

# WEST VIRGINIA LEGISLATURE

## 2024 REGULAR SESSION

Introduced

### House Bill 4677

FISCAL  
NOTE

By Delegate Young

[Introduced January 12, 2024; 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 55 elected county prosecuting attorneys in the state. The  
 3 Institute shall meet at least once each calendar year and the presence of 28 of the 55 prosecutors  
 4 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,  
21 or 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.

51 (e) Each prosecuting attorney is subject to appointment by the institute to serve as a  
52 special prosecuting attorney in any county where the prosecutor for that county or his or her office  
53 has been disqualified from participating in a particular criminal case, a juvenile delinquency matter  
54 or a matter involving child abuse neglect pursuant to Chapter 49 of this code, or in any matter  
55 wherein a special prosecutor previously appointed has failed to take any action thereon within  
56 such time as the Executive Director deems unreasonable, not to exceed three terms of court from  
57 the date on which the special prosecutor was appointed: *Provided*, That such replacement or  
58 original appointment may be any attorney with a license in good standing in this state. The circuit  
59 judge of any county of this state, who disqualifies the prosecutor or his or her office from  
60 participating in a particular criminal case, a juvenile delinquency matter or a matter involving child  
61 abuse or neglect pursuant to chapter forty-nine of this code in that county, shall seek the  
62 appointment by the institute of a special prosecuting attorney to substitute for the disqualified  
63 prosecutor. The executive director of the institute shall, upon written request to the institute by any  
64 circuit judge as a result of disqualification of the prosecutor or for other good cause shown, and  
65 upon approval of the executive council, appoint a prosecuting attorney to serve as a special  
66 prosecuting attorney. The special prosecuting attorney appointed shall serve without any further  
67 compensation other than that paid to him or her by his or her county, except that he or she is

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

74 (f) The executive director of the institute shall maintain an appointment list that shall  
 75 include the names of all 55 prosecuting attorneys and that shall also include the names of any  
 76 assistant prosecuting attorney who wishes to serve as a special prosecuting attorney upon the  
 77 same terms and conditions as set forth in this section. The executive director of the institute, with  
 78 the approval of the executive council, shall appoint special prosecuting attorneys from the  
 79 appointment list for any particular matter giving due consideration to the proximity of the proposed  
 80 special prosecuting attorney's home county to the county requesting a special prosecutor and  
 81 giving due consideration to the expertise of the special prosecuting attorney.

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

85 **MONTHLY PREMIUMS**

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

88	Category	Minimum	Maximum	Premium
89	A	\$1,500,000,000	Unlimited	\$400
90	B	\$1,000,000,000	\$1,499,999,000	\$375
91	C	\$ 800,000,000	\$ 999,999,000	\$350
92	D	\$ 700,000,000	\$ 799,999,000	\$325
93	E	\$ 600,000,000	\$ 699,999,000	\$300

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

99 (h) Upon receipt of a premium, grant, reimbursement or other funding source, excluding  
 100 federal funds as provided in §4-2-1 *et seq.* of this code, the Treasurer shall deposit the funds into a  
 101 special revenue fund to be known as the "West Virginia prosecuting attorneys Institute Fund". All  
 102 costs of operating the West Virginia prosecuting attorneys Institute shall be paid from the West  
 103 Virginia prosecuting attorneys Institute Fund upon proper authorization by the executive council or  
 104 by the executive director of the institute and subject to annual appropriation by the Legislature of  
 105 the amounts contained within the fund.

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

114 (j) Neither the institute nor its employees acting in their employment capacity shall may  
 115 engage in activities before governmental bodies which advocate positions on issues other than  
 116 those 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~~ may be construed to prohibit a licensed medical facility from  
12 seeking payment for services referred to in this subdivision from the alleged victim or his or her  
13 insurer, if any;

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

16 (4) The licensed medical facility ~~must~~ shall apply for payment of the costs of a forensic  
17 medical 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~~ may be construed to require an alleged victim of sexual  
25 assault to participate in the criminal justice system or to cooperate with law enforcement in order to  
26 be 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.