the victim about the availability of, and contact
18 information for, on- and off-campus resources and services, and
19 coordination with law enforcement, as appropriate.
- 20 (8) Participation of victim advocates and other supporting people.
- 21 (9) Investigation of allegations that alcohol or drugs were involved in an
22 incident.
- 23 (10) No disciplinary sanctions shall be imposed on an individual who participates
24 as a complainant or witness in an investigation of sexual assault, domestic
25 violence, dating violence, or stalking for a violation of the institution's
26 student conduct policy at or near the time of an incident, unless the
27 institution determines that the violation was egregious, including an action
28 that places the health or safety of any other person at risk or involves
29 plagiarism, cheating, or academic dishonesty.
- 30 (11) Role of the institution's staff supervision.
- 31 (12) Comprehensive, trauma-informed training program for campus officials
32 involved in investigating and adjudicating sexual assault, domestic violence,
33 dating violence, and stalking cases.
- 34 (13) Confidential reporting by third parties.

35 (d) Victim Support Services and Student Outreach. – The nonprofit postsecondary
36 institution of higher education shall do all of the following to provide assistance to students
37 involved in incidences of sexual assault, domestic violence, dating violence, and stalking: to the
38 extent feasible, enter into memoranda of understanding, agreements, or collaborative
39 partnerships with existing on-campus and community-based organizations, including rape crisis
40 centers, to provide support services and resources for both the victim and the accused, as
41 appropriate, including counseling, health care, victim advocacy, and legal assistance.

42 (e) Student Prevention and Outreach Programs. – The nonprofit postsecondary
43 institution of higher education shall develop prevention strategies and outreach programs to be
44 included as part of every incoming student's orientation and to continue to be offered
45 throughout the academic year. The prevention strategies shall include all of the following:
46 awareness raising campaigns, primary prevention, bystander intervention, and risk reduction.
47 Outreach programs shall be provided to make students aware of the institution's policy on
48 sexual assault, domestic violence, dating violence, and stalking. At a minimum, an outreach
49 program shall include a process for contacting and informing the student body, campus
50 organizations, affirmative consent standard, and the rights and responsibilities of students under
51 the policy.

1 (f) Report to State Education Assistance Authority. – The nonprofit postsecondary
2 institution of higher education shall report to the State Education Assistance Authority by
3 September 1 each year regarding its compliance with the requirements of this section."

4 **SECTION 4.** Article 23 of Chapter 116 of the General Statutes is amended by
5 adding a new section to read:

6 "**§ 116-209.19B. Eligible institution must have approved policy to address sexual assault**
7 **and related offenses and provide certain outreach programs.**

8 Any community college that fails to comply with G.S. 115D-5.5, any constituent institution
9 that fails to comply with G.S. 116-11.3, and any nonprofit postsecondary institution of higher
10 education that fails to comply with G.S. 116-229.20 shall be ineligible to receive State funds
11 for student financial assistance."

12 **SECTION 5.(a)** Notwithstanding G.S. 115D-5.5(g), as enacted by this act, the
13 State Board of Community Colleges shall submit the initial report required by
14 G.S. 115D-5.5(h) to the State Education Assistance Authority and the Joint Legislative
15 Education Oversight Committee by December 1, 2016.

16 **SECTION 5.(b)** Notwithstanding G.S. 116-11.3(g), as enacted by this act, the
17 Board of Governors shall submit the initial report required by G.S. 116-11.3(h) to the State
18 Education Assistance Authority and the Joint Legislative Education Oversight Committee by
19 December 1, 2016.

20 **SECTION 6.** This act is effective when it becomes law and applies beginning with
21 the 2015-2016 academic year.