

**H. B. 2690**

(By Delegates Pasdon, Fleischauer, Storch, Miller, Border,  
Guthrie and Rowan)

[Introduced February 11, 2015; referred to the  
Committee on Education then the Judiciary.]

**FISCAL  
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-4-5b, relating to student safety on higher education campuses; requiring governing boards of higher education schools and training facilities to adopt victim-centered sexual assault policies and protocols.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18B-4-5b, to read as follows:

**ARTICLE 4. GENERAL ADMINISTRATION.**

**§18B-4-5b. Policy on sexual violence, domestic violence and dating violence, etc.**

(a) The governing board of each state institution of higher education subject to rules of accreditation pursuant to section 7 of this article, and the governing boards of West Virginia University and Marshall University, shall adopt a policy concerning campus sexual violence, domestic violence, dating violence, and stalking that includes all of the following:

(1) An affirmative consent standard in the determination of whether consent was given by

1 a complainant. "Affirmative consent" is a freely and affirmatively communicated willingness to  
2 participate in particular sexual activity or behavior, expressed either by words or clear, unambiguous  
3 actions. It is the responsibility of the person who wants to engage in the sexual activity to ensure that  
4 he or she has the consent of the other person to engage in the sexual activity. Lack of protest or  
5 resistance does not mean consent, nor does silence mean consent. For that reason, relying solely on  
6 nonverbal communication can lead to misunderstanding. The existence of a dating relationship  
7 between the persons involved, or the fact of a past sexual relationship, does not provide the basis for  
8 an assumption of consent. Consent must be present throughout sexual activity, and at any time, a  
9 participant can communicate that he or she no longer consents to continuing the sexual activity. If  
10 there is confusion as to whether a person has consented or continues to consent to sexual activity,  
11 it is essential that the participants stop the activity until the confusion can be clearly resolved.

12 (2) In the evaluation of complaints in the disciplinary process, it is not a defense that the  
13 accused believed that the complainant consented to the sexual activity under either of the following  
14 circumstances:

15 (A) The accused's belief in consent arose from the self-induced intoxication or recklessness  
16 of the accused; or

17 (B) The accused did not take reasonable steps, in the circumstances known to the accused  
18 at the time, to ascertain that the complainant was consenting.

19 (3) A preponderance of the evidence standard in the determination of disciplinary action.

20 (4) In the evaluation of complaints in the disciplinary process, an individual under any of the  
21 following conditions is unable to consent to the sexual activity:

22 (A) Asleep or unconscious;

1 (B) Incapacitated due to the influence of drugs, alcohol, or medication; or

2 (C) Unable to communicate due to a mental or physical condition.

3 (b) The governing board of each state institution of higher education subject to rules of  
4 accreditation pursuant to section 7 of this article and the governing boards of West Virginia  
5 University and Marshall University, shall adopt detailed and victim-centered sexual assault policies  
6 and protocols that comport with best practices and current professional standards. At a minimum,  
7 the policies and protocols shall cover all of the following:

8 (1) A policy statement on how the institution will protect the confidentiality of victims;

9 (2) Initial officer response to a report of sexual assault, including requirements specific to  
10 assisting the victim, evidence collection, and the identification and location of witnesses;

11 (3) Response to stranger and nonstranger sexual assault;

12 (4) The preliminary victim interview, including the development of a victim interview  
13 protocol, and a comprehensive follow-up victim interview;

14 (5) Contacting and interviewing the accused;

15 (6) Medical forensic examinations and coordination with the forensic examiner;

16 (7) Participation of victim advocates;

17 (8) Investigative considerations regarding alcohol- and drug-facilitated sexual assault,  
18 including requirements specific to evidence collection and forensic examination of victims;

19 (9) The role of the institutional staff supervision; and

20 (10) Procedures for anonymous reporting of sexual assault.

21 (c) To the extent feasible, the governing board of each state institution of higher education  
22 subject to rules of accreditation pursuant to section 7 of this article, and the governing boards of

1 West Virginia University and Marshall University, shall enter into memoranda of understanding,  
2 agreements, or similar partnerships with existing on-campus and community-based organizations,  
3 including rape crisis centers, to make services available to victims, including counseling, health,  
4 mental health, victim advocacy, and legal assistance.

5 (d) The governing board of each state institution of higher education subject to rules of  
6 accreditation pursuant to section 7 of this article, and the governing boards of West Virginia  
7 University and Marshall University, shall implement comprehensive prevention programs addressing  
8 sexual violence, domestic violence, dating violence, and stalking. A comprehensive prevention  
9 program shall include a range of prevention strategies, including, but not limited to, women's  
10 empowerment programming, awareness- raising campaigns, primary prevention, bystander  
11 intervention, and risk reduction.

NOTE: The purpose of this bill is to require state institutions of higher education and certain other postsecondary schools or training facilities to adopt policies and procedures relating to campus sexual violence, domestic violence, dating violence and stalking.

§18B-4-5b is new; therefore, it has been completely underscored.