

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3420

FISCAL
NOTE

By Delegate Young

[Introduced February 13, 2023; Referred to the
Committee on the Judiciary then Finance]

1 A BILL to amend and reenact §7-4-6 of the Code of West Virginia, 1931, as amended; to amend
 2 and reenact §15-9B-1 of said code; and to amend and reenact §61-8B-16 of said code, all
 3 relating to the reimbursement of sexual assault forensic medical examinations; setting the
 4 rate of reimbursement; and providing for an annual report to the Legislative Oversight
 5 Commission on Health and Human Resource Accountability estimating the sustainability
 6 of the Forensic Medical Examination Fund .

Be it enacted by the Legislature of West Virginia.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§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 fifty-five elected county prosecuting attorneys in the state.
 3 The Institute shall meet at least once each calendar year and the presence of twenty-eight of the
 4 fifty-five prosecutors at any meeting constitutes a quorum for the conduct of the Institute's
 5 business.

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

12 (c) There is continued the position of Executive Director of the West Virginia prosecuting
 13 attorneys Institute to be employed by the executive council of the institute. The Executive Director
 14 of the West Virginia prosecuting attorneys Institute shall serve at the will and pleasure of the
 15 executive council of the institute. The executive director shall be licensed to practice law in the

16 State of West Virginia and shall devote full time to his or her official duties and may not engage in
17 the private practice of law.

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

20 (1) The provision for special prosecuting attorneys to pursue a criminal matter, a juvenile
21 delinquency matter or a matter involving child abuse neglect pursuant to chapter forty-nine of this
22 code, or in any matter wherein a special prosecutor previously appointed has failed to take any
23 action thereon within such time as the Executive Director deems unreasonable, not to exceed
24 three terms of court from the date on which the special prosecutor was appointed: *Provided*, That
25 such replacement or original appointment may be any attorney with a license in good standing in
26 this state in any county upon the request of a circuit court judge of that county and upon the
27 approval of the executive council;

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

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

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

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

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

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

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

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

49 (10) The development of a written handbook for prosecutors and their assistants to use
50 which delineates relevant information concerning the elements of various crimes in West Virginia
51 and other information the institute considers appropriate.

52 (e) Each prosecuting attorney is subject to appointment by the institute to serve as a
53 special prosecuting attorney in any county where the prosecutor for that county or his or her office
54 has been disqualified from participating in a particular criminal case, a juvenile delinquency matter
55 or a matter involving child abuse neglect pursuant to chapter forty-nine of this code, or in any
56 matter wherein a special prosecutor previously appointed has failed to take any action thereon
57 within such time as the Executive Director deems unreasonable, not to exceed three terms of court
58 from the date on which the special prosecutor was appointed: *Provided*, That such replacement or
59 original appointment may be any attorney with a license in good standing in this state. The circuit
60 judge of any county of this state, who disqualifies the prosecutor or his or her office from
61 participating in a particular criminal case, a juvenile delinquency matter or a matter involving child
62 abuse or neglect pursuant to chapter forty-nine of this code in that county, shall seek the
63 appointment by the institute of a special prosecuting attorney to substitute for the disqualified
64 prosecutor. The executive director of the institute shall, upon written request to the institute by any
65 circuit judge as a result of disqualification of the prosecutor or for other good cause shown, and
66 upon approval of the executive council, appoint a prosecuting attorney to serve as a special
67 prosecuting attorney. The special prosecuting attorney appointed shall serve without any further

68 compensation other than that paid to him or her by his or her county, except that he or she is
 69 entitled to be reimbursed for his or her legitimate expenses associated with travel, mileage and
 70 room and board from the county to which he or she is appointed as a prosecutor. The county
 71 commission in which county he or she is special prosecutor is responsible for all expenses
 72 associated with the prosecution of the criminal action. No person who is serving as a prosecuting
 73 attorney or an assistant prosecuting attorney of any county is required to take an additional oath
 74 when appointed to serve as a special prosecuting attorney.

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

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

86 **MONTHLY PREMIUMS**

87 Assessed Valuation of Property
 88 of All Classes in the County

89	Category	Minimum	Maximum	Premium
90	A	\$1,500,000,000	Unlimited	\$400
91	B	\$1,000,000,000	\$1,499,999,000	\$375
92	C	\$ 800,000,000	\$ 999,999,000	\$350
93	D	\$ 700,000,000	\$ 799,999,000	\$325

94	E	\$ 600,000,000	\$ 699,999,000	\$300
95	F	\$ 500,000,000	\$ 599,999,000	\$250
96	G	\$ 400,000,000	\$ 499,999,000	\$200
97	H	\$ 300,000,000	\$ 399,999,000	\$150
98	I	\$ 200,000,000	\$ 299,999,000	\$100
99	J	-0-	\$ 199,999,000	\$ 50

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

107 (i) The institute shall annually, by the first day of the regular Legislative session, provide the
 108 Joint Committee on Government and Finance with a report setting forth the activities of the
 109 institute and suggestions for legislative action. The institute shall annually, by the first day of the
 110 regular Legislative session, provide the Legislative Oversight Commission on Health and Human
 111 Resource Accountability with a report estimating the sustainability of the Forensic Medical
 112 Examination Fund set forth in §61-8B-15 of this code, based on the last three years of
 113 reimbursement costs associated with the timely and efficient collection and submission of forensic
 114 medical evidence in sexual assault cases.

