

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

**H.B. 793**  
**Apr 11, 2017**  
**HOUSE PRINCIPAL CLERK**

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HOUSE BILL DRH40450-MK-149 (03/22)

Short Title: IHE Policies Sexual Assault/Sexual Consent.

(Public)

Sponsors: Representative Meyer.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO DIRECT THE STATE BOARD OF COMMUNITY COLLEGES AND THE  
3 BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA TO  
4 DEVELOP SYSTEMWIDE POLICIES AND PREVENTION AND OUTREACH  
5 PROGRAMS CONCERNING SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING  
6 VIOLENCE, AND STALKING AND TO ENCOURAGE PRIVATE INSTITUTIONS OF  
7 HIGHER EDUCATION TO ADOPT SIMILAR POLICIES AND PREVENTION AND  
8 OUTREACH PROGRAMS.

9 The General Assembly of North Carolina enacts:

10

11 **PART I. COMMUNITY COLLEGES**

12 **SECTION 1.1.** The State Board of Community Colleges shall adopt a systemwide  
13 policy to be implemented at each community college concerning sexual assault, domestic  
14 violence, dating violence, and stalking, as defined in the Higher Education Act of 1965, 20  
15 U.S.C. § 1092(f), involving a student, both on and off a community college campus. The policy  
16 shall include at least the following components:

- 17 (1) Establish an affirmative consent standard to be applied in the determination  
18 of whether consent was given by all parties to sexual activity. The policy  
19 shall define "affirmative consent" to mean an affirmative, conscious, and  
20 voluntary agreement to engage in sexual activity. The affirmative consent  
21 standard shall also include the following:
- 22 a. Each person involved in the sexual activity is responsible for  
23 ensuring that he or she has the affirmative consent of the other or  
24 others to engage in the sexual activity.
  - 25 b. Lack of protest or resistance shall not indicate consent. Silence shall  
26 not indicate consent.
  - 27 c. Affirmative consent must be ongoing throughout a sexual activity  
28 and can be revoked at any time.
  - 29 d. The existence of a dating relationship between the persons involved,  
30 or the fact of past sexual relations between them, shall never by itself  
31 be assumed to be an indicator of consent.
- 32 (2) Address circumstances in which affirmative consent cannot be assumed,  
33 including:
- 34 a. Intoxication.
  - 35 b. Lack of reasonable steps, in the circumstances known to ascertain  
36 whether there is affirmative consent.



- 1 c. Inability to consent to the sexual activity because of any of the  
2 following circumstances:  
3 1. The person was asleep or unconscious.  
4 2. The person was incapacitated due to the influence of drugs,  
5 alcohol, or medication, so that the person could not  
6 understand the fact, nature, or extent of the sexual activity.  
7 3. The person was unable to communicate due to a mental or  
8 physical condition.
- 9 (3) Provide that the standard used in determining whether the elements of a  
10 complaint are demonstrated concerning sexual assault, domestic violence,  
11 dating violence, and stalking is the preponderance of the evidence.
- 12 (4) Detailed procedures regarding sexual assault, domestic violence, dating  
13 violence, and stalking involving a student that comport with best practices  
14 and current professional standards and take into account the victim's  
15 circumstances. The procedures shall address at least the following:  
16 a. Appropriate protections provided by the community college for the  
17 privacy of persons involved in incidences of sexual assault, domestic  
18 violence, dating violence, and stalking, including the extent of  
19 confidentiality for those persons.  
20 b. Initial response by community college personnel to a report of an  
21 incident, including requirements specific to assisting the victim,  
22 providing information in writing about the importance of preserving  
23 evidence, and the identification and location of witnesses.  
24 c. Response to stranger and nonstranger sexual assault.  
25 d. Preliminary victim interview, including the development of a victim  
26 interview protocol, and a comprehensive follow-up victim interview,  
27 as appropriate.  
28 e. Contact with and interview of the accused.  
29 f. Identification and location of witnesses.  
30 g. Written notification to the victim about the availability of, and  
31 contact information for, on- and off-campus resources and services,  
32 and coordination with law enforcement, as appropriate.  
33 h. Participation of victim advocates and other supporting people.  
34 i. Investigation of allegations that alcohol or drugs were involved in an  
35 incident.  
36 j. Imposition of no disciplinary sanctions on a person who participates  
37 as a complainant or witness in an investigation of sexual assault,  
38 domestic violence, dating violence, or stalking for a violation of the  
39 community college's student conduct policy at or near the time of an  
40 incident, unless the community college determines that the violation  
41 was egregious, including an action that places the health or safety of  
42 any other person at risk or involves plagiarism, cheating, or academic  
43 dishonesty.  
44 k. Role of the community college's staff supervision.  
45 l. Comprehensive, trauma-informed training program for campus  
46 officials involved in investigating and adjudicating sexual assault,  
47 domestic violence, dating violence, and stalking cases.  
48 m. Confidential reporting by third parties.

