

# STATE OF NEW YORK

5285--A

2017-2018 Regular Sessions

## IN ASSEMBLY

February 7, 2017

Introduced by M. of A. PERRY, ABINANTI, ARROYO, AUBRY, BARRON, BICHOTTE, BRONSON, CAHILL, DAVILA, DICKENS, DINOWITZ, GANTT, GOTTFRIED, HARRIS, HEVESI, HYNDMAN, JEAN-PIERRE, JENNE, KIM, MAGNARELLI, MONTESANO, MOSLEY, ORTIZ, PRETLOW, RICHARDSON, RIVERA, RODRIGUEZ, SEAWRIGHT, SEPULVEDA, SIMOTAS, SOLAGES, STECK, TITUS, VANEL, WALKER, WILLIAMS, JAFFEE, D'URSO, PEOPLES-STOKES, WRIGHT -- Multi-Sponsored by -- M. of A. CARROLL, COOK, FAHY, FARRELL, HOOPER, LENTOL, LUPARDO, MAGEE, NIOU, O'DONNELL, PICHARDO, SIMON -- read once and referred to the Committee on Judiciary -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the judiciary law, in relation to establishing the commission on prosecutorial conduct

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The judiciary law is amended by adding a new article 15-A to read as follows:

### ARTICLE 15-A

#### STATE COMMISSION ON PROSECUTORIAL CONDUCT

##### Section 499-a. Establishment of commission.

##### 499-b. Definitions.

##### 499-c. State commission on prosecutorial conduct; organization.

##### 499-d. Functions; powers and duties.

##### 499-e. Panels; referees.

##### 499-f. Complaint; investigation; hearing and disposition.

##### 499-g. Confidentiality of records.

##### 499-h. Breach of confidentiality of commission information.

##### 499-i. Resignation not to divest commission or court of appeals of jurisdiction.

##### 499-j. Effect.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD08062-04-7

1     § 499-a. Establishment of commission. A state commission of prosecuto-  
2 rial conduct is hereby established. The commission shall have the  
3 authority to review the conduct of prosecutors upon the filing of a  
4 complaint with the commission to determine whether said conduct as  
5 alleged departs from the applicable statutes, case law, New York Rules  
6 of Professional Conduct, 22 NYCRR 1200, including but not limited to  
7 Rule 3.8 (Special Responsibilities of Prosecutors and Other Government  
8 Lawyers).

9     § 499-b. Definitions. For the purposes of this article the following  
10 terms have the following meanings:

11     1. "Commission" means the state commission on prosecutorial conduct.

12     2. "Prosecutor" means a district attorney or any assistant district  
13 attorney of any county of the state, and the attorney general or any  
14 assistant attorney general of the state, in an action to exact any crim-  
15 inal penalty, fine, sanction or forfeiture.

16     3. "Hearing" means a proceeding under subdivision four of section four  
17 hundred ninety-nine-f of this article.

18     4. "Member of the bar" means a person admitted to the practice of law  
19 in this state for at least five years.

20     § 499-c. State commission on prosecutorial conduct; organization. 1.  
21 The commission shall consist of eleven members, of whom two shall be  
22 appointed by the governor, two by the temporary president of the senate,  
23 one by the minority leader of the senate, two by the speaker of the  
24 assembly, one by the minority leader of the assembly and three by the  
25 chief judge of the court of appeals. Of the members appointed by the  
26 governor one shall be a public defender and one shall be a prosecutor.  
27 Of the members appointed by the chief judge one person shall be a  
28 justice of the appellate division of the supreme court and two shall be  
29 judges of courts other than the court of appeals or appellate division.  
30 Of the members appointed by the legislative leaders, there shall be an  
31 equal number of prosecutors and attorneys providing defense services;  
32 provided, however, that a temporary imbalance in the number of prosecu-  
33 tors and defense attorneys pending new appointments shall not prevent  
34 the commission from conducting business.

35     2. Membership on the commission by a prosecutor shall not constitute  
36 the holding of a public office and no prosecutor shall be required to  
37 take and file an oath of office before serving on the commission. The  
38 members of the commission shall elect one of their number to serve as  
39 chairman during his or her term of office or for a period of two years,  
40 whichever is shorter.

