

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 488

By Senators Karnes, Azinger, Chapman, Clements,
Hunt, Martin, Maynard, Rucker, Smith, Stover, Stuart,
Taylor, Hamilton, and Roberts

[Introduced January 18, 2024; referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

1 A BILL to amend and reenact §5-3-2 of the Code of West Virginia, 1931, as amended, relating to
 2 providing investigatory powers and non-exclusive prosecutorial authority over public
 3 integrity cases to the Attorney General.

Be it enacted by the Legislature of West Virginia:

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 shall appear
 3 in any cause in which the state is interested that is pending in any other court in the state, on the
 4 written request of the Governor, and when such appearance is entered he shall take charge of and
 5 have control of such cause; he shall defend all actions and proceedings against any state officer in
 6 his official capacity in any of the courts of this state or any of the federal courts when the state is not
 7 interested in such cause against such officer, but should the state be interested against such
 8 officer, he shall appear for the state; he shall institute and prosecute all civil actions and
 9 proceedings in favor of or for the use of the state which may be necessary in the execution of the
 10 official duties of any state officer, board or commission on the written request of such officer, board
 11 or commission.

12 (1) To accomplish the responsibilities contained in §5-3-2(a) and (b) of this code, the
 13 Attorney General may initiate investigations into cases involving public integrity based on any
 14 information that would cause the Attorney General to believe that such an offense against the
 15 state of West Virginia has occurred. The cause for an investigation can be, but is not limited to,
 16 information from the public, other agencies or officers, or originating in the Office of the Attorney
 17 General and based on the existence of an articulable belief that an offense against the public
 18 integrity of West Virginia has occurred. The Attorney General has non-exclusive jurisdiction to
 19 investigate and prosecute matters arising before the West Virginia Ethics Commission.

20 (A) This jurisdiction shall apply to any elected official in West Virginia and specifically to the
21 Governor, Board of Public Works members, members of the West Virginia Senate and House of
22 Delegates, any officers elected by those bodies and attorneys retained or employed by those
23 bodies, state and local boards of education, county school superintendents, elected county and
24 municipal officials, county and city administrators, and any official appointed by the governor
25 requiring confirmation by the Senate.

26 (B) It shall also include private citizens attempting to illegally influence, induce, intimidate,
27 bribe, or interfere with the above-named officials.

28 (C) This non-exclusive jurisdiction shall be limited to cases involving misfeasance,
29 malfeasance, nonfeasance, fraud as part of official duties, election crimes, bribes, kickbacks or
30 illegal gifts to or from public officials, illegal intimidation or interference with an official or by an
31 official, or any other state law related directly to prosecuting the above crimes.

32 (2) If, in the course of this investigation, the Attorney General finds probable cause,
33 reasonable suspicion, or credible evidence to believe another party has committed offenses
34 against the state, such as waste, fraud, or malfeasance, he shall have non-exclusive prosecutorial
35 jurisdiction to investigate and prosecute said offenses.

36 (3) The Attorney General shall have the power to hire such staff, or repurpose existing
37 staff, to ensure that any investigation can be thoroughly, quickly, and satisfactorily completed.

38 (4) Nothing in this section shall be construed as limiting jurisdiction for any other body
39 within the state nor requiring the Attorney General to investigate all claims that may be handled by
40 other agencies or officers.

41 (5) The Attorney General will establish legislative rules regarding processes for:

42 (A) Opening and closing an investigation.

43 (B) Establishing a clear process for county prosecutors to voluntarily refer covered crimes
44 to the Attorney General.

45 (C) Establishing a clear process for any covered official to report attempts to illegally bribe,

46 influence, induce, intimidate, or interfere with said covered official's duties.

47 (D) The Attorney General shall have the discretion to choose whether to inform the
48 members of the Joint Committee on Special Investigations related to ongoing investigations.

49 (E) He or she may also cooperate with any member of federal, state, or local law
50 enforcement or county prosecutors for the purposes of furthering an investigation.

51 (F) He or she shall report annually to members of the legislature on the number and type of
52 ongoing cases being investigated, without including identifying information that could compromise
53 ongoing investigations.

54 (G) He or she shall report annually the disposition of any investigation involving a
55 conviction or adjudication including the name and office of the person as well as details of the
56 crime and final disposition of the case, except where the full investigation has not yet been
57 completed.

58 (H) He or she shall establish referral procedures for local prosecutors when evidence of
59 crimes not covered by this law are uncovered during an investigation.

60 (b) Further, he shall, when requested by the prosecuting attorney of a county wherein a
61 state institution of correction is located, provide attorneys for appointment as special prosecuting
62 attorneys to assist the prosecuting attorney of said county in the prosecution of criminal
63 proceedings when, in the opinion of the circuit judge of said county, or a justice of the West Virginia
64 Supreme Court of Appeals, extraordinary circumstances exist at said institution which render the
65 financial resources of the office of the prosecuting attorney inadequate to prosecute said cases; he
66 may consult with and advise the several prosecuting attorneys in matters relating to the official
67 duties of their office, and may require a written report from them of the state and condition of the
68 several causes, in which the state is a party, pending in the courts of their respective counties; he
69 may require the several prosecuting attorneys to perform, within the respective counties in which
70 they are elected, any of the legal duties required to be performed by the Attorney General which
71 are not inconsistent with the duties of the prosecuting attorneys as the legal representatives of

72 their respective counties; when the performance of any such duties by the prosecuting attorney
73 conflicts with his duties as the legal representative of his county, or for any reason any prosecuting
74 attorney is disqualified from performing such duties, the Attorney General may require the
75 prosecuting attorney of any other county to perform such duties in any county other than that in
76 which such prosecuting attorney is elected and for the performance of which duties outside of the
77 county in which he is elected the prosecuting attorney shall be paid his actual traveling and other
78 expenses out of the appropriation for contingent expenses for the department for which such
79 services are rendered; the Attorney General shall keep in proper books, a register of all causes
80 prosecuted or defended by him in behalf of the state or its officers and of the proceedings had in
81 relation thereto, and deliver the same to his successor in office; and he shall preserve in his office
82 all his official opinions and publish the same in his biennial report.

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

NOTE: The purpose of this bill is to provide non-exclusive prosecutorial authority over public integrity cases to the Attorney General of West Virginia.

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