

# WEST VIRGINIA LEGISLATURE

## 2017 REGULAR SESSION

**Introduced**

### **Senate Bill 69**

**FISCAL  
NOTE**

BY SENATORS WOELFEL, OJEDA, FACEMIRE AND

JEFFRIES

[Introduced February 8, 2017; referred  
to the Committee on the Judiciary; and then to the  
Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §61-11A-9, relating to creation of the Sexual Assault Survivors' Bill of Rights;  
 3 declaring additional rights bestowed upon sexual assault survivors regarding medical  
 4 forensic examinations, sexual assault evidence collection kits and other similar topics;  
 5 clarifying the right of a victim to be accompanied by a personal representative during  
 6 certain proceedings; creating a right of confidentiality and privileged communications  
 7 between a victim and certain trained advocates; declaring certain people be informed or  
 8 notified of certain rights; incorporating other rights contained in code; and defining terms.

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

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 section, designated §61-11A-9, to read as follows:

**ARTICLE 11A. VICTIM PROTECTION ACT OF 1984.**

**§61-11A-9. Sexual Assault Survivors' Bill of Rights.**

1 (a) In addition to those rights provided elsewhere in this code, a sexual assault survivor  
 2 has the following rights:

3 (1) The right to, if the victim of a sexual assault so desires, a personal representative of  
 4 the victim's choice to accompany the victim to the hospital or other health care facility, and to  
 5 proceedings concerning the alleged assault, including police and prosecution interviews and court  
 6 proceedings;

7 (2) The right not to be prevented from, or charged for, receiving a medical forensic  
 8 examination.

9 (3) The right to—

10 (A) Subject to paragraph (4), have a sexual assault evidence collection kit or its probative  
 11 contents preserved, without charge, for the duration of the maximum applicable statute of  
 12 limitations or 20 years, whichever is shorter;

13 (B) Be informed of any result of a sexual assault evidence collection kit, including a DNA

14 profile match, toxicology report, or other information collected as part of a medical forensic  
15 examination, if such disclosure would not impede or compromise an ongoing investigation; and

16 (C) Be informed in writing of policies governing the collection and preservation of a sexual  
17 assault evidence collection kit.

18 (4) The right to—

19 (A) Upon written request, receive written notification from the appropriate official with  
20 custody of the sexual assault evidence collection kit or its probative contents not later than 60  
21 days before the date of the intended destruction or disposal; and

22 (B) Upon written request, be granted further preservation of the kit or its probative  
23 contents.

24 (5) The right to communicate confidentially with a sexual assault victim advocate or a  
25 trained volunteer of a rape crisis center. A communication between a sexual assault counselor  
26 or trained volunteer and a victim is confidential, for purposes of this subdivision, if it is not intended  
27 to be disclosed to third persons other than those persons present to further the interest of the  
28 victim in the consultation, examination, or interview, those persons necessary for the transmission  
29 of the communication, or those persons to whom disclosure is reasonably necessary to  
30 accomplish the purposes for which the sexual assault advocate or the trained volunteer is  
31 consulted. Except as required by the mandatory reporting of abuse sections contained in article  
32 six, chapter nine of this code, and article two, chapter forty-nine of this code, a sexual assault  
33 victim advocate or a trained volunteer of a rape crisis center may not be compelled, without  
34 appropriate consent, to give testimony or to produce records concerning confidential  
35 communications for any purpose in a criminal, civil, legislative, or administrative proceeding. The  
36 claim of a privilege under this subdivision, whether in a present proceeding or upon a prior  
37 occasion, is not a proper subject of comment by a judge, hearing officer, legislator, or counsel.  
38 An inference may not be drawn from the claim of privilege. In jury cases, proceedings shall be  
39 conducted, to the extent practicable, so as to facilitate the making of a claim of privilege without

40 the knowledge of the jury. Upon request, a party against whom a jury might draw an adverse  
41 inference from a claim of privilege is entitled to an instruction that an inference may not be drawn  
42 from the claim of privilege.

43 (6) The right to be informed of the rights under this subsection.

44 (b) All rights provided to victims of crimes under this code, whether contained in this article  
45 or elsewhere, shall apply to sexual assault survivors.

46 (c) For the purposes of this section:

47 (1) The term "appropriate consent" means the consent of the victim with respect to the  
48 testimony of an adult victim and a sexual assault victim advocate or trained volunteer of a rape  
49 crisis center when the victim is an adult;

50 (2) The term "sexual assault" means any sexual act proscribed by article eight-b of this  
51 chapter;

52 (3) The term "sexual assault victim advocate" means any employee of a rape crisis center  
53 whose primary purpose is the rendering of advice, counseling, or assistance to victims of sexual  
54 assault or sexual battery; and

55 (4) The term "trained volunteer" means a person who volunteers at a rape crisis center,  
56 has completed 40 hours of training in assisting victims of sexual violence and related topics  
57 provided by the rape crisis center, is supervised by members of the staff of the rape crisis center,  
58 and is included on a list of volunteers that is maintained by the rape crisis center.

NOTE: The purpose of this bill is to create the sexual assault survivors' bill of rights.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.