41     3. The persons first appointed by the governor shall have respectively  
42 three and four year terms as he or she shall designate. The persons  
43 first appointed by the chief judge of the court of appeals shall have  
44 respectively two, three and four year terms as he or she shall desig-  
45 nate. The persons first appointed by the temporary president of the  
46 senate shall have respectively three and four year terms as he or she  
47 shall designate. The person first appointed by the minority leader of  
48 the senate shall have a two year term. The persons first appointed by  
49 the speaker of the assembly shall have respectively three and four year  
50 terms as he or she shall designate. The person first appointed by the  
51 minority leader of the assembly shall have a three year term. Each  
52 member of the commission shall be appointed thereafter for a term of  
53 four years. Commission membership of a judge or justice appointed by the  
54 governor or the chief judge shall terminate if such member ceases to  
55 hold the judicial position which qualified him or her for such appoint-  
56 ment. Membership shall also terminate if a member attains a position

1 which would have rendered him or her ineligible for appointment at the  
2 time of his or her appointment. A vacancy shall be filled by the  
3 appointing officer for the remainder of the term.

4 4. If a member of the commission who is a prosecutor is the subject of  
5 a complaint or investigation with respect to his or her qualifications,  
6 conduct, fitness to perform or performance of his or her official  
7 duties, he or she shall be disqualified from participating in any and  
8 all proceedings with respect thereto. If a member of the commission is  
9 employed in the same organization as the subject of a complaint or  
10 investigation with respect to his or her qualifications, conduct,  
11 fitness to perform, or performance of his or her official duties, he or  
12 she shall be disqualified from participating in any and all proceedings  
13 with respect thereto.

14 5. Each member of the commission shall serve without salary or other  
15 compensation, but shall be entitled to receive actual and necessary  
16 expenses incurred in the discharge of his or her duties.

17 6. For any action taken pursuant to subdivisions four through nine of  
18 section four hundred ninety-nine-f or subdivision two of section four  
19 hundred ninety-nine-e of this article, eight members of the commission  
20 shall constitute a quorum of the commission and the concurrence of six  
21 members of the commission shall be necessary. Two members of a three  
22 member panel of the commission shall constitute a quorum of the panel  
23 and the concurrence of two members of the panel shall be necessary for  
24 any action taken.

25 7. The commission shall appoint and at pleasure may remove an adminis-  
26 trator who shall be a member of the bar who is not a prosecutor or  
27 retired prosecutor. The administrator of the commission may appoint such  
28 deputies, assistants, counsel, investigators and other officers and  
29 employees as he or she may deem necessary, prescribe their powers and  
30 duties, fix their compensation and provide for reimbursement of their  
31 expenses within the amounts appropriated therefor.

32 § 499-d. Functions; powers and duties. The commission shall have the  
33 following functions, powers and duties:

34 1. To conduct hearings and investigations, administer oaths or affir-  
35 mations, subpoena witnesses, compel their attendance, examine them under  
36 oath or affirmation and require the production of any books, records,  
37 documents or other evidence that it may deem relevant or material to an  
38 investigation; and the commission may designate any of its members or  
39 any member of its staff to exercise any such powers, provided, however,  
40 that except as is otherwise provided in section four hundred ninety-  
41 nine-e of this article, only a member of the commission or the adminis-  
42 trator shall exercise the power to subpoena witnesses or require the  
43 production of books, records, documents or other evidence. The prose-  
44 cuting agency may inform the commission of its position that the commis-  
45 sion's investigations will substantially interfere with the agency's own  
46 investigation or prosecution. If the prosecuting agency, by affirmation  
47 with specificity and particularity, informs the commission of its basis  
48 for that position, the commission shall only exercise its powers in a  
49 way that will not interfere with an agency's active investigation or  
50 prosecution.

51 2. To confer immunity when the commission deems it necessary and prop-  
52 er in accordance with section 50.20 of the criminal procedure law;  
53 provided, however, that at least forty-eight hours prior written notice  
54 of the commission's intention to confer such immunity is given the  
55 attorney general and the appropriate district attorney.

