

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2825

FISCAL
NOTE

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[Introduced March 8, 2017; Referred
to the Committee on Education then the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §18B-4-5b, relating to requiring state institutions of higher education and
 3 community and technical colleges to adopt certain policies and implement certain
 4 programs relating to sexual assault, domestic violence, dating violence and stalking.

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 §18B-4-5b, to read as follows:

ARTICLE 4. GENERAL ADMINISTRATION.

**§18B-4-5b. Required policies and programs concerning sexual assault, domestic violence,
 dating violence and stalking.**

1 (a) The governing board of each state institution of higher education and of each
 2 community and technical college shall adopt a policy concerning sexual assault, domestic
 3 violence, dating violence and stalking, as defined in the federal Higher Education Act of 1965, 20
 4 U.S.C. §1092(f), involving a student, both on-campus and off-campus. The policy shall include all
 5 of the following:

6 (1) An affirmative consent standard in the determination of whether consent was given by
 7 both parties to sexual activity. "Affirmative consent" means affirmative, conscious and voluntary
 8 agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual
 9 activity to ensure that he or she has the affirmative consent of the other or others to engage in
 10 the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean
 11 consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at
 12 any time. The existence of a dating relationship between the persons involved, or the fact of past
 13 sexual relations between them, should never by itself be assumed to be an indicator of consent.

14 (2) A policy that, in the evaluation of complaints in any disciplinary process, shall not be a
 15 valid excuse to alleged lack of affirmative consent that the accused believed that the complainant
 16 consented to the sexual activity under either of the following circumstances:

17 (A) The accused's belief in affirmative consent arose from the intoxication or recklessness
18 of the accused.

19 (B) The accused did not take reasonable steps, in the circumstances known to the
20 accused at the time, to ascertain whether the complainant affirmatively consented.

21 (3) A policy that the standard used in determining whether the elements of the complaint
22 against the accused have been demonstrated, is the preponderance of the evidence.

23 (4) A policy that, in the evaluation of complaints in the disciplinary process, shall not be a
24 valid excuse that the accused believed that the complainant affirmatively consented to the sexual
25 activity if the accused knew or reasonably should have known that the complainant was unable
26 to consent to the sexual activity under any of the following circumstances:

27 (A) The complainant was asleep or unconscious.

28 (B) The complainant was incapacitated due to the influence of drugs, alcohol or
29 medication, so that the complainant could not understand the fact, nature or extent of the sexual
30 activity.

31 (C) The complainant was unable to communicate due to a mental or physical condition.

32 (b) The governing board of each state institution of higher education and of each
33 community and technical college shall adopt detailed and victim-centered policies and protocols
34 regarding sexual assault, domestic violence, dating violence and stalking involving a student that
35 comport with best practices and current professional standards. At a minimum, the policies and
36 protocols shall cover all of the following:

37 (1) A policy statement on how the institution will provide appropriate protections for the
38 privacy of individuals involved, including confidentiality.

39 (2) Initial response by the institution's personnel to a report of an incident, including
40 requirements specific to assisting the victim, providing information in writing about the importance
41 of preserving evidence, and the identification and location of witnesses.

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

43 (4) The preliminary victim interview, including the development of a victim interview
44 protocol and a comprehensive followup victim interview, as appropriate.

45 (5) Contacting and interviewing the accused.

46 (6) Seeking the identification and location of witnesses.

47 (7) Providing written notification to the victim about the availability of and contact
48 information for, on-campus and off-campus resources and services, and coordination with law
49 enforcement, as appropriate.

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

51 (9) Investigating allegations that alcohol or drugs were involved in the incident.

52 (10) Providing that an individual who participates as a complainant or witness in an
53 investigation of sexual assault, domestic violence, dating violence or stalking will not be subject
54 to disciplinary sanctions for a violation of the institution's student conduct policy at or near the
55 time of the incident, unless the institution determines that the violation was egregious, including,
56 but not limited to, an action that places the health or safety of any other person at risk or involves
57 plagiarism, cheating or academic dishonesty.

58 (11) The role of the institutional staff supervision.

59 (12) A comprehensive, trauma-informed training program for campus officials involved in
60 investigating and adjudicating sexual assault, domestic violence, dating violence and stalking
61 cases.

62 (13) Procedures for confidential reporting by victims and third parties.

63 (c) The governing board of each state institution of higher education and of each
64 community and technical college shall, to the extent feasible, enter into memoranda of
65 understanding, agreements, or collaborative partnerships with existing on-campus and
66 community-based organizations, including rape crisis centers, to refer students for assistance or
67 make services available to students, including counseling, health, mental health, victim advocacy,
68 legal assistance and including resources for the accused.

69 (d) The governing board of each state institution of higher education and of each
70 community and technical college shall implement comprehensive prevention and outreach
71 programs addressing sexual violence, domestic violence, dating violence and stalking. A
72 comprehensive prevention program shall include a range of prevention strategies, including, but
73 not limited to, empowerment programming for victim prevention, awareness raising campaigns,
74 primary prevention, bystander intervention and risk reduction. Outreach programs shall be
75 provided to make students aware of the institution's policy on sexual assault, domestic violence,
76 dating violence and stalking. At a minimum, an outreach program shall include a process for
77 contacting and informing the student body, campus organizations, athletic programs, and student
78 groups about the institution's overall sexual assault policy, the practical implications of an
79 affirmative consent standard, and the rights and responsibilities of students under the policy.
80 (e) Outreach programming shall be included as part of every incoming student's
81 orientation.

NOTE: The purpose of this bill is to require state institutions of higher education and community and technical colleges to implement policies and programs relating to sexual assault, domestic violence, dating violence and stalking, including adoption of an "affirmative consent" standard in conduct rules and disciplinary proceedings at each institution.

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