

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

House Bill 2435

BY MR. SPEAKER (MR. HANSHAW), SHOTT, CANESTRARO,

NELSON, MILEY AND BATES

[Originating in the Committee on the Judiciary,

January 18, 2019.]

1 A BILL to amend and reenact §4-5-2 of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §5-3-2 of said code, all relating to authorizing and empowering the
3 Attorney General to prosecute violations of state criminal law recommended by the
4 Commission on Special Investigations under certain conditions; providing that CSI
5 recommend prosecution of state criminal law violations to appropriate county prosecutor;
6 providing that, if county prosecutor has not pursued the matter within six months, CSI must
7 recommend the matter to the Attorney General; empowering and authorizing the Attorney
8 General to prosecute violations of criminal law referred by CSI under certain conditions;
9 and empowering the Attorney General to impanel a grand jury and prosecute a person
10 indicted by that grand jury.

Be it enacted by the Legislature of West Virginia:

CHAPTER 4. THE LEGISLATURE.

ARTICLE 5. COMMISSION ON SPECIAL INVESTIGATIONS.

§4-5-2. Powers and duties generally.

1 (a) The Commission on Special Investigations shall have the power, duty and
2 responsibility, upon a majority vote of the members appointed, to:

3 (1) Conduct a comprehensive and detailed investigation into the purchasing practices and
4 procedures of the state;

5 (2) Determine if there is reason to believe that the laws or public policy of the state in
6 connection with purchasing practices and procedures have been violated or are inadequate;

7 (3) Determine if any criminal or civil statutes relating to the purchasing practices and
8 procedures in this state are necessary to protect and control the expenditures of money by the
9 state;

10 (4) Investigate or examine any matter involving conflicts of interest, bribery of state
11 officials, malfeasance, misfeasance or nonfeasance in office by any employee or officer of the
12 state;

13 (5) Conduct comprehensive and detailed investigations to determine if any criminal or civil
14 statutes have been violated at any level of state government;

15 (6) Determine whether to recommend criminal prosecution or civil action for any violation,
16 either criminal or civil, at any level of state government and, if it is determined that action is
17 necessary, to make appropriate recommendation to the Attorney General, prosecuting attorney
18 or other authority empowered to act on such recommendation; and

19 (7) Recommend prosecution of state criminal law violations to the appropriate county
20 prosecutor. If the county prosecutor chooses in his or her discretion not to prosecute the matter,
21 the prosecutor shall notify the Commission on Special Investigations within six months, at which
22 time the Commission on Special Investigations shall refer the matter to the West Virginia
23 Prosecuting Attorneys Institute for appointment of a special prosecutor pursuant to §7-4-6 of this
24 code. If the West Virginia Prosecuting Attorney Institute does not appoint a special prosecutor
25 within 30 days, the Commission on Special Investigations may refer the matter to the Attorney
26 General, who may prosecute such action pursuant to §5-3-2 of this code.

27 ~~(7)~~ (8) Make such written reports to the members of the Legislature between sessions
28 thereof as the commission may deem advisable and on the first day of each regular session of
29 the Legislature make an annual report to the Legislature containing the commission's findings
30 and recommendations including in such report drafts of any proposed legislation which it deems
31 necessary to carry such recommendations into effect.

32 (b) The commission is also expressly empowered and authorized to:

33 (1) Sit during any recess of the Senate and House of Delegates;

34 (2) Recommend to the judge of any circuit court that a grand jury be convened pursuant
35 to the provisions of §52-2-14 of this code, to consider any matter which the commission may

36 deem in the public interest and, in support thereof, make available to such court and such grand
37 jury the contents of any reports, files, transcripts of hearings or other evidence pertinent thereto;

38 (3) Employ such legal, technical, investigative, clerical, stenographic, advisory and other
39 personnel as it deems needed and, within the appropriation herein specified, fix reasonable
40 compensation of such persons and firms as may be employed: *Provided*, That such personnel as
41 the commission may determine shall have the authority to administer oaths and take affidavits
42 and depositions anywhere in the state.

43 (4) Consult and confer with all persons and agencies, public (whether federal, state or
44 local) and private, that have information and data pertinent to an investigation; and all state and
45 local governmental personnel and agencies shall cooperate to the fullest extent with the
46 commission;

47 (5) Call upon any department or agency of state or local government for such services,
48 information and assistance as it may deem advisable; and

49 (6) Refer such matters as are appropriate to the office of the United States attorney and
50 cooperate with such office in the disposition of matters so referred.

51 (c) Notwithstanding any provision of this code to the contrary, specific personnel may be
52 designated by the commission to carry a firearm in the course of performing his or her official
53 duties: *Provided*, That as a precondition of being authorized to carry a concealed weapon in the
54 course of their official duties, any such designated personnel must have first successfully
55 completed a firearms training and certification program which is equivalent to that which is
56 required of members of the state police. The designated persons must also possess a license to
57 carry a concealed deadly weapon in the manner prescribed in §61-7-1 *et seq.* of this code.

