

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2784

By Delegate Dillon

[Introduced January 18, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §7-4-1 and §7-4-6 of the Code of West Virginia, 1931, as amended,
2 all relating to the mandatory duty of prosecuting attorneys to prosecute persons accused of
3 committing criminal acts; duty to create file on cases not prosecuted; and when the county
4 commission, in cooperation with the West Virginia prosecuting attorneys Institute, shall
5 select and appoint a special prosecuting attorney.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§7-4-1. Duties of prosecuting attorney; further duties upon request of Attorney General.

1 (a) (1) The prosecuting attorney shall attend to the criminal business of the state in the
2 county in which he or she is elected and qualified and when the prosecuting attorney has
3 information of the violation of any penal law committed within the county, the prosecuting attorney
4 shall institute and prosecute all necessary and proper proceedings against the offender and may,
5 in such case, issue or cause to be issued a summons for any witness the prosecuting attorney
6 considers material. Every public officer shall give the prosecuting attorney information regarding
7 the commission of any criminal offense committed within his or her county. The prosecuting
8 attorney shall also attend to civil suits in the county in which the state or any department,
9 commission, or board thereof, is interested, and to advise, attend to, bring, prosecute, or defend,
10 as the case may be, all matters, actions, suits, and proceedings in which such county or any
11 county board of education is interested.

12 (2) If the prosecuting attorney fails to prosecute an offender, citing inadequate evidence for
13 prosecution, the prosecuting attorney shall create a file relating to the alleged criminal offense and
14 offender and maintain the file for three years for future prosecution.

15 (b) (1) In furtherance of a prosecuting attorney's duty to investigate and prosecute criminal
16 offenses, a prosecuting attorney and assistant prosecuting attorneys under his or her supervision
17 shall have the authority to may arrest any person committing a violation of the criminal laws of the
18 State of West Virginia, the United States, or a violation of Rule 42 of the West Virginia Rules of

19 Criminal Procedure which occur within the office of the prosecuting attorney and committed in the
20 presence of the prosecuting attorney or assistant prosecuting attorney.

21 (2) For purposes of subdivision (1) of this subsection, the arrest authority of a prosecuting
22 attorney or assistant prosecuting attorney shall be consistent with that authority vested in a deputy
23 sheriff within the geographic limitations set forth in said subdivision.

24 (3) ~~Should~~ If a prosecuting attorney ~~desire~~ desires to establish a program authorizing
25 prosecuting attorneys and assistant prosecuting attorneys to carry a concealed firearm for self-
26 defense purposes pursuant to the provisions of 18 U. S. C. § 926B, the following criteria must be
27 met:

28 (A) The prosecuting attorney's office shall have a written policy authorizing the prosecuting
29 attorney and his or her assistant prosecuting attorneys to carry a concealed firearm for self-
30 defense purposes;

31 (B) There shall be in place in the office of the prosecuting attorney a requirement that the
32 prosecuting attorney and assistant prosecuting attorneys must regularly qualify in the use of a
33 firearm with standards therefor which are equal to or exceed those required of sheriff's deputies in
34 the county in which the prosecuting attorney was elected or appointed;

35 (C) The office of the prosecuting attorney shall issue a photographic identification and
36 certification card which identify the prosecuting attorney or assistant prosecuting attorneys as law-
37 enforcement employees of the prosecuting attorney's office pursuant to the provisions of §30-29-
38 12 of this code.

39 (4) Any policy instituted pursuant to paragraph (A), subdivision (3) of this subsection shall
40 include provisions which: (i) Preclude or remove a person from participation in the concealed
41 firearm program who is subject to any disciplinary or legal action which could result in the loss of
42 the authority to participate in the program; (ii) preclude from participation persons prohibited by
43 federal or state law from possessing or receiving a firearm and; (iii) prohibit persons from carrying
44 a firearm pursuant to the provisions of this subsection while in an impaired state as defined in

45 §17C-5-2 of this code.

46 (5) Any prosecuting attorney or assistant prosecuting attorney who participates in a
47 program authorized by the provisions of this subsection shall be responsible, at his or her
48 expense, for obtaining and maintaining a suitable firearm and ammunition.

49 (6) It is the intent of the Legislature in enacting the amendments to this section during the
50 2017 regular session of the Legislature to authorize prosecuting attorney's offices wishing to do so
51 to allow prosecuting attorneys and assistant prosecuting attorneys to meet the requirements of the
52 federal Law-Enforcement Officer's Safety Act, 18 U.S.C. § 926B.

