

COMMITTEE SUBSTITUTE

for

**H. B. 2263**

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(BY DELEGATE(S) COWLES)

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(Originating in the House Committee on the Judiciary)

[February 25, 2015]

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

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

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

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

1 (a) The prosecuting attorney shall render to the Department  
2 of Health and Human Resources, without additional  
3 compensation, the legal services as the department may require.  
4 This section ~~shall not be construed to~~ does not prohibit the  
5 department from developing plans for cooperation with courts,  
6 prosecuting attorneys, and other law-enforcement officials in a  
7 manner as to permit the state and its citizens to obtain maximum  
8 fiscal benefits under federal laws, rules and regulations.

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

14 (c) Notwithstanding the responsibilities and relationship set  
15 forth in this section, the prosecuting attorney maintains an  
16 attorney-client relationship with the Department of Health and  
17 Human Resources, and equally owes an independent duty to  
18 fulfill the requirements and responsibilities imposed upon the  
19 prosecuting attorney by law.

20 ~~(c) Whenever, pursuant to this chapter, a prosecuting~~  
21 ~~attorney acts as counsel for the Department of Health and~~  
22 ~~Human Resources, and a dispute arises between the prosecuting~~  
23 ~~attorney and the department's representative because an action~~  
24 ~~proposed by the other is believed to place the child at imminent~~  
25 ~~risk of abuse or serious neglect, either the prosecuting attorney~~  
26 ~~or the department's representative may contact the secretary of~~  
27 ~~the department and the executive director of the West Virginia~~  
28 ~~Prosecuting Attorneys Institute for prompt mediation and~~  
29 ~~resolution. The secretary may designate either his or her general~~  
30 ~~counsel or the director of social services to act as his or her~~  
31 ~~designee and the executive director may designate an objective~~  
32 ~~prosecuting attorney as his or her designee.~~

33 (d) Whenever, pursuant to this chapter, a prosecuting  
34 attorney acts as counsel for the Department of Health and  
35 Human Resources and a dispute or conflict arises between the  
36 prosecuting attorney and the department's representative as to  
37 whether to file a petition or to take a certain course of action in  
38 a proceeding, the prosecuting attorney shall inform the  
39 department of the differing position to be taken, and if, after

40 discussion with the department, no agreement can be reached,  
41 the prosecuting attorney has the right and responsibility to  
42 represent the public interest in protecting abused and neglected  
43 children when their position conflicts with that of the  
44 department. When such disagreement or conflict with the  
45 department arises, the prosecuting attorney may pursue action  
46 independent of the department, if necessary and appropriate, and  
47 is no longer required to continue to represent the interests of the  
48 department in that matter: *Provided*, That the prosecuting  
49 attorney shall give appropriate notice of withdraw as counsel to  
50 the department and the court. With notice to, and approval by,  
51 the court having jurisdiction of the proceeding, the department  
52 shall then designate one of its own counsel to represent the  
53 interests of the department for the remainder of the proceeding.

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

1 It is the duty of every prosecuting attorney to fully and  
2 promptly cooperate with persons seeking to apply for relief,  
3 including co-petitioners with the department, under this article  
4 in all cases of suspected child abuse and neglect; to promptly

5 prepare applications and petitions for relief requested by those  
6 persons, to investigate reported cases of suspected child abuse  
7 and neglect for possible criminal activity; and to report at least  
8 annually to the grand jury regarding the discharge of his or her  
9 duties with respect thereto.





