
WEST VIRGINIA CODE CHAPTER 7
ARTICLE 4

WV Legislature

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

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

(b) (1) In furtherance of a prosecuting attorney's duty to investigate and prosecute criminal offenses, a prosecuting attorney and assistant prosecuting attorneys under his or her supervision shall have the authority to arrest any person committing a violation of the criminal laws of the State of West Virginia, the United States, or a violation of Rule 42 of the West Virginia Rules of Criminal Procedure which occur within the office of the prosecuting attorney and committed in the presence of the prosecuting attorney or assistant prosecuting attorney.

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

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

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

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

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

(4) Any policy instituted pursuant to paragraph (A), subdivision (3) of this subsection shall include provisions which: (i) Preclude or remove a person from participation in the concealed firearm program who is subject to any disciplinary or legal action which could result in the loss of the authority to participate in the program; (ii) preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and; (iii) prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defined in §17C-5-2 of this code.

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

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

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

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

§7-4-1a. Eligibility of prosecuting attorneys.

To be eligible to be a candidate for the office of prosecuting attorney, a person shall be a duly licensed attorney in the State of West Virginia at the time of his or her filing for office.

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§7-4-2. Rewards for apprehension of persons charged with crime and expenditure of money for detection of crime; appointment of investigators of crime.

The prosecuting attorney of any county, with the approval of the county commission, or of the Governor, or of the court of the county vested with authority to try criminal offenses, or of the judge thereof in vacation, may, within his discretion, offer rewards for the apprehension of persons charged with crime, or may expend money for the detection of crime. Any money expended under this section shall, when approved by the prosecuting attorney, be paid out of the county fund, in the same manner as other county expenses are paid: Provided, That the prosecuting attorneys of the several counties of the state may, with the approval of the county commissions of their respective counties, entered of record, appoint to assist them in the discharge of their official duties, trained and qualified full-time or part-time investigators of crime. Such full-time investigators shall accept no other public employment or employment in a private police or investigative capacity during the term of their appointment without prior approval of the county commission and county prosecuting attorney and shall be paid such salary and expenses as may be fixed by the county commission. Such expenses shall be itemized and sworn to by the investigator upon presentation to the county commission.

Notwithstanding any other provision of this code to the contrary, the prosecuting attorney of any county, with the consent of the judge of the court of competent jurisdiction and the county commission, may appoint an investigator of crime who need not be a resident of this state.

§7-4-3. Employment of counsel for civil matters; compensation of counsel.

The county commission of any county shall have authority to employ such legal counsel as it may deem necessary for the purpose of advising such county commission on matters of a civil nature and to conduct any litigation of a civil nature to which the county is a party. The county commission shall also have the authority to fix the compensation of any such counsel so employed, and to pay the same out of the county treasury. Any counsel so employed may be removed at the pleasure of the county commission.

§7-4-4. Prosecutor's advisory council; victim advocates; participation in multidisciplinary planning process.

The prosecutor's advisory council composed of elected prosecuting attorneys of each county of the state or a designated member of their staff is continued. The prosecutor's advisory council shall meet not less than one time each year. Annually, the council shall elect from among its membership a chairman of the council who shall set the agenda for the council's meetings and shall appoint necessary committees and direct the work of the council in carrying out its duties under the provisions of this section.

The council shall provide advice, assistance, training, and leadership to the offices of the various county prosecuting attorneys of this state in criminal and civil cases which involve child abuse or neglect or sexual assault or sexual abuse of children. The council shall also provide advice and assistance to the Secretary of the Department of Human Services in the implementation of a multidisciplinary planning process as set forth in §49-4-401 through §49-4-413 of this code.

The council may seek funds and programs to provide each prosecuting attorney's office with a staff person to assist children who are crime victims to obtain services and assistance from other agencies and programs in the community. Prosecuting attorneys shall be reimbursed by their respective county commissions for necessary expenses actually incurred when attending meetings of the council.

The council may apply for and receive funds from any grant program of any agency or institution in the United States, public or private, to be used for carrying out the purposes of this section.

§7-4-5. Multidisciplinary investigative teams.

The prosecuting attorney of each county in the state shall maintain a multidisciplinary investigative team, in accordance with the provisions of §49-4-402 of this code.

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§7-4-6. West Virginia Prosecuting Attorneys Institute.