53 (c) The prosecuting attorney shall keep his or her office open in the charge of a responsible
54 person during the hours when polls are open during statewide general and primary election days,
55 and the prosecuting attorney, or the prosecuting attorney's assistant, if any, shall be available for
56 the purpose of advising election officials. The prosecuting attorney, when requested by the
57 Attorney General, shall perform or assist the Attorney General in performing, in the county in which
58 the prosecuting attorney is elected, any legal duties required to be performed by the Attorney
59 General and which are not inconsistent with the duties of the prosecuting attorney as the legal
60 representative of the county. The prosecuting attorney, when requested by the Attorney General,
61 shall perform or assist the Attorney General in performing, any legal duties required to be
62 performed by the Attorney General in any county other than that in which the prosecuting attorney
63 is elected and for the performance of these duties in any county other than that in which the
64 prosecuting attorney is elected, the prosecuting attorney shall be paid his or her actual expenses.

65 Upon the request of the Attorney General, the prosecuting attorney shall make a written
66 report of the state and condition of the several causes in which the state is a party, pending in his or
67 her county, and upon any matters referred to the prosecuting attorney by the Attorney General as
68 provided by law.

69 (d) The county commission shall maintain a list of contingency prosecuting attorneys for
70 use, in cooperation with the West Virginia prosecuting attorneys Institute, as provided for in §7-4-6

71 of this code, if the prosecuting attorney cites insufficient time or personnel to adequately prosecute
72 an offender.

§7-4-6. West Virginia prosecuting attorneys Institute.

1 (a) There is continued the West Virginia prosecuting attorneys Institute, a public body
2 whose membership shall consist of the 55 elected county prosecuting attorneys in the state. The
3 Institute shall meet at least once each calendar year and the presence of twenty-eight of the fifty-
4 five prosecutors at any meeting constitutes a quorum for the conduct of the Institute's business.

5 (b) There is continued the Executive Council of the West Virginia prosecuting attorneys
6 Institute which shall consist of seven prosecuting attorneys elected by the membership of the West
7 Virginia prosecuting attorneys Institute at its annual meeting and two persons appointed annually
8 by the county commissioner's association of West Virginia. The executive council shall elect one
9 member of the council to serve as chairman of the institute for a term of one year without
10 compensation. The executive council shall serve as the regular executive body of the institute.

11 (c) There is continued the position of Executive Director of the West Virginia prosecuting
12 attorneys Institute to be employed by the executive council of the institute. The Executive Director
13 of the West Virginia prosecuting attorneys Institute shall serve at the will and pleasure of the
14 executive council of the institute. The executive director shall be licensed to practice law in the
15 State of West Virginia and shall devote full time to his or her official duties and may not engage in
16 the private practice of law.

17 (d) The duties and responsibilities of the institute, as implemented by and through its
18 executive council and its executive director, shall include the following:

19 (1) The provision for special prosecuting attorneys to pursue a criminal matter, a juvenile
20 delinquency matter or a matter involving child abuse neglect pursuant to chapter 49 of this code, or
21 in any matter wherein a special prosecutor previously appointed has failed to take any action
22 thereon within such time as the Executive Director deems unreasonable, not to exceed three
23 terms of court from the date on which the special prosecutor was appointed: *Provided*, That such

24 replacement or original appointment may be any attorney with a license in good standing in this
25 state in any county upon the request of a circuit court judge of that county and upon the approval of
26 the executive council;

27 (2) The establishment and implementation of general and specialized training programs for
28 prosecuting attorneys, their staffs and, where determined practical by the executive council and
29 executive director, all statutorily authorized law-enforcement or investigative agencies of the state
30 or its political subdivisions;

31 (3) The provision of materials for prosecuting attorneys and their staffs, including legal
32 research, technical assistance and technical and professional publications;

33 (4) The compilation and dissemination of information on behalf of prosecuting attorneys
34 and their staffs on current developments and changes in the law and the administration of criminal
35 justice;

36 (5) The establishment and implementation of uniform reporting procedures for prosecuting
37 attorneys and their professional staffs in order to maintain and to provide accurate and timely data
38 and information relative to criminal prosecutorial matters;

39 (6) The acceptance and expenditure of grants, moneys for reimbursement of expenses,
40 gifts and acceptance of services from any public or private source;

41 (7) The entering into of agreements and contracts with public or private agencies, groups,
42 organizations or educational institutions;

43 (8) The identification of experts and other resources for use by prosecutors in criminal
44 matters;

45 (9) The recommendation to the Legislature or the Supreme Court of Appeals of the State of
46 West Virginia on measures required, or procedural rules to be promulgated, to make uniform the
47 processing of juvenile cases in the 55 counties of the state; and

48 (10) The development of a written handbook for prosecutors and their assistants to use
49 which delineates relevant information concerning the elements of various crimes in West Virginia

50 and other information the institute considers appropriate; and

51 (11) The establishment, with the cooperation of county commissions, to maintain a list of
52 contingency prosecuting attorneys for use if a prosecuting attorney cites insufficient time or
53 personnel to adequately prosecute an offender and the appointment of a special prosecuting
54 attorney as provided in subsection (e) of this section.