1 3. To request and receive from any court, department, division, board,  
2 bureau, commission, or other agency of the state or political subdivi-  
3 sion thereof or any public authority such assistance, information and  
4 data as will enable it properly to carry out its functions, powers and  
5 duties.

6 4. To report annually, on or before the first day of March in each  
7 year and at such other times as the commission shall deem necessary, to  
8 the governor, the legislature and the chief judge of the court of  
9 appeals, with respect to proceedings which have been finally determined  
10 by the commission. Such reports may include legislative and administra-  
11 tive recommendations. The contents of the annual report and any other  
12 report shall conform to the provisions of this article relating to  
13 confidentiality.

14 5. To adopt, promulgate, amend and rescind rules and procedures, not  
15 otherwise inconsistent with law, necessary to carry out the provisions  
16 and purposes of this article. All such rules and procedures shall be  
17 filed in the offices of the chief administrator of the courts and the  
18 secretary of state.

19 6. To do all other things necessary and convenient to carry out its  
20 functions, powers and duties expressly set forth in this article.

21 § 499-e. Panels; referees. 1. The commission may delegate any of its  
22 functions, powers and duties to a panel of three of its members, one of  
23 whom shall be a member of the bar, except that no panel shall confer  
24 immunity in accordance with section 50.20 of the criminal procedure law.  
25 No panel shall be authorized to take any action pursuant to subdivisions  
26 four through nine of section four hundred ninety-nine-f of this article  
27 or subdivision two of this section.

28 2. The commission may designate a member of the bar who is not a  
29 prosecutor or a member of the commission or its staff as a referee to  
30 hear and report to the commission in accordance with the provisions of  
31 section four hundred ninety-nine-f of this article. Such referee shall  
32 be empowered to conduct hearings, administer oaths or affirmations,  
33 subpoena witnesses, compel their attendance, examine them under oath or  
34 affirmation and require the production of any books, records, documents  
35 or other evidence that the referee may deem relevant or material to the  
36 subject of the hearing.

37 § 499-f. Complaint; investigation; hearing and disposition. 1. The  
38 commission shall receive, initiate, investigate and hear complaints with  
39 respect to the conduct, qualifications, fitness to perform, or perform-  
40 ance of official duties of any prosecutor, and may determine that a  
41 prosecutor be admonished, or censured; and make a recommendation to the  
42 governor that a prosecutor be removed from office for cause, for,  
43 including, but not limited to, misconduct in office, as evidenced by his  
44 or her departure from his or her obligations under appropriate statute,  
45 case law, and/or New York Rules of Professional Conduct, 22 NYCRR 1200,  
46 including but not limited to Rule 3.8 (Special Responsibilities of  
47 Prosecutors and Other Government Lawyers), persistent failure to perform  
48 his or her duties, habitual intemperance and conduct, in and outside of  
49 his or her office, prejudicial to the administration of justice, or that  
50 a prosecutor be retired for mental or physical disability preventing the  
51 proper performance of his or her prosecutorial duties. A complaint shall  
52 be in writing and signed by the complainant and, if directed by the  
53 commission, shall be verified. Upon receipt of a complaint (a) the  
54 commission shall conduct an investigation of the complaint; or (b) the  
55 commission may dismiss the complaint if it determines that the complaint  
56 on its face lacks merit. If the complaint is dismissed, the commission

1 shall so notify the complainant. If the commission shall have notified  
2 the prosecutor of the complaint, the commission shall also notify the  
3 prosecutor of such dismissal. Pursuant to paragraph a of subdivision  
4 four of section ninety of this chapter, any person being an attorney and  
5 counselor-at-law who shall be convicted of a felony as defined in para-  
6 graph e of subdivision four of section ninety of this chapter, shall  
7 upon such conviction, cease to be any attorney and counselor-at-law, or  
8 to be competent to practice law as such.