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

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 9B. SEXUAL ASSAULT EXAMINATION NETWORK.**§15-9B-1. Sexual Assault Forensic Examination Commission.**

1 (a) The Sexual Assault Forensic Examination Commission is continued as a subcommittee
2 of the Governor's Committee on Crime, Delinquency and Correction. The purpose of the
3 commission is to establish, manage, and monitor a statewide system to facilitate the timely and
4 efficient collection, submission, testing, retention, tracking, and disposition of forensic evidence in
5 sexual assault cases. As used in this article, the word "commission" means the Sexual Assault
6 Forensic Examination Commission.

7 (b) Membership on the commission shall consist of the following:

8 (1) A representative chosen from the membership of the West Virginia Prosecuting
9 Attorneys Association who shall be chosen by the president of that organization;

10 (2) A representative chosen from the membership of the West Virginia Association of
11 Counties who shall be chosen by the executive director of that organization;

12 (3) The Commissioner of the Bureau for Public Health, or his or her designee;

13 (4) A representative from the State Police Forensic Laboratory who shall be chosen by the
14 Superintendent of the West Virginia State Police;

15 (5) A representative from the membership of the West Virginia Child Advocacy Network;

16 (6) The President of the West Virginia Hospital Association, or his or her designee;

17 (7) A representative from the membership of the West Virginia Foundation for Rape and
18 Information Services who shall be chosen by the state coordinator of that organization;

19 (8) A representative of the West Virginia University Forensic and Investigative Sciences
20 Program who shall be chosen by the director of that program; and

21 (9) A representative of the Marshall University Forensic Science Center who shall be
22 chosen by the director of that organization.

23 (c) If any of the representative organizations listed in subsection (b) of this section cease to
24 exist, the director of the Division of Administrative Services, or his or her designee, may select a

25 person from a similar organization.

26 (d) The director of the Division of Administrative Services, or his or her designee, shall
27 appoint the following additional members of the commission:

28 (1) An emergency room physician licensed to practice and practicing medicine in this state;

29 (2) A victim advocate from a rape crisis center employed in this state;

30 (3) A sexual assault nurse examiner who is engaged in an active practice within this state;

31 (4) A law-enforcement officer in this state with experience in sexual assault investigations;

32 (5) A health care provider with pediatric and child abuse expertise licensed in this state;

33 and

34 (6) A director of a child advocacy center licensed and operating in this state.

35 (e) The commission shall establish mandatory statewide protocols for conducting sexual
36 assault forensic examinations, including designating locations and providers to perform forensic
37 examinations, establishing minimum qualifications and procedures for performing forensic
38 examinations, and establishing protocols to assure the proper collection of evidence. The
39 commission shall bi-annually review the adequacy of reimbursement rates for forensic medical
40 examinations and make such information available to the Legislative Oversight Commission on
41 Health and Human Resource Accountability.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-16. Payment for costs of forensic medical examination.

1 (a) When any person alleges that he or she has been the victim of an offense proscribed by
2 this article, the West Virginia prosecuting attorneys institute shall pay to a licensed medical facility
3 from the forensic medical examination fund the cost of the forensic medical examination for the
4 alleged victim on the following conditions and in the following manner:

5 (1) The payment shall be \$1,000 unless changed by procedural rule, in accordance with

6 §61-8B-18 of this code, and cover all reasonable, customary and usual costs of the forensic
7 medical examination;

8 (2) The costs of additional nonforensic procedures performed by the licensed medical
9 facility, including, but not limited to, prophylactic treatment, treatment of injuries, testing for
10 pregnancy and testing for sexually transmitted diseases, may not be paid from the fund: *Provided,*
11 That nothing in this section shall be construed to prohibit a licensed medical facility from seeking
12 payment for services referred to in this subdivision from the alleged victim or his or her insurer, if
13 any;

14 (3) The forensic medical examination must have been conducted within a reasonable time
15 of the alleged violation;

16 (4) The licensed medical facility must apply for payment of the costs of a forensic medical
17 examination from the fund within a reasonable time of the examination;

18 (5) The licensed medical facility shall certify that the forensic medical examination was
19 performed and may submit a statement of charges to the West Virginia prosecuting attorneys
20 Institute for payment from the fund.

21 (b) No licensed medical facility may collect the costs of a forensic medical examination
22 from the alleged victim of a violation of this article or from the alleged victim's insurance coverage,
23 if any.

24 (c) Nothing in this section shall be construed to require an alleged victim of sexual assault
25 to participate in the criminal justice system or to cooperate with law enforcement in order to be
26 provided a forensic medical examination pursuant to the provisions of this section.

NOTE: The purpose of this bill is to set the reimbursement rate paid by the Prosecuting Attorneys Institute for the cost of forensic medical examinations of persons alleged to be the victim of rape, and provides for an annual report to the Legislative Oversight Commission on Health and Human Resource Accountability estimating the sustainability of the Forensic Medical Examination Fund.

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