55 (e) Each prosecuting attorney is subject to appointment by the institute to serve as a
56 special prosecuting attorney in any county where the prosecutor for that county or his or her office
57 has been disqualified from participating in a particular criminal case, a juvenile delinquency matter
58 or a matter involving child abuse neglect pursuant to chapter forty-nine of this code, or in any
59 matter wherein a special prosecutor previously appointed has failed to take any action thereon
60 within such time as the Executive Director deems unreasonable, not to exceed three terms of court
61 from the date on which the special prosecutor was appointed: *Provided*, That such replacement or
62 original appointment may be any attorney with a license in good standing in this state. The circuit
63 judge of any county of this state, who disqualifies the prosecutor or his or her office from
64 participating in a particular criminal case, a juvenile delinquency matter or a matter involving child
65 abuse or neglect pursuant to chapter forty-nine of this code in that county, shall seek the
66 appointment by the institute of a special prosecuting attorney to substitute for the disqualified
67 prosecutor. The executive director of the institute shall, upon written request to the institute by any
68 circuit judge as a result of disqualification of the prosecutor or for other good cause shown, and
69 upon approval of the executive council, appoint a prosecuting attorney to serve as a special
70 prosecuting attorney. The special prosecuting attorney appointed shall serve without any further
71 compensation other than that paid to him or her by his or her county, except that he or she is
72 entitled to be reimbursed for his or her legitimate expenses associated with travel, mileage and
73 room and board from the county to which he or she is appointed as a prosecutor. The county
74 commission in which county he or she is special prosecutor is responsible for all expenses
75 associated with the prosecution of the criminal action. No person who is serving as a prosecuting

76 attorney or an assistant prosecuting attorney of any county is required to take an additional oath
 77 when appointed to serve as a special prosecuting attorney.

78 (f) The executive director of the institute shall maintain an appointment list that shall
 79 include the names of all fifty-five prosecuting attorneys and that shall also include the names of
 80 any assistant prosecuting attorney who wishes to serve as a special prosecuting attorney upon the
 81 same terms and conditions as set forth in this section. The executive director of the institute, with
 82 the approval of the executive council, shall appoint special prosecuting attorneys from the
 83 appointment list for any particular matter giving due consideration to the proximity of the proposed
 84 special prosecuting attorney's home county to the county requesting a special prosecutor and
 85 giving due consideration to the expertise of the special prosecuting attorney.

86 (g) Each county commission shall pay, on a monthly basis, a special prosecution premium
 87 to the Treasurer of the state for the funding of the West Virginia prosecuting attorneys Institute.
 88 The monthly premiums shall be paid according to the following schedule:

89 **MONTHLY PREMIUMS**

90 Assessed Valuation of Property
 91 of All Classes in the County

92	Category	Minimum	Maximum	Premium
93	A	\$1,500,000,000	Unlimited	\$400
94	B	\$1,000,000,000	\$1,499,999,000	\$375
95	C	\$ 800,000,000	\$ 999,999,000	\$350
96	D	\$ 700,000,000	\$ 799,999,000	\$325
97	E	\$ 600,000,000	\$ 699,999,000	\$300
98	F	\$ 500,000,000	\$ 599,999,000	\$250
99	G	\$ 400,000,000	\$ 499,999,000	\$200
100	H	\$ 300,000,000	\$ 399,999,000	\$150
101	I	\$ 200,000,000	\$ 299,999,000	\$100

102 J -0- \$ 199,999,000 \$ 50

103 (h) Upon receipt of a premium, grant, reimbursement or other funding source, excluding
104 federal funds as provided in article two, chapter four of this code, the Treasurer shall deposit the
105 funds into a special revenue fund to be known as the "West Virginia prosecuting attorneys Institute
106 Fund". All costs of operating the West Virginia prosecuting attorneys Institute shall be paid from
107 the West Virginia prosecuting attorneys Institute Fund upon proper authorization by the executive
108 council or by the executive director of the institute and subject to annual appropriation by the
109 Legislature of the amounts contained within the fund.

110 (i) The institute shall annually, by the first day of the regular Legislative session, provide the
111 Joint Committee on Government and Finance with a report setting forth the activities of the
112 institute and suggestions for legislative action.

113 (j) Neither the institute nor its employees acting in their employment capacity shall engage
114 in activities before governmental bodies which advocate positions on issues other than those
115 issues consistent with the duties of the institute set forth in subsection (d) of this section.

NOTE: The purpose of this bill is to state the mandatory duty of prosecuting attorneys to prosecute persons accused of committing criminal acts; duty to create file on cases not prosecuted; and when the county commission, in cooperation with the West Virginia prosecuting attorneys Institute, shall select and appoint a special prosecuting attorney.

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