9 2. The commission may, on its own motion, initiate an investigation of  
10 a prosecutor with respect to his or her qualifications, conduct, fitness  
11 to perform or the performance of his or her official duties. Prior to  
12 initiating any such investigation, the commission shall file as part of  
13 its record a written complaint, signed by the administrator of the  
14 commission, which complaint shall serve as the basis for such investi-  
15 gation.

16 3. In the course of an investigation, the commission may require the  
17 appearance of the prosecutor involved before it, in which event the  
18 prosecutor shall be notified in writing of his or her required appear-  
19 ance, either personally, at least three days prior to such appearance,  
20 or by certified mail, return receipt requested, at least five days prior  
21 to such appearance. In either case a copy of the complaint shall be  
22 served upon the prosecutor at the time of such notification. The prose-  
23 cutor shall have the right to be represented by counsel during any and  
24 all stages of the investigation in which his or her appearance is  
25 required and to present evidentiary data and material relevant to the  
26 complaint. A transcript shall be made and kept with respect to all  
27 proceedings at which testimony or statements under oath of any party or  
28 witness shall be taken, and the transcript of the prosecutor's testimony  
29 shall be made available to the prosecutor without cost. Such transcript  
30 shall be confidential except as otherwise permitted by section four  
31 hundred ninety-nine-g of this article.

32 4. If in the course of an investigation, the commission determines  
33 that a hearing is warranted it shall direct that a formal written  
34 complaint signed and verified by the administrator be drawn and served  
35 upon the prosecutor involved, either personally or by certified mail,  
36 return receipt requested. The prosecutor shall file a written answer to  
37 the complaint with the commission within twenty days of such service.  
38 If, upon receipt of the answer, or upon expiration of the time to  
39 answer, the commission shall direct that a hearing be held with respect  
40 to the complaint, the prosecutor involved shall be notified in writing  
41 of the date of the hearing either personally, at least twenty days prior  
42 thereto, or by certified mail, return receipt requested, at least twen-  
43 ty-two days prior thereto. Upon the written request of the prosecutor,  
44 the commission shall, at least five days prior to the hearing or any  
45 adjourned date thereof, make available to the prosecutor without cost  
46 copies of all documents which the commission intends to present at such  
47 hearing and any written statements made by witnesses who will be called  
48 to give testimony by the commission. The commission shall, in any case,  
49 make available to the prosecutor at least five days prior to the hearing  
50 or any adjourned date thereof any exculpatory evidentiary data and mate-  
51 rial relevant to the complaint. The failure of the commission to timely  
52 furnish any documents, statements and/or exculpatory evidentiary data  
53 and material provided for herein shall not affect the validity of any  
54 proceedings before the commission provided that such failure is not  
55 substantially prejudicial to the prosecutor. The complainant may be  
56 notified of the hearing and unless he or she shall be subpoenaed as a



1 witness by the prosecutor, his or her presence thereat shall be within  
2 the discretion of the commission. The hearing shall not be public unless  
3 the prosecutor involved shall so demand in writing. At the hearing the  
4 commission may take the testimony of witnesses and receive evidentiary  
5 data and material relevant to the complaint. The prosecutor shall have  
6 the right to be represented by counsel during any and all stages of the  
7 hearing and shall have the right to call and cross-examine witnesses and  
8 present evidentiary data and material relevant to the complaint. A tran-  
9 script of the proceedings and of the testimony of witnesses at the hear-  
10 ing shall be taken and kept with the records of the commission.

11 5. Subject to the approval of the commission, the administrator and  
12 the prosecutor may agree on a statement of facts and may stipulate in  
13 writing that the hearing shall be waived. In such a case, the commission  
14 shall make its determination upon the pleadings and the agreed statement  
15 of facts.

16 6. If, after a formal written complaint has been served pursuant to  
17 subdivision four of this section, or during the course of or after a  
18 hearing, the commission determines that no further action is necessary,  
19 the complaint shall be dismissed and the complainant and the prosecutor  
20 shall be so notified in writing.