(a) There is continued the West Virginia Prosecuting Attorneys Institute, a public body whose membership shall consist of the 55 elected county prosecuting attorneys in the state. The Institute shall meet at least once each calendar year and the presence of 28 of the 55 prosecutors at any meeting constitutes a quorum for the conduct of the Institute's business.

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

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

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

(1) The provision for special prosecuting attorneys to pursue a criminal matter, a juvenile delinquency matter, or a matter involving child abuse neglect pursuant to Chapter 49 of this code, or in any matter in which a special prosecutor previously appointed has failed to take any action on the matter within such time as the executive director considers unreasonable, not to exceed three terms of court from the date on which the special prosecutor was appointed: *Provided*, That such replacement or original appointment may be any attorney with a license in good standing in this state in any county upon the request of a circuit court judge of that county and upon the approval of the executive council;

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

(3) The establishment of a training program for all newly appointed or newly elected prosecuting attorneys;

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

- (5) The compilation and dissemination of information on behalf of prosecuting attorneys and their staffs on current developments and changes in the law and the administration of criminal justice;
- (6) The establishment and implementation of uniform reporting procedures for prosecuting attorneys and their professional staffs in order to maintain and to provide accurate and timely data and information relative to criminal prosecutorial matters;
- (7) The acceptance and expenditure of grants, moneys for reimbursement of expenses, gifts, and acceptance of services from any public or private source;
- (8) The entering into of agreements and contracts with public or private agencies, groups, organizations, or educational institutions;
- (9) The identification of experts and other resources for use by prosecutors in criminal matters;
- (10) The recommendation to the Legislature or the Supreme Court of Appeals of the State of West Virginia on measures required, or procedural rules to be promulgated, to make uniform the processing of juvenile cases in the 55 counties of the state; and
- (11) The development of a written handbook for prosecutors and their assistants to use which delineates relevant information concerning the elements of various crimes in West Virginia and other information the institute considers appropriate.
- (e) Each prosecuting attorney is subject to appointment by the institute to serve as a special prosecuting attorney in any county where the prosecutor for that county or his or her office has been disqualified from participating in a particular criminal case, a juvenile delinquency matter, or a matter involving child abuse neglect pursuant to Chapter 49 of this code, or in any matter in which a special prosecutor previously appointed has failed to take any action on the matter within such time as the executive director considers unreasonable, not to exceed three terms of court from the date on which the special prosecutor was appointed: *Provided*, That such replacement or original appointment may be any attorney with a license in good standing in this state. The circuit judge of any county of this state, who disqualifies the prosecutor or his or her office from participating in a particular criminal case, a juvenile delinquency matter, or a matter involving child abuse or neglect pursuant to chapter 49 of this code in that county, shall seek the appointment by the institute of a special prosecuting attorney to substitute for the disqualified prosecutor. The executive director of the institute shall, upon written request to the institute by any circuit judge as a result of disqualification of the prosecutor or for other good cause shown, and upon approval of the executive council, appoint a prosecuting attorney to serve as a special prosecuting attorney. The special prosecuting attorney appointed shall serve without any further compensation other than that paid to him or her by his or her county, except that he or she is entitled to be reimbursed for his or her legitimate expenses associated with travel, mileage, and room and board from the county to which he or she is appointed as a prosecutor. The county commission in which

county he or she is special prosecutor is responsible for all expenses associated with the prosecution of the criminal action. A person who is serving as a prosecuting attorney or an assistant prosecuting attorney of any county is not required to take an additional oath when appointed to serve as a special prosecuting attorney.

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

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

MONTHLY PREMIUMS

Assessed Valuation of Property

of All Classes in the County

Category Minimum Maximum Premium

A	\$1,500,000,000	Unlimited	\$400
B	\$1,000,000,000	\$1,499,999,000	\$375
C	\$ 800,000,000	\$ 999,999,000	\$350
D	\$ 700,000,000	\$ 799,999,000	\$325
E	\$ 600,000,000	\$ 699,999,000	\$300
F	\$ 500,000,000	\$ 599,999,000	\$250
G	\$ 400,000,000	\$ 499,999,000	\$200
H	\$ 300,000,000	\$ 399,999,000	\$150
I	\$ 200,000,000	\$ 299,999,000	\$100
J	-0-	\$ 199,999,000	\$ 50

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

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

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

§7-4-6a.

Repealed.

Acts, 2009 Reg. Sess., Ch. 178.

WV Legislature