

## OPPOSITION Response to SB187

### Creating new criminal offenses of sexual contact, intrusion, or abuse of students by school employee

February 17, 2023

House Judiciary Committee:

[West Virginians for Rational Sexual Offense Laws \(WVRSOL\)](#) is a West Virginia non-profit association and affiliate of the [National Association for Rational Sexual Offense Laws \(NARSOL\)](#), which advocates for society's segment that is adversely affected by the sex offender registry. We try to help families impacted by the registry, seek ways to maintain and improve public safety, recommend prudent use of state funding in this area, and work to ensure that proposed legislation is constitutional.

WVRSOL **opposes** SB187 because it is unconstitutional, unnecessary, and includes vague language.

#### **SB187 is unconstitutional, unnecessary, and vague**

1. The proposed code §61-8B-11b makes it a  
*felony offense for any teacher, principal, counselor, coach or other employee of any private or public elementary or secondary school to engage in sexual intercourse, sexual intrusion or sexual contact as defined by chapter §61-8B-1 of this code with any student enrolled in such school regardless of the age of said student. The fact that said student consented to such an act or that the act did not occur on school property or during a school function shall not be a defense.*
2. Doe v. Commonwealth's Atty. for City of Richmond, 403 F. Supp. 1199 (E.D. Va. 1975) made it clear that private sexual conduct among consenting adults was constitutionally protected, and while we understand the House's desire to protect children, this law would not. Additionally, it is already a felony for an adult to have sexual contact with a minor, so this code is not only unconstitutional but also unnecessary.
3. Moreover, as written, §§61-8B-11b(b) says, "... and shall include the permanent forfeiture of any teaching or other certificate." Includes vague language in that "... or other certificate." consists of the entire universe of certificates outside the intended school employee audience, which isn't narrowly written and fails the strict scrutiny test.

WVRSOL supports legislation that actually works to reduce abuse and sexual offenses, help children and families, and improve public safety. Unfortunately, SB187 does none of these things. Therefore, we **oppose** and respectfully urge the House, its members, and House Judiciary Committee to **reject SB187**.

Sincerely,

*Philip W. Kaso*

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WVRSOL does not in any way condone sexual activity between adults and children, nor does it condone any sexual activity that would break the laws of any state. We do not advocate lowering the age of consent, and we have no affiliation with any group that does condone such activities.

## Works Cited

Doe v. Commonwealth's Atty. for City of Richmond, 403 F. Supp. 1199 (E.D. Va. 1975). Retrieved January 27, 2023, from <https://law.justia.com/cases/federal/district-courts/FSupp/403/1199/1568467/>