

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2681**

BY DELEGATE COWLES, STEELE, CANESTRARO, MILLER,

LOVEJOY AND KESSINGER

[Introduced January 25, 2019; Referred  
to the Committee on Health and Human Resources  
then the Judiciary.]

1 A BILL to amend and reenact §49-4-501 of the Code of West Virginia, 1931, as amended, relating  
 2 to duties of prosecuting attorneys in matters of abuse or neglect of children and to  
 3 resolution of conflicts between a prosecuting attorney and the Department of Health and  
 4 Human Resources.

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

**ARTICLE 4. COURT ACTIONS.**

PART V. DUTIES OF THE PROSECUTING ATTORNEY.

**§49-4-501. Prosecuting attorney representation of the Department of Health and Human Resources; conflict resolution.**

1 (a) The prosecuting attorney shall render to the Department of Health and Human  
 2 Resources, without additional compensation, the legal services as the department may require.  
 3 This section shall not be construed to prohibit the department from developing plans for  
 4 cooperation with courts, prosecuting attorneys, and other law-enforcement officials in a manner  
 5 as to permit the state and its citizens to obtain maximum fiscal benefits under federal laws, rules  
 6 and regulations.

7 (b) Nothing in this code may be construed to limit the authority of a prosecuting attorney  
 8 to file an abuse or neglect petition, including the duties and responsibilities owed to its client the  
 9 Department of Health and Human Resources, in his or her fulfillment of the provisions of this  
 10 article.

11 (c) Prosecuting attorneys have the right and responsibility to represent the public interest  
 12 in protecting abused and neglected children when their position conflicts with that of the  
 13 department. Whenever, pursuant to this chapter, a prosecuting attorney acts as counsel for the  
 14 Department of Health and Human Resources, and a dispute arises between the prosecuting  
 15 attorney and the department's representative, ~~because an action proposed by the other is~~  
 16 ~~believed to place the child at imminent risk of abuse or serious neglect~~ either the prosecuting

17 attorney or the department's representative may contact the secretary of the department and the  
18 executive director of the West Virginia Prosecuting Attorneys Institute for prompt mediation and  
19 resolution. The secretary may designate either his or her general counsel or the director of social  
20 services to act as his or her designee and the executive director may designate an objective  
21 prosecuting attorney as his or her designee.

NOTE: The purpose of this bill is to add language to the West Virginia Code to provide guidance for prosecuting attorneys in cases involving abused and neglected children and a means of resolving conflicts with representatives of the DHHR.

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