

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2263**

4 (By Delegate Cowles)

5
6 (Originating in the House Committee on the Judiciary)

7 [February 25, 2015]

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9
10 A BILL to amend and reenact §49-4-501 and §49-4-502 of the Code of West Virginia, 1931, as
11 amended, relating to the responsibilities of prosecuting attorneys when representing the
12 Department of Health and Human Resources; clarifying the independence of prosecuting
13 attorneys in abuse and neglect matters and explaining the nature of the attorney-client
14 relationship; and establishing procedure when a dispute or conflict arises.

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

16 That §49-4-501 and §49-4-502 of the Code of West Virginia, 1931, as amended, be amended
17 and reenacted to read as follows:

18 **§49-4-501. Prosecuting attorney representation of the Department of Health and Human**
19 **Resources; conflict resolution.**

20 (a) The prosecuting attorney shall render to the Department of Health and Human Resources,
21 without additional compensation, the legal services as the department may require. This section ~~shall~~
22 ~~not be construed to~~ does not prohibit the department from developing plans for cooperation with

1 courts, prosecuting attorneys, and other law-enforcement officials in a manner as to permit the state
2 and its citizens to obtain maximum fiscal benefits under federal laws, rules and regulations.

3 (b) Nothing in this code may be construed to limit the authority of a prosecuting attorney to
4 file an abuse or neglect petition, including the duties and responsibilities owed to its client the
5 Department of Health and Human Resources, in his or her fulfillment of the provisions of this article-

6 (c) Notwithstanding the responsibilities and relationship set forth in this section, the
7 prosecuting attorney maintains an attorney-client relationship with the Department of Health and
8 Human Resources, and equally owes an independent duty to fulfill the requirements and
9 responsibilities imposed upon the prosecuting attorney by law.

10 ~~(c) Whenever, pursuant to this chapter, a prosecuting attorney acts as counsel for the~~
11 ~~Department of Health and Human Resources, and a dispute arises between the prosecuting attorney~~
12 ~~and the department's representative because an action proposed by the other is believed to place the~~
13 ~~child at imminent risk of abuse or serious neglect, either the prosecuting attorney or the department's~~
14 ~~representative may contact the secretary of the department and the executive director of the West~~
15 ~~Virginia Prosecuting Attorneys Institute for prompt mediation and resolution. The secretary may~~
16 ~~designate either his or her general counsel or the director of social services to act as his or her~~
17 ~~designee and the executive director may designate an objective prosecuting attorney as his or her~~
18 ~~designee.~~

19 (d) Whenever, pursuant to this chapter, a prosecuting attorney acts as counsel for the
20 Department of Health and Human Resources and a dispute or conflict arises between the prosecuting
21 attorney and the department's representative as to whether to file a petition or to take a certain course
22 of action in a proceeding, the prosecuting attorney shall inform the department of the differing

1 position to be taken, and if, after discussion with the department, no agreement can be reached, the
2 prosecuting attorney has the right and responsibility to represent the public interest in protecting
3 abused and neglected children when their position conflicts with that of the department. When such
4 disagreement or conflict with the department arises, the prosecuting attorney may pursue action
5 independent of the department, if necessary and appropriate, and is no longer required to continue
6 to represent the interests of the department in that matter: *Provided*, That the prosecuting attorney
7 shall give appropriate notice of withdraw as counsel to the department and the court. With notice
8 to, and approval by, the court having jurisdiction of the proceeding, the department shall then
9 designate one of its own counsel to represent the interests of the department for the remainder of the
10 proceeding.

11 **§49-4-502. Prosecuting attorney to ~~represent and cooperate with persons other than the~~**
12 **department in child abuse and neglect matters; duties.**

13 It is the duty of every prosecuting attorney to fully and promptly cooperate with persons
14 seeking to apply for relief, including co-petitioners with the department, under this article in all cases
15 of suspected child abuse and neglect; to promptly prepare applications and petitions for relief
16 requested by those persons, to investigate reported cases of suspected child abuse and neglect for
17 possible criminal activity; and to report at least annually to the grand jury regarding the discharge
18 of his or her duties with respect thereto.