21 7. After a hearing, the commission may determine that a prosecutor be  
22 admonished or censured, or may recommend to the governor that a prosecu-  
23 tor be removed from office for cause. The commission shall transmit its  
24 written determination, together with its findings of fact and conclu-  
25 sions of law and the record of the proceedings upon which its determi-  
26 nation is based, to the chief judge of the court of appeals who shall  
27 cause a copy thereof to be served either personally or by certified  
28 mail, return receipt requested, on the prosecutor involved. Upon  
29 completion of service, the determination of the commission, its findings  
30 and conclusions and the record of its proceedings shall be made public  
31 and shall be made available for public inspection at the principal  
32 office of the commission and at the office of the clerk of the court of  
33 appeals. The prosecutor involved may either accept the determination of  
34 the commission or make written request to the chief judge, within thirty  
35 days after receipt of such determination, for a review thereof by the  
36 court of appeals. If the commission has determined that a prosecutor be  
37 admonished or censured, and if the prosecutor accepts such determination  
38 or fails to request a review thereof by the court of appeals, the  
39 commission shall thereupon admonish or censure him or her in accordance  
40 with its findings. If the commission has recommended that a prosecutor  
41 be removed or retired and the prosecutor accepts such determination or  
42 fails to request a review thereof by the court of appeals, the court of  
43 appeals shall thereupon transmit the commission's findings to the gover-  
44 nor who will independently determine whether the prosecutor should be  
45 removed or retired. Notwithstanding any provision of this subdivision  
46 to the contrary, if the commission has and the court of appeals recom-  
47 mends that the attorney general be removed, the court of appeals shall  
48 transmit the commission's findings and, if any, court of appeals find-  
49 ings to the governor who may recommend the removal of the attorney  
50 general pursuant to section thirty-two of the public officers law.

51 8. If the prosecutor requests a review of the determination of the  
52 commission, in its review of a determination of the commission pursuant  
53 to the second undesignated paragraph of subdivision b of section three  
54 of article six of the state constitution, the court of appeals shall  
55 review the commission's findings of fact and conclusions of law on the  
56 record of the proceedings upon which the commission's determination was

1 based. After such review, the court may accept or reject the determined  
2 sanction; impose a different sanction including admonition or censure,  
3 recommend removal or retirement for the reasons set forth in subdivision  
4 one of this section; or impose no sanction. However, if the court of  
5 appeals recommends removal or retirement, it shall, together with the  
6 commission, transmit the entire record to the governor who will inde-  
7 pendently determine whether a prosecutor should be removed or retired.  
8 Notwithstanding any provision of this subdivision to the contrary, if  
9 the court of appeals recommends the removal or retirement of the attor-  
10 ney general, it shall, together with the commission, transmit the entire  
11 record to the governor who may recommend the removal of the attorney  
12 general pursuant to section thirty-two of the public officers law.

13 9. (a) The court of appeals may suspend a prosecutor from exercising  
14 the powers of his or her office while there is pending a determination  
15 by the commission for his or her removal or retirement, or while he or  
16 she is charged in this state with a felony by an indictment or an infor-  
17 mation filed pursuant to section six of article one of the constitution.  
18 The suspension shall terminate upon conviction of a felony resulting in  
19 such prosecutor's disbarment pursuant to paragraph a of subdivision four  
20 of section ninety of this chapter. If such conviction becomes final, he  
21 or she shall be removed from office provided, however, that if such  
22 conviction is of the attorney general, he or she shall be removed from  
23 office pursuant to paragraph e of subdivision one of section thirty of  
24 the public officers law, if applicable, or may be removed from office  
25 pursuant to section thirty-two of such law. The suspension shall be  
26 terminated upon reversal of the conviction and dismissal of the accusa-  
27 tory instrument.

28 (b) Upon the recommendation of the commission or on its own motion,  
29 the court may suspend a prosecutor from office when he or she is charged  
30 with a crime punishable as a felony under the laws of this state, or any  
31 other crime which involves moral turpitude. The suspension shall termi-  
32 nate upon conviction of a felony resulting in such prosecutor's disbar-  
33 ment pursuant to paragraph a of subdivision four of section ninety of  
34 this chapter. The suspension shall continue upon conviction of any other  
35 crime which involves moral turpitude and, if such conviction becomes  
36 final, he or she shall be removed from office provided, however, that if  
37 such conviction is of the attorney general, he or she shall be removed  
38 from office pursuant to paragraph e of subdivision one of section thirty  
39 of the public officers law, if applicable, or may be removed from office  
40 pursuant to section thirty-two of such law. The suspension shall be  
41 terminated upon reversal of the conviction and dismissal of the accusa-  
42 tory instrument.

