

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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SENATE BILL 474

Short Title: Affirmative Consent Standard. (Public)

Sponsors: Senators McKissick and Tarte (Primary Sponsors).

Referred to: Rules and Operations of the Senate.

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA TO ADOPT A POLICY ADDRESSING SEXUAL ASSAULT AND SEX-RELATED OFFENSES INVOLVING STUDENTS FOR IMPLEMENTATION AT CONSTITUENT INSTITUTIONS; TO PROVIDE SUPPORT SERVICES FOR STUDENTS INVOLVED IN INCIDENCES OF SEXUAL ASSAULT AND OTHER SEX-RELATED OFFENSES AT CONSTITUENT INSTITUTIONS; TO PROVIDE PREVENTION AND OUTREACH PROGRAMS FOR THE ENTIRE STUDENT BODY AS PART OF STUDENT ORIENTATION AND THROUGHOUT THE ACADEMIC YEAR TO MAKE THEM AWARE OF THE POLICY REGARDING SEXUAL ASSAULT AND OTHER SEX-RELATED OFFENSES AT CONSTITUENT INSTITUTIONS; AND TO REQUIRE THE STATE BOARD OF COMMUNITY COLLEGES TO REPORT ON CURRENT COMMUNITY COLLEGE POLICIES ADDRESSING SEXUAL ASSAULT AND SEX-RELATED OFFENSES INVOLVING STUDENTS AND ANY PREVENTION AND OUTREACH PROGRAMS OFFERED TO COMMUNITY COLLEGE STUDENTS.

The General Assembly of North Carolina enacts:

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

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

(a) Policy Concerning Sexual Offenses and Victim-Centered Response. – The Board of Governors of The University of North Carolina 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 Board of Governors shall require each institution to 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 both 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:



- 1           a.     Each person involved in the sexual activity is responsible for  
2           ensuring that he or she has the affirmative consent of the other or  
3           others to engage in the sexual activity.
- 4           b.     Lack of protest or resistance shall not indicate consent. Silence shall  
5           not indicate consent.
- 6           c.     Affirmative consent must be ongoing throughout a sexual activity  
7           and can be revoked at any time.
- 8           d.     The existence of a dating relationship between the persons involved,  
9           or the fact of past sexual relations between them, shall never by itself  
10          be assumed to be an indicator of consent.
- 11        (2)    It shall not be a valid excuse to alleged lack of affirmative consent that the  
12        accused believed that the complainant consented to the sexual activity under  
13        either of the following circumstances:
- 14           a.     The accused's belief in affirmative consent arose from the  
15           intoxication or recklessness of the accused.
- 16           b.     The accused did not take reasonable steps, in the circumstances  
17           known to the accused at the time, to ascertain whether the  
18           complainant affirmatively consented.
- 19        (3)    It shall not be a valid excuse that the accused believed that the complainant  
20        affirmatively consented to the sexual activity if the accused knew or  
21        reasonably should have known that the complainant was unable to consent to  
22        the sexual activity because of any of the following circumstances:
- 23           a.     The complainant was asleep or unconscious.
- 24           b.     The complainant was incapacitated due to the influence of drugs,  
25           alcohol, or medication, so that the complainant could not understand  
26           the fact, nature, or extent of the sexual activity.
- 27           c.     The complainant was unable to communicate due to a mental or  
28           physical condition.
- 29        (4)    The standard used in determining whether the elements of the complaint  
30        against the accused have been demonstrated is the preponderance of the  
31        evidence.
- 32        (c)    Victim-Centered Response. – The policy required by subsection (a) of this section  
33        shall include detailed and victim-centered procedures regarding sexual assault, domestic  
34        violence, dating violence, and stalking involving a student that comport with best practices and  
35        current professional standards. The procedures shall address at least the following:
- 36           (1)    Appropriate protections provided by the constituent institution for the  
37           privacy of individuals involved in incidences of sexual assault, domestic  
38           violence, dating violence, and stalking, including the extent of  
39           confidentiality for those individuals.
- 40           (2)    Initial response by constituent institution personnel to a report of an incident,  
41           including requirements specific to assisting the victim, providing  
42           information in writing about the importance of preserving evidence, and the  
43           identification and location of witnesses.
- 44           (3)    Response to stranger and nonstranger sexual assault.
- 45           (4)    Preliminary victim interview, including the development of a victim  
46           interview protocol, and a comprehensive follow-up victim interview, as  
47           appropriate.
- 48           (5)    Contact with and interview of the accused.
- 49           (6)    Identification and location of witnesses.