49 **SECTION 1.2.** The State Board of Community Colleges shall direct each  
50 community college to provide assistance to students involved in incidences of sexual assault,  
51 domestic violence, dating violence, and stalking, to the extent feasible, by entering into

1 memoranda of understanding, agreements, or collaborative partnerships with existing  
2 on-campus and community-based organizations, including rape crisis centers, and providing  
3 support services and resources for both the victim and the accused, as appropriate, including  
4 counseling, health care, victim advocacy, and legal assistance.

5 **SECTION 1.3.** The State Board of Community Colleges shall direct each  
6 community college to develop prevention strategies and outreach programs to be included as  
7 part of every incoming student's orientation and to continue to be offered throughout the  
8 academic year. The prevention strategies shall include all of the following: awareness raising  
9 campaigns, primary prevention, bystander intervention, and risk reduction. Outreach programs  
10 shall be provided to make students aware of the community college's policy on sexual assault,  
11 domestic violence, dating violence, and stalking. At a minimum, an outreach program shall  
12 include a process for contacting and informing the student body and campus organizations of  
13 the affirmative consent standard and the rights and responsibilities of students under the policy.

14 **SECTION 1.4.** By February 1, 2018, the State Board of Community Colleges shall  
15 report to the Joint Legislative Education Oversight Committee on the development of the  
16 policy required by Section 1.1 of this act and the plan for implementation of the policy at each  
17 community college beginning with the 2018-2019 academic year. In addition, the State Board  
18 of Community Colleges shall include in the report the implementation of victim assistance  
19 programs and prevention and outreach programs required by this part.  
20

## 21 **PART II. UNIVERSITY OF NORTH CAROLINA CONSTITUENT INSTITUTIONS**

22 **SECTION 2.1.** The Board of Governors of The University of North Carolina shall  
23 adopt a systemwide policy to be implemented at each constituent institution concerning sexual  
24 assault, domestic violence, dating violence, and stalking, as defined in the Higher Education  
25 Act of 1965, 20 U.S.C. § 1092(f), involving a student, both on and off the institution's campus.  
26 The policy shall include at least the following components:

- 27 (1) Establish an affirmative consent standard to be applied in the determination  
28 of whether consent was given by all parties to sexual activity. The policy  
29 shall define "affirmative consent" to mean an affirmative, conscious, and  
30 voluntary agreement to engage in sexual activity. The affirmative consent  
31 standard shall also include the following:
- 32 a. Each person involved in the sexual activity is responsible for  
33 ensuring that he or she has the affirmative consent of the other or  
34 others to engage in the sexual activity.
  - 35 b. Lack of protest or resistance shall not indicate consent. Silence shall  
36 not indicate consent.
  - 37 c. Affirmative consent must be ongoing throughout a sexual activity  
38 and can be revoked at any time.
  - 39 d. The existence of a dating relationship between the persons involved,  
40 or the fact of past sexual relations between them, shall never by itself  
41 be assumed to be an indicator of consent.
- 42 (2) Address circumstances in which affirmative consent cannot be assumed,  
43 including:
- 44 a. Intoxication.
  - 45 b. Lack of reasonable steps, in the circumstances known to ascertain  
46 whether there is affirmative consent.
  - 47 c. Inability to consent to the sexual activity because of any of the  
48 following circumstances:
    - 49 1. The person was asleep or unconscious.