43 (c) A prosecutor who is suspended from office by the court shall  
44 receive his or her salary during such period of suspension, unless the  
45 court directs otherwise. If the court has so directed and such suspen-  
46 sion is thereafter terminated, the court may direct that he or she shall  
47 be paid his or her salary for such period of suspension.

48 (d) Nothing in this subdivision shall prevent the commission from  
49 determining that a prosecutor be admonished or censured or prevent the  
50 commission from recommending removal or retirement pursuant to subdivi-  
51 sion seven of this section.

52 10. If during the course of or after an investigation or hearing, the  
53 commission determines that the complaint or any allegation thereof  
54 warrants action, other than in accordance with the provisions of subdivi-  
55 sions seven through nine of this section, within the powers of: (a) a  
56 person having administrative jurisdiction over the prosecutor involved

1 in the complaint; or (b) an appellate division of the supreme court; or  
2 (c) a presiding justice of an appellate division of the supreme court;  
3 or (d) the chief judge of the court of appeals; or (e) the governor  
4 pursuant to subdivision (b) of section thirteen of article thirteen of  
5 the constitution; or (f) an applicable district attorney's office or  
6 other prosecuting agency, the commission shall refer such complaint or  
7 the appropriate allegations thereof and any evidence or material related  
8 thereto to such person, agency or court for such action as may be deemed  
9 proper or necessary.

10 11. The commission shall notify the complainant of its disposition of  
11 the complaint.

12 12. In the event of removal from office of any prosecutor, pursuant to  
13 subdivision seven or eight or paragraph (a) or (b) of subdivision nine  
14 of this section, a vacancy shall exist pursuant to article three of the  
15 public officers law.

16 § 499-g. Confidentiality of records. Except as hereinafter provided,  
17 all complaints, correspondence, commission proceedings and transcripts  
18 thereof, other papers and data and records of the commission shall be  
19 confidential and shall not be made available to any person except pursu-  
20 ant to section four hundred ninety-nine-f of this article. The commis-  
21 sion and its designated staff personnel shall have access to confiden-  
22 tial material in the performance of their powers and duties. If the  
23 prosecutor who is the subject of a complaint so requests in writing,  
24 copies of the complaint, the transcripts of hearings by the commission  
25 thereon, if any, and the dispositive action of the commission with  
26 respect to the complaint, such copies with any reference to the identity  
27 of any person who did not participate at any such hearing suitably  
28 deleted therefrom, except the subject prosecutor or complainant, shall  
29 be made available for inspection and copying to the public, or to any  
30 person, agency or body designated by such prosecutor.

31 § 499-h. Breach of confidentiality of commission information. 1. Any  
32 staff member, employee or agent of the state commission on prosecutorial  
33 conduct who violates any of the provisions of section four hundred nine-  
34 ty-nine-g of this article shall be subject to a reprimand, a fine,  
35 suspension or removal by the commission.

36 2. Within ten days after the commission has acquired knowledge that a  
37 staff member, employee or agent of the commission has or may have  
38 breached the provisions of section four hundred ninety-nine-g of this  
39 article, written charges against such staff member, employee or agent  
40 shall be prepared and signed by the chairman of the commission and filed  
41 with the commission. Within five days after receipt of charges, the  
42 commission shall determine, by a vote of the majority of all the members  
43 of the commission, whether probable cause for such charges exists. If  
44 such determination is affirmative, within five days thereafter a written  
45 statement specifying the charges in detail and outlining his or her  
46 rights under this section shall be forwarded to the accused staff  
47 member, employee or agent by certified mail. The commission may suspend  
48 the staff member, employee or agent, with or without pay, pending the  
49 final determination of the charges. Within ten days after receipt of the  
50 statement of charges, the staff member, employee or agent shall notify  
51 the commission in writing whether he or she desires a hearing on the  
52 charges. The failure of the staff member, employee or agent to notify  
53 the commission of his or her desire to have a hearing within such period  
54 of time shall be deemed a waiver of the right to a hearing. If the hear-  
55 ing has been waived, the commission shall proceed, within ten days after  
56 such waiver, by a vote of a majority of all the members of such commis-



1 sion, to determine the charges and fix the penalty or punishment, if  
2 any, to be imposed as hereinafter provided.