- 1           (7)    Written notification to the victim about the availability of, and contact  
2           information for, on- and off-campus resources and services, and  
3           coordination with law enforcement, as appropriate.  
4           (8)    Participation of victim advocates and other supporting people.  
5           (9)    Investigation of allegations that alcohol or drugs were involved in an  
6           incident.  
7           (10) No disciplinary sanctions shall be imposed on an individual who participates  
8           as a complainant or witness in an investigation of sexual assault, domestic  
9           violence, dating violence, or stalking for a violation of the institution's  
10          student conduct policy at or near the time of an incident, unless the  
11          constituent institution determines that the violation was egregious, including  
12          an action that places the health or safety of any other person at risk or  
13          involves plagiarism, cheating, or academic dishonesty.  
14          (11) Role of the institution's staff supervision.  
15          (12) Comprehensive, trauma-informed training program for campus officials  
16          involved in investigating and adjudicating sexual assault, domestic violence,  
17          dating violence, and stalking cases.  
18          (13) Confidential reporting by third parties.

19          (d)    Victim Support Services and Student Outreach. – The Board of Governors of The  
20          University of North Carolina shall direct each constituent institution to do all of the following  
21          to provide assistance to students involved in incidences of sexual assault, domestic violence,  
22          dating violence, and stalking: to the extent feasible, enter into memoranda of understanding,  
23          agreements, or collaborative partnerships with existing on-campus and community-based  
24          organizations, including rape crisis centers, to provide support services and resources for both  
25          the victim and the accused, as appropriate, including counseling, health care, victim advocacy,  
26          and legal assistance.

27          (e)    Student Prevention and Outreach Programs. – The Board of Governors of The  
28          University of North Carolina shall direct each constituent institution to develop prevention  
29          strategies and outreach programs to be included as part of every incoming student's orientation  
30          and to continue to be offered throughout the academic year. The prevention strategies shall  
31          include all of the following: empowerment programming for victim prevention,  
32          awareness-raising campaigns, primary prevention, bystander intervention, and risk reduction.  
33          Outreach programs shall be provided to make students aware of the institution's policy on  
34          sexual assault, domestic violence, dating violence, and stalking. At a minimum, an outreach  
35          program shall include a process for contacting and informing the student body and campus  
36          organizations of the affirmative consent standard and the rights and responsibilities of students  
37          under the policy.

38          (f)    Mandatory Report of Sexual Assault to Local Law Enforcement. – The policy  
39          required by subsection (a) of this section shall provide that in the event a student who is an  
40          alleged victim of an incident of sexual assault, domestic violence, dating violence, or stalking  
41          reports the incident to the campus law enforcement agency on the student's own initiative, the  
42          campus law enforcement agency shall immediately notify the appropriate local law  
43          enforcement agencies of the allegation.

44          (g)    Annual Compliance Review. – The Board of Governors shall annually review the  
45          support services and outreach activities provided to students by each constituent institution in  
46          the prior academic year as required by subsection (d) of this section and shall also assess the  
47          actions taken by the constituent institution to protect students against offenses of sexual assault,  
48          domestic violence, dating violence, and stalking.

49          (h)    Report to Joint Legislative Education Oversight Committee. – The Board of  
50          Governors shall report to the Joint Legislative Education Oversight Committee by September 1  
51          each year on compliance by the constituent institutions with the requirements of this section."

1           **SECTION 2.** Notwithstanding G.S. 116-11.3(h), as enacted by this act, the Board  
2 of Governors shall submit the initial report required by G.S. 116-11.3(h) to the Joint Legislative  
3 Education Oversight Committee by December 1, 2016.

4           **SECTION 3.** By December 1, 2015, the State Board of Community Colleges shall  
5 report to the Joint Legislative Education Oversight Committee on whether community colleges  
6 have (i) adopted any policies concerning sexual assault, domestic violence, dating violence, and  
7 stalking, as defined in the Higher Education Act of 1965, 20 U.S.C. § 1092(f), involving a  
8 student, both on and off the campus, and (ii) offered outreach programs, prevention programs,  
9 or support services to students regarding sexual assault and sex-related offenses. The report  
10 shall include at least the following information:

11           (1) The number of community colleges with an existing policy.

12           (2) Variation among the provisions of existing policies implemented on  
13 community college campuses, including whether affirmative consent is  
14 defined in those policies and whether the procedures are victim-centered and  
15 comport with best practices and current professional standards.

16           (3) If a community college has a current policy, any concerns or adaptations  
17 regarding implementation of the policy due to the type of students that the  
18 community college serves, such as part-time students or students who are not  
19 attending courses in a centralized location.

20           (4) The number and type of outreach programs, prevention programs, or support  
21 services related to sexual assault and sex-related offenses offered at any of  
22 the community college campuses.

23           **SECTION 4.** This act is effective when it becomes law. Sections 1 and 2 of this act  
24 apply beginning with the 2015-2016 academic year.