A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"§ 115D-5.5. 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 State Board of Community Colleges 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 a community college campus, in accordance with the requirements of this section. The State Board shall require each community college 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 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 and take into account the victim’s circumstances. The procedures shall address at least the following:

(1) Appropriate protections provided by the community college for the privacy of individuals involved in incidences of sexual assault, domestic violence, dating violence, and stalking, including the extent of confidentiality for those individuals.

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

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

(5) Contact with and interview of the accused.

(6) Identification and location of witnesses.

(7) Written notification to the victim about the availability of, and contact information for, on- and off-campus resources and services, and coordination with law enforcement, as appropriate.

(8) Participation of victim advocates and other supporting people.

(9) Investigation of allegations that alcohol or drugs were involved in an incident.

(10) No disciplinary sanctions shall be imposed on an individual who participates as a complainant or witness in an investigation of sexual assault, domestic
violence, dating violence, or stalking for a violation of the community college's student conduct policy at or near the time of an incident, unless the community college determines that the violation was egregious, including an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

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

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

(13) Confidential reporting by third parties.

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

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

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

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

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

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

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

(3) Response to stranger and nonstranger sexual assault.

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

(5) Contact with and interview of the accused.

(6) Identification and location of witnesses.

(7) Written notification to the victim about the availability of, and contact
information for, on- and off-campus resources and services, and
coordination with law enforcement, as appropriate.

(8) Participation of victim advocates and other supporting people.

(9) Investigation of allegations that alcohol or drugs were involved in an
incident.

(10) No disciplinary sanctions shall be imposed on an individual who participates
as a complainant or witness in an investigation of sexual assault, domestic
violence, dating violence, or stalking for a violation of the institution's
student conduct policy at or near the time of an incident, unless the
constituent institution determines that the violation was egregious, including
an action that places the health or safety of any other person at risk or
involves plagiarism, cheating, or academic dishonesty.

(11) Role of the institution's staff supervision.

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

(13) Confidential reporting by third parties.

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

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

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

(g) Report to State Education Assistance Authority and Joint Legislative Education
Oversight Committee. – The Board of Governors shall report to the State Education Assistance
Authority and the Joint Legislative Education Oversight Committee by September 1 each year on compliance by the constituent institutions with the requirements of this section."

SECTION 3. Chapter 116 of the General Statutes is amended by adding a new Article to read:

"Article 27B.
"Policy Addressing Sexual Assault and Related Offenses.
"§ 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.
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 and take into account the victim’s circumstances. The procedures shall address at least the following:

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

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

(3) Response to stranger and nonstranger sexual assault.

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

(5) Contact with and interview of the accused.

(6) Identification and location of witnesses.

(7) Written notification to the victim about the availability of, and contact information for, on- and off-campus resources and services, and coordination with law enforcement, as appropriate.

(8) Participation of victim advocates and other supporting people.

(9) Investigation of allegations that alcohol or drugs were involved in an incident.

(10) No disciplinary sanctions shall be imposed on an individual who participates as a complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking for a violation of the institution’s student conduct policy at or near the time of an incident, unless the institution determines that the violation was egregious, including an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

(11) Role of the institution’s staff supervision.

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

(13) Confidential reporting by third parties.

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

(e) Student Prevention and Outreach Programs. – The nonprofit postsecondary institution of higher education shall develop prevention strategies and outreach programs to be included as part of every incoming student’s orientation and to continue to be offered throughout the academic year. The prevention strategies shall include all of the following:
Outreach programs shall be provided to make students aware of the institution's policy on sexual assault, domestic violence, dating violence, and stalking. At a minimum, an outreach program shall include a process for contacting and informing the student body, campus organizations, affirmative consent standard, and the rights and responsibilities of students under the policy.

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

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

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

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

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

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

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