- 1                                2.        The person was incapacitated due to the influence of drugs,  
 2    alcohol, or medication, so that the person could not  
 3    understand the fact, nature, or extent of the sexual activity.  
 4                                3.        The person was unable to communicate due to a mental or  
 5    physical condition.
- 6                    (3)       Provide that the standard used in determining whether the elements of a  
 7    complaint are demonstrated concerning sexual assault, domestic violence,  
 8    dating violence, and stalking is the preponderance of the evidence.  
 9                    (4)       Detailed procedures regarding sexual assault, domestic violence, dating  
 10    violence, and stalking involving a student that comport with best practices  
 11    and current professional standards and take into account the victim's  
 12    circumstances. The procedures shall address at least the following:
- 13    a.        Appropriate protections provided by the constituent institution for the  
 14    privacy of persons involved in incidences of sexual assault, domestic  
 15    violence, dating violence, and stalking, including the extent of  
 16    confidentiality for those persons.  
 17    b.        Initial response by constituent institution personnel to a report of an  
 18    incident, including requirements specific to assisting the victim,  
 19    providing information in writing about the importance of preserving  
 20    evidence, and the identification and location of witnesses.  
 21    c.        Response to stranger and nonstranger sexual assault.  
 22    d.        Preliminary victim interview, including the development of a victim  
 23    interview protocol, and a comprehensive follow-up victim interview,  
 24    as appropriate.  
 25    e.        Contact with and interview of the accused.  
 26    f.        Identification and location of witnesses.  
 27    g.        Written notification to the victim about the availability of, and  
 28    contact information for, on- and off-campus resources and services,  
 29    and coordination with law enforcement, as appropriate.  
 30    h.        Participation of victim advocates and other supporting people.  
 31    i.        Investigation of allegations that alcohol or drugs were involved in an  
 32    incident.  
 33    j.        Imposition of no disciplinary sanctions imposed on a person who  
 34    participates as a complainant or witness in an investigation of sexual  
 35    assault, domestic violence, dating violence, or stalking for a violation  
 36    of the constituent institution's student conduct policy at or near the  
 37    time of an incident, unless the institution determines that the  
 38    violation was egregious, including an action that places the health or  
 39    safety of any other person at risk or involves plagiarism, cheating, or  
 40    academic dishonesty.  
 41    k.        Role of the constituent institution's staff supervision.  
 42    l.        Comprehensive, trauma-informed training program for campus  
 43    officials involved in investigating and adjudicating sexual assault,  
 44    domestic violence, dating violence, and stalking cases.  
 45    m.        Confidential reporting by third parties.

46                    **SECTION 2.2.** The Board of Governors of The University of North Carolina shall  
 47    direct each constituent institution to provide assistance to students involved in incidences of  
 48    sexual assault, domestic violence, dating violence, and stalking, to the extent feasible, by  
 49    entering into memoranda of understanding, agreements, or collaborative partnerships with  
 50    existing on-campus and community-based organizations, including rape crisis centers, and

1 providing support services and resources for both the victim and the accused, as appropriate,  
2 including counseling, health care, victim advocacy, and legal assistance.

3 **SECTION 2.3.** The Board of Governors of The University of North Carolina shall  
4 direct each constituent institution to develop prevention strategies and outreach programs to be  
5 included as part of every incoming student's orientation and to continue to be offered  
6 throughout the academic year. The prevention strategies shall include all of the following:  
7 awareness raising campaigns, primary prevention, bystander intervention, and risk reduction.  
8 Outreach programs shall be provided to make students aware of the constituent institution's  
9 policy on sexual assault, domestic violence, dating violence, and stalking. At a minimum, an  
10 outreach program shall include a process for contacting and informing the student body and  
11 campus organizations of the affirmative consent standard and the rights and responsibilities of  
12 students under the policy.

13 **SECTION 2.4.** By February 1, 2018, the Board of Governors of The University of  
14 North Carolina shall report to the Joint Legislative Education Oversight Committee on the  
15 development of the policy required by Section 2.1 of this act and the plan for implementation  
16 of the policy at each constituent institution beginning with the 2018-2019 academic year. In  
17 addition, the Board of Governors shall include in the report the implementation of victim  
18 assistance programs and prevention and outreach programs required by this Part.  
19

### 20 **PART III. PRIVATE POSTSECONDARY INSTITUTIONS OF HIGHER EDUCATION**

21 **SECTION 3.1.** Each nonprofit postsecondary institution of higher education  
22 located in North Carolina is encouraged to adopt a policy concerning sexual assault, domestic  
23 violence, dating violence, and stalking, as defined in the Higher Education Act of 1965, 20  
24 U.S.C. § 1092(f), involving a student, both on and off the institution's campus. The policy  
25 should include at least the following components:

- 26 (1) Establish an affirmative consent standard to be applied in the determination  
27 of whether consent was given by all parties to sexual activity. The policy  
28 should define "affirmative consent" to mean an affirmative, conscious, and  
29 voluntary agreement to engage in sexual activity. The affirmative consent  
30 standard should also include the following:
- 31 a. Each person involved in the sexual activity is responsible for  
32 ensuring that he or she has the affirmative consent of the other or  
33 others to engage in the sexual activity.
  - 34 b. Lack of protest or resistance shall not indicate consent. Silence shall  
35 not indicate consent.
  - 36 c. Affirmative consent must be ongoing throughout a sexual activity  
37 and can be revoked at any time.
  - 38 d. The existence of a dating relationship between the persons involved,  
39 or the fact of past sexual relations between them, shall never by itself  
40 be assumed to be an indicator of consent.
- 41 (2) Address circumstances in which affirmative consent cannot be assumed,  
42 including:
- 43 a. Intoxication.
  - 44 b. Lack of reasonable steps, in the circumstances known to ascertain  
45 whether there is affirmative consent.
  - 46 c. Inability to consent to the sexual activity because of any of the  
47 following circumstances:
    - 48 1. The person was asleep or unconscious.
    - 49 2. The person was incapacitated due to the influence of drugs,  
50 alcohol, or medication, so that the person could not  
51 understand the fact, nature, or extent of the sexual activity.

- 1                                3.     The person was unable to communicate due to a mental or
- 2    physical condition.
- 3                                (3)    Provide that the standard used in determining whether the elements of a
- 4    complaint are demonstrated concerning sexual assault, domestic violence,
- 5    dating violence, and stalking is the preponderance of the evidence.
- 6                                (4)    Detailed procedures regarding sexual assault, domestic violence, dating
- 7    violence, and stalking involving a student that comport with best practices
- 8    and current professional standards and take into account the victim's
- 9    circumstances. The procedures should address at least the following:
- 10    a.     Appropriate protections provided by the institution for the privacy of
- 11    persons involved in incidences of sexual assault, domestic violence,
- 12    dating violence, and stalking, including the extent of confidentiality
- 13    for those persons.
- 14    b.     Initial response by institution personnel to a report of an incident,
- 15    including requirements specific to assisting the victim, providing
- 16    information in writing about the importance of preserving evidence,
- 17    and the identification and location of witnesses.
- 18    c.     Response to stranger and nonstranger sexual assault.
- 19    d.     Preliminary victim interview, including the development of a victim
- 20    interview protocol, and a comprehensive follow-up victim interview,
- 21    as appropriate.
- 22    e.     Contact with and interview of the accused.
- 23    f.     Identification and location of witnesses.
- 24    g.     Written notification to the victim about the availability of, and
- 25    contact information for, on- and off-campus resources and services,
- 26    and coordination with law enforcement, as appropriate.
- 27    h.     Participation of victim advocates and other supporting people.
- 28    i.     Investigation of allegations that alcohol or drugs were involved in an
- 29    incident.
- 30    j.     Imposition of no disciplinary sanctions on a person who participates
- 31    as a complainant or witness in an investigation of sexual assault,
- 32    domestic violence, dating violence, or stalking for a violation of the
- 33    institution's student conduct policy at or near the time of an incident,
- 34    unless the institution determines that the violation was egregious,
- 35    including an action that places the health or safety of any other
- 36    person at risk or involves plagiarism, cheating, or academic
- 37    dishonesty.
- 38    k.     Role of the institution's staff supervision.
- 39    l.     Comprehensive, trauma-informed training program for campus
- 40    officials involved in investigating and adjudicating sexual assault,
- 41    domestic violence, dating violence, and stalking cases.
- 42    m.     Confidential reporting by third parties.

43                                **SECTION 3.2.** Each nonprofit institution of higher education located in North

44 Carolina is encouraged to provide assistance to students involved in incidences of sexual

45 assault, domestic violence, dating violence, and stalking, to the extent feasible, by entering into

46 memoranda of understanding, agreements, or collaborative partnerships with existing

47 on-campus and community-based organizations, including rape crisis centers, and providing

48 support services and resources for both the victim and the accused, as appropriate, including

49 counseling, health care, victim advocacy, and legal assistance.

50                                **SECTION 3.3.** Each nonprofit institution of higher education located in North

51 Carolina is encouraged to develop prevention strategies and outreach programs to be included

1 as part of every incoming student's orientation and to continue to be offered throughout the  
2 academic year. The prevention strategies should include all of the following: awareness raising  
3 campaigns, primary prevention, bystander intervention, and risk reduction. Outreach programs  
4 should be provided to make students aware of the institution's policy on sexual assault,  
5 domestic violence, dating violence, and stalking. At a minimum, an outreach program should  
6 include a process for contacting and informing the student body and campus organizations of  
7 the affirmative consent standard and the rights and responsibilities of students under the policy.

8  
9 **PART IV. EFFECTIVE DATE**

10 **SECTION 4.** This act is effective when it becomes law.