

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

FILED SENATE
Mar 25, 2015
S.B. 474
PRINCIPAL CLERK

S

D

SENATE DRS15191-LH-18C (11/25)

Short Title: Affirmative Consent Standard. (Public)

Sponsors: Senators McKissick and Tarte (Primary Sponsors).

Referred to:

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.