

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

H

1

HOUSE BILL 793

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

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

Referred to: Education - Universities, if favorable, Education - Community Colleges, if favorable, Judiciary II

April 13, 2017

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE STATE BOARD OF COMMUNITY COLLEGES AND THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA TO DEVELOP SYSTEMWIDE POLICIES AND PREVENTION AND OUTREACH PROGRAMS CONCERNING SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING AND TO ENCOURAGE PRIVATE INSTITUTIONS OF HIGHER EDUCATION TO ADOPT SIMILAR POLICIES AND PREVENTION AND OUTREACH PROGRAMS.

The General Assembly of North Carolina enacts:

PART I. COMMUNITY COLLEGES

SECTION 1.1. The State Board of Community Colleges shall adopt a systemwide policy to be implemented at each community college 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. The policy shall include at least the following components:

- (1) Establish an affirmative consent standard to 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) Address circumstances in which affirmative consent cannot be assumed, including:
 - a. Intoxication.



* H 7 9 3 - V - 1 *

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

1 **SECTION 1.2.** The State Board of Community Colleges shall direct each
2 community college to provide assistance to students involved in incidences of sexual assault,
3 domestic violence, dating violence, and stalking, to the extent feasible, by entering into
4 memoranda of understanding, agreements, or collaborative partnerships with existing
5 on-campus and community-based organizations, including rape crisis centers, and providing
6 support services and resources for both the victim and the accused, as appropriate, including
7 counseling, health care, victim advocacy, and legal assistance.

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

17 **SECTION 1.4.** By February 1, 2018, the State Board of Community Colleges shall
18 report to the Joint Legislative Education Oversight Committee on the development of the
19 policy required by Section 1.1 of this act and the plan for implementation of the policy at each
20 community college beginning with the 2018-2019 academic year. In addition, the State Board
21 of Community Colleges shall include in the report the implementation of victim assistance
22 programs and prevention and outreach programs required by this part.
23

24 **PART II. UNIVERSITY OF NORTH CAROLINA CONSTITUENT INSTITUTIONS**

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

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

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

47 **SECTION 2.2.** The Board of Governors of The University of North Carolina shall
48 direct each constituent institution to provide assistance to students involved in incidences of
49 sexual assault, domestic violence, dating violence, and stalking, to the extent feasible, by
50 entering into memoranda of understanding, agreements, or collaborative partnerships with
51 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 **PART III. PRIVATE POSTSECONDARY INSTITUTIONS OF HIGHER EDUCATION**

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

- 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.