

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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HOUSE BILL 815

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

Sponsors: Representatives Meyer, B. Turner, Saine, and Hardister (Primary Sponsors).  
*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Education - Universities.

April 15, 2015

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.



- 1                   d.       The existence of a dating relationship between the persons involved,  
2                               or the fact of past sexual relations between them, shall never by itself  
3                               be assumed to be an indicator of consent.
- 4           (2)     It shall not be a valid excuse to alleged lack of affirmative consent that the  
5                   accused believed that the complainant consented to the sexual activity under  
6                   either of the following circumstances:
- 7                   a.       The accused's belief in affirmative consent arose from the  
8                               intoxication or recklessness of the accused.
- 9                   b.       The accused did not take reasonable steps, in the circumstances  
10                              known to the accused at the time, to ascertain whether the  
11                              complainant affirmatively consented.
- 12           (3)     It shall not be a valid excuse that the accused believed that the complainant  
13                   affirmatively consented to the sexual activity if the accused knew or  
14                   reasonably should have known that the complainant was unable to consent to  
15                   the sexual activity because of any of the following circumstances:
- 16                   a.       The complainant was asleep or unconscious.
- 17                   b.       The complainant was incapacitated due to the influence of drugs,  
18                              alcohol, or medication, so that the complainant could not understand  
19                              the fact, nature, or extent of the sexual activity.
- 20                   c.       The complainant was unable to communicate due to a mental or  
21                              physical condition.
- 22           (4)     The standard used in determining whether the elements of the complaint  
23                   against the accused have been demonstrated is the preponderance of the  
24                   evidence.
- 25           (c)     Victim Response. – The policy required by subsection (a) of this section shall  
26                   include detailed procedures regarding sexual assault, domestic violence, dating violence, and  
27                   stalking involving a student that comport with best practices and current professional standards  
28                   and take into account the victim's circumstances. The procedures shall address at least the  
29                   following:
- 30                   (1)     Appropriate protections provided by the community college for the privacy  
31                              of individuals involved in incidences of sexual assault, domestic violence,  
32                              dating violence, and stalking, including the extent of confidentiality for those  
33                              individuals.
- 34                   (2)     Initial response by community college personnel to a report of an incident,  
35                              including requirements specific to assisting the victim, providing  
36                              information in writing about the importance of preserving evidence, and the  
37                              identification and location of witnesses.
- 38                   (3)     Response to stranger and nonstranger sexual assault.
- 39                   (4)     Preliminary victim interview, including the development of a victim  
40                              interview protocol, and a comprehensive follow-up victim interview, as  
41                              appropriate.
- 42                   (5)     Contact with and interview of the accused.
- 43                   (6)     Identification and location of witnesses.
- 44                   (7)     Written notification to the victim about the availability of, and contact  
45                              information for, on- and off-campus resources and services, and  
46                              coordination with law enforcement, as appropriate.
- 47                   (8)     Participation of victim advocates and other supporting people.
- 48                   (9)     Investigation of allegations that alcohol or drugs were involved in an  
49                              incident.
- 50                   (10)    No disciplinary sanctions shall be imposed on an individual who participates  
51                              as a complainant or witness in an investigation of sexual assault, domestic

1 violence, dating violence, or stalking for a violation of the community  
2 college's student conduct policy at or near the time of an incident, unless the  
3 community college determines that the violation was egregious, including an  
4 action that places the health or safety of any other person at risk or involves  
5 plagiarism, cheating, or academic dishonesty.

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

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

10 (13) Confidential reporting by third parties.

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

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

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

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

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

41 **"§ 116-11.3. Policy addressing sexual assault and related offenses; student resources and**  
42 **outreach; reports.**

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

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

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

9       **a.** Each person involved in the sexual activity is responsible for  
10 ensuring that he or she has the affirmative consent of the other or  
11 others to engage in the sexual activity.

12       **b.** Lack of protest or resistance shall not indicate consent. Silence shall  
13 not indicate consent.

14       **c.** Affirmative consent must be ongoing throughout a sexual activity  
15 and can be revoked at any time.

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

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

22       **a.** The accused's belief in affirmative consent arose from the  
23 intoxication or recklessness of the accused.

24       **b.** The accused did not take reasonable steps, in the circumstances  
25 known to the accused at the time, to ascertain whether the  
26 complainant affirmatively consented.

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

31       **a.** The complainant was asleep or unconscious.

32       **b.** The complainant was incapacitated due to the influence of drugs,  
33 alcohol, or medication, so that the complainant could not understand  
34 the fact, nature, or extent of the sexual activity.

35       **c.** The complainant was unable to communicate due to a mental or  
36 physical condition.

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

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

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

49       **(2)** Initial response by constituent institution personnel to a report of an incident,  
50 including requirements specific to assisting the victim, providing

1 information in writing about the importance of preserving evidence, and the  
2 identification and location of witnesses.

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

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

7 (5) Contact with and interview of the accused.

8 (6) Identification and location of witnesses.

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

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

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

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

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

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

26 (13) Confidential reporting by third parties.

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

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

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

50 (g) Report to State Education Assistance Authority and Joint Legislative Education  
51 Oversight Committee. – The Board of Governors shall report to the State Education Assistance

1 Authority and the Joint Legislative Education Oversight Committee by September 1 each year  
2 on compliance by the constituent institutions with the requirements of this section."

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

5 "Article 27B.

6 "Policy Addressing Sexual Assault and Related Offenses.

7 **"§ 116-229.20. Policy addressing sexual assault and related offenses; student resources**  
8 **and outreach; reports.**

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

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

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

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

27 b. Lack of protest or resistance shall not indicate consent. Silence shall  
28 not indicate consent.

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

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

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

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

39 b. The accused did not take reasonable steps, in the circumstances  
40 known to the accused at the time, to ascertain whether the  
41 complainant affirmatively consented.

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

46 a. The complainant was asleep or unconscious.

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

50 c. The complainant was unable to communicate due to a mental or  
51 physical condition.

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

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

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

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

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

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

21          (5)   Contact with and interview of the accused.

22          (6)   Identification and location of witnesses.

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

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

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

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

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

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

40          (13)  Confidential reporting by third parties.

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

48          (e)   Student Prevention and Outreach Programs. – The nonprofit postsecondary  
49          institution of higher education shall develop prevention strategies and outreach programs to be  
50          included as part of every incoming student's orientation and to continue to be offered  
51          throughout the academic year. The prevention strategies shall include all of the following:

1 awareness raising campaigns, primary prevention, bystander intervention, and risk reduction.  
2 Outreach programs shall be provided to make students aware of the institution's policy on  
3 sexual assault, domestic violence, dating violence, and stalking. At a minimum, an outreach  
4 program shall include a process for contacting and informing the student body, campus  
5 organizations, affirmative consent standard, and the rights and responsibilities of students under  
6 the policy.

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

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

12 "**§ 116-209.19B. Eligible institution must have approved policy to address sexual assault**  
13 **and related offenses and provide certain outreach programs.**

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

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

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

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