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE
GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL;**

**BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,
COMMISSIONS, OFFICES, PROGRAMS, ETC.**

ARTICLE 3. ATTORNEY GENERAL.

**§5-3-2. Act as counsel for state; duties and powers as to prosecuting attorneys; defense
of National Guardsmen.**

1 (a) The Attorney General shall appear as counsel for the state in all causes pending in the
2 Supreme Court of Appeals, or in any federal court, in which the state is interested; ~~he~~ the Attorney
3 General shall appear in any cause in which the state is interested that is pending in any other
4 court in the state, on the written request of the Governor, and when such appearance is entered
5 ~~he~~ the Attorney General shall take charge of and have control of such cause; ~~he~~ the Attorney
6 General shall defend all actions and proceedings against any state officer in his official capacity
7 in any of the courts of this state or any of the federal courts when the state is not interested in
8 such cause against such officer, but should the state be interested against such officer, ~~he~~ the
9 Attorney General shall appear for the state; ~~he~~ the Attorney General shall institute and prosecute
10 all civil actions and proceedings in favor of or for the use of the state which may be necessary in
11 the execution of the official duties of any state officer, board or commission on the written request
12 of such officer, board or commission; ~~he~~ the Attorney General shall, when requested by the
13 prosecuting attorney of a county wherein a state institution of correction is located, provide
14 attorneys for appointment as special prosecuting attorneys to assist the prosecuting attorney of
15 said county in the prosecution of criminal proceedings when, in the opinion of the circuit judge of
16 said county, or a justice of the West Virginia Supreme Court of Appeals, extraordinary
17 circumstances exist at said institution which render the financial resources of the office of the
18 prosecuting attorney inadequate to prosecute said cases; ~~he~~ the Attorney General may consult
19 with and advise the several prosecuting attorneys in matters relating to the official duties of their
20 office, and may require a written report from them of the state and condition of the several causes,

21 in which the state is a party, pending in the courts of their respective counties; ~~he~~ the Attorney
22 General may require the several prosecuting attorneys to perform, within the respective counties
23 in which they are elected, any of the legal duties required to be performed by the Attorney General
24 which are not inconsistent with the duties of the prosecuting attorneys as the legal representatives
25 of their respective counties; when the performance of any such duties by the prosecuting attorney
26 conflicts with his or her duties as the legal representative of his or her county, or for any reason
27 any prosecuting attorney is disqualified from performing such duties, the Attorney General may
28 require the prosecuting attorney of any other county to perform such duties in any county other
29 than that in which such prosecuting attorney is elected and for the performance of which duties
30 outside of the county in which he or she is elected the prosecuting attorney shall be paid his or
31 her actual traveling and other expenses out of the appropriation for contingent expenses for the
32 department for which such services are rendered; the Attorney General may prosecute all civil
33 actions and proceedings in favor of or for the use of the state which may be necessary in the
34 execution of the official duties of any state officer, board or commission on the written request of
35 such officer, board or commission the Attorney General shall keep in proper books, a register of
36 all causes prosecuted or defended by him or her in behalf of the state or its officers and of the
37 proceedings had in relation thereto, and deliver the same to his or her successor in office; and ~~he~~
38 the Attorney General shall preserve in his or her office all his official opinions of the Office of the
39 Attorney General and publish the same in his or her biennial report.

40 (b) Upon request of any member of the West Virginia National Guard who has been named
41 defendant in any civil action arising out of that guardsman's action while under orders from the
42 Governor relating to National Guard assistance in disasters and civil disorders, the Attorney
43 General shall appear as counsel for and represent such guardsman.

44 (c) The Attorney General may prosecute criminal cases that have been investigated and
45 recommended for prosecution by the Commission on Special Investigations pursuant to §4-5-2
46 of this code. In all matters referred to the Attorney General pursuant to §4-5-2 of this code, the

- 47 Attorney General may make a presentment to any regularly or specially impaneled grand jury in
48 the appointing circuit court and prosecute any person indicted by such grand jury.

NOTE: The purpose of this bill is to authorize and empower the Attorney General to prosecute violations of state criminal law recommended by the Commission on Special Investigations under certain conditions; to provide that CSI recommend prosecution of state criminal law violations to appropriate county prosecutor; to provide that, if county prosecutor has not pursued the matter within six months, CSI must recommend the matter to the Attorney General; empowering and authorizing the Attorney General to prosecute violations of state criminal law referred by CSI under certain conditions; and empower the Attorney General to impanel a grand jury and prosecute a person indicted by that grand jury.

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