

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 4456**

BY DELEGATES SKINNER MANCHIN

[Introduced February 9, 2016; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §7-4-1 and §7-4-2 of the Code of West Virginia, 1931, as amended;  
 2 and to amend said code by adding thereto a new section, designated §7-4-7, all relating  
 3 to establishing the prosecuting attorney Modernization Act; eliminating gendered  
 4 language referring to prosecuting attorneys; clarifying the duties of the prosecuting  
 5 attorney; and codifying qualifications for the position of prosecuting attorney.

*Be it enacted by the Legislature of West Virginia:*

1 That §7-4-1 and §7-4-2 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted; and that said code be amended by adding thereto a new section, designated §7-4-7,  
 3 all to read as follows:

**ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.**

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

1 (a) It shall be is the duty of the prosecuting attorney to attend to the criminal business of  
 2 the state in the county in which ~~he~~ the prosecuting attorney is ~~elected~~ seated and qualified.  
 3 Qualifications for the office of prosecuting attorney are set forth in section seven of this article.  
 4 ~~and~~ When ~~he~~ the prosecuting attorney has information of the violation of any penal law committed  
 5 within ~~such~~ the county in which he or she serves, ~~he~~ the prosecuting attorney shall institute and  
 6 prosecute all necessary and proper proceedings against the offender, and may in such case issue  
 7 or cause to be issued a summons for any material witness. ~~he may deem material~~ Every public  
 8 officer shall give ~~him~~ the prosecuting attorney information of the violation of any penal law  
 9 committed within ~~his~~ the county in which the prosecuting attorney serves. For the purpose of  
 10 instituting and maintaining effective criminal justice policy, the prosecuting attorney shall work  
 11 with, and maintain communication with, state and local public officials, state and local law-  
 12 enforcement organizations, and community organizations.

13 (b) In addition to duties set forth in subsection (a) of this section, it shall also be is also the  
 14 duty of the prosecuting attorney to:

15 (1) Attend to civil suits in such county in which the state, or any department, commission

16 or board thereof, is interested, and to advise, attend to, bring, prosecute or defend, as the case  
17 may be, all matters, actions, suits and proceedings in which such county or any county board of  
18 education is interested;

19 ~~(2) It shall be the duty of the prosecuting attorney to~~ Keep his the office open in the charge  
20 of a responsible person during the hours polls are open on general, primary and special county-  
21 wide election days, and the prosecuting attorney, or ~~his~~ assistant prosecuting attorney, if any,  
22 shall be available for the purpose of advising election officials;

23 ~~(3) It shall be the further duty of the prosecuting attorney~~ When requested by the Attorney  
24 General, to perform or to assist the Attorney General in performing, in the county in which ~~he~~ the  
25 prosecuting attorney is elected, any legal duties required to be performed by the Attorney General,  
26 and which are not inconsistent with the duties of the prosecuting attorney as the legal  
27 representative of ~~such~~ the county;

28 ~~(4) It shall also be the duty of the prosecuting attorney,~~ When requested by the Attorney  
29 General, to perform or to assist the Attorney General in performing, any legal duties required to  
30 be performed by the Attorney General, in any county other than that in which ~~such~~ the prosecuting  
31 attorney is ~~elected~~ seated, and for the performance of any ~~such~~ duties in any county other than  
32 that in which ~~such~~ the prosecuting attorney is elected ~~he~~ the prosecuting attorney shall be paid  
33 his or her actual expenses; and

34 ~~(5) Upon the request of the Attorney General, the prosecuting attorney shall~~ make a written  
35 report of the state and condition of the several causes in which the state is a party, pending in ~~his~~  
36 the county in which the prosecuting attorney serves, and upon any matters referred to ~~him~~ the  
37 prosecuting attorney by the Attorney General as provided by law.

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

1 (a) The prosecuting attorney of any county, with the approval of the county commission,  
2 or of the Governor, or of the court of the county vested with authority to try criminal offenses, or

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

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

**§7-4-7. Qualifications of the prosecuting attorney.**

1 Beginning January 1, 2017, all prosecuting attorneys, at the time of taking office, and  
 2 throughout the term of service shall:

3 (1) Be at least 18 years of age;

4 (2) Be a member in good standing with the West Virginia State Bar; and

5 (3) Be a resident of, and domiciled in the State of West Virginia, and if serving in a Class I, II,  
 6 III, or IV county, as defined under section three, article seven, of this chapter, be a resident of,  
 7 and domiciled in, the county where the office is held.

NOTE: The purpose of this bill is to modernize the gendered references to the prosecuting attorney and sets forth the qualifications to be 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.