3 3. Upon receipt of a request for a hearing, the commission shall sche-  
4 dule a hearing, to be held at the commission offices, within twenty days  
5 after receipt of the request therefor, and shall immediately notify in  
6 writing the staff member, employee or agent of the time and place there-  
7 of.

8 4. The commission shall have the power to establish necessary rules  
9 and procedures for the conduct of hearings under this section. Such  
10 rules shall not require compliance with technical rules of evidence. All  
11 such hearings shall be held before a hearing panel composed of three  
12 members of the commission selected by the commission. Each hearing shall  
13 be conducted by the chairman of the panel who shall be selected by the  
14 panel. The staff member, employee or agent shall have a reasonable  
15 opportunity to defend himself and to testify on his or her own behalf.  
16 He or she shall also have the right to be represented by counsel, to  
17 subpoena witnesses and to cross-examine witnesses. All testimony taken  
18 shall be under oath which the chairman of the panel is hereby authorized  
19 to administer. A record of the proceedings shall be made and a copy of  
20 the transcript of the hearing shall, upon written request, be furnished  
21 without charge to the staff member, employee or agent involved.

22 5. Within five days after the conclusion of a hearing, the panel shall  
23 forward a report of the hearing, including its findings and recommenda-  
24 tions, including its recommendations as to penalty or punishment, if one  
25 is warranted, to the commission and to the accused staff member, employ-  
26 ee or agent. Within ten days after receipt of such report the commission  
27 shall determine whether it shall implement the recommendations of the  
28 panel. If the commission shall determine to implement such recommenda-  
29 tions, which shall include the penalty or punishment, if any, of a  
30 reprimand, a fine, suspension for a fixed time without pay or dismissal,  
31 it shall do so within five days after such determination. If the charges  
32 against the staff member, employee or agent are dismissed, he or she  
33 shall be restored to his or her position with full pay for any period of  
34 suspension without pay and the charges shall be expunged from his or her  
35 record.

36 6. The accused staff member, employee or agent may seek review of the  
37 recommendation by the commission by way of a special proceeding pursuant  
38 to article seventy-eight of the civil practice law and rules.

39 § 499-i. Resignation not to divest commission or court of appeals of  
40 jurisdiction. The jurisdiction of the court of appeals and the commis-  
41 sion pursuant to this article shall continue notwithstanding that a  
42 prosecutor resigns from office after a recommendation by the commission  
43 that the prosecutor be removed from office has been transmitted to the  
44 chief judge of the court of appeals, or in any case in which the commis-  
45 sion's recommendation that a prosecutor should be removed from office  
46 shall be transmitted to the chief judge of the court of appeals within  
47 one hundred twenty days after receipt by the chief administrator of the  
48 courts of the resignation of such prosecutor. Any determination by the  
49 governor that a prosecutor who has resigned should be removed from  
50 office shall render such prosecutor ineligible to hold any other prose-  
51 cutorial office.

52 § 499-j. Effect. 1. The powers, duties, and functions of the state  
53 commission on prosecutorial conduct shall not supersede the powers and  
54 duties of the governor as outlined in section thirteen of article thir-  
55 teen of the New York state constitution.

1     2. Removal or retirement of a prosecutor pursuant to this article  
2     shall be considered a removal from office pursuant to section thirty of  
3     the public officers law.

4     § 2. If any part or provision of this act is adjudged by a court of  
5     competent jurisdiction to be unconstitutional or otherwise invalid, such  
6     judgment shall not affect or impair any other part or provision of this  
7     act, but shall be confined in its operation to such part or provision.

8     § 3. This act shall take effect January 1, 2018.