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## IN ASSEMBLY

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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, RAMOS, ENGLEBRIGHT, HIKIND, COLTON, THIELE, DE LA ROSA, SKARTADOS, JOYNER, STIRPE, DILAN, L. ROSENTHAL, QUART, HUNTER -- Multi-Sponsored by -- M. of A. CARROLL, COOK, FAHY, HOOPER, LENTOL, LUPARDO, MAGEE, McDONALD, 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 -- reported and referred to the Committee on Ways and Means -- reported and referred to the Committee on Rules -- amended on the special order of third reading, ordered reprinted as amended, retaining its place on the special order of third reading -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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:

1 Section 1. The judiciary law is amended by adding a new article 15-A  
2 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.

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

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1 499-f. Complaint; investigation; hearing and disposition.

2 499-g. Confidentiality of records.

3 499-h. Breach of confidentiality of commission information.

4 499-i. Resignation not to divest commission or court of appeals  
5 of jurisdiction.

6 499-j. Effect.

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

15 § 499-b. Definitions. For the purposes of this article the following  
16 terms have the following meanings:

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

18 2. "Prosecutor" means a district attorney or any assistant district  
19 attorney of any county of the state in an action to exact any criminal  
20 penalty, fine, sanction or forfeiture.

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

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

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

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

46 3. The persons first appointed by the governor shall have respectively  
47 three and four year terms as he or she shall designate. The persons  
48 first appointed by the chief judge of the court of appeals shall have  
49 respectively two, three and four year terms as he or she shall desig-  
50 nate. The persons first appointed by the temporary president of the  
51 senate shall have respectively three and four year terms as he or she  
52 shall designate. The person first appointed by the minority leader of  
53 the senate shall have a two year term. The persons first appointed by  
54 the speaker of the assembly shall have respectively three and four year  
55 terms as he or she shall designate. The person first appointed by the  
56 minority leader of the assembly shall have a three year term. Each

1 member of the commission shall be appointed thereafter for a term of  
2 four years. Commission membership of a judge or justice appointed by the  
3 governor or the chief judge shall terminate if such member ceases to  
4 hold the judicial position which qualified him or her for such appoint-  
5 ment. Membership shall also terminate if a member attains a position  
6 which would have rendered him or her ineligible for appointment at the  
7 time of his or her appointment. A vacancy shall be filled by the  
8 appointing officer for the remainder of the term.

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

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

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

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

37 § 499-d. Functions; powers and duties. The commission shall have the  
38 following functions, powers and duties:

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

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

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

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

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

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

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

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

§ 499-f. Complaint; investigation; hearing and disposition. 1. The commission shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform, or performance of official duties of any prosecutor, and may determine that a prosecutor be admonished, or censured; and make a recommendation to the governor that a prosecutor be removed from office for cause, for, including, but not limited to, misconduct in office, as evidenced by his or her departure from his or her obligations under appropriate statute, case law, and/or New York Rules of Professional Conduct, 22 NYCRR 1200, including but not limited to Rule 3.8 (Special Responsibilities of Prosecutors and Other Government Lawyers), persistent failure to perform his or her duties, habitual intemperance and conduct, in and outside of his or her office, prejudicial to the administration of justice, or that a prosecutor be retired for mental or physical disability preventing the proper performance of his or her prosecutorial duties. A complaint shall

1 be in writing and signed by the complainant and, if directed by the  
2 commission, shall be verified. Upon receipt of a complaint (a) the  
3 commission shall conduct an investigation of the complaint; or (b) the  
4 commission may dismiss the complaint if it determines that the complaint  
5 on its face lacks merit. If the complaint is dismissed, the commission  
6 shall so notify the complainant. If the commission shall have notified  
7 the prosecutor of the complaint, the commission shall also notify the  
8 prosecutor of such dismissal. Pursuant to paragraph a of subdivision  
9 four of section ninety of this chapter, any person being an attorney and  
10 counselor-at-law who shall be convicted of a felony as defined in para-  
11 graph e of subdivision four of section ninety of this chapter, shall  
12 upon such conviction, cease to be any attorney and counselor-at-law, or  
13 to be competent to practice law as such.

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

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

37 4. If in the course of an investigation, the commission determines  
38 that a hearing is warranted it shall direct that a formal written  
39 complaint signed and verified by the administrator be drawn and served  
40 upon the prosecutor involved, either personally or by certified mail,  
41 return receipt requested. The prosecutor shall file a written answer to  
42 the complaint with the commission within twenty days of such service.  
43 If, upon receipt of the answer, or upon expiration of the time to  
44 answer, the commission shall direct that a hearing be held with respect  
45 to the complaint, the prosecutor involved shall be notified in writing  
46 of the date of the hearing either personally, at least twenty days prior  
47 thereto, or by certified mail, return receipt requested, at least twen-  
48 ty-two days prior thereto. Upon the written request of the prosecutor,  
49 the commission shall, at least five days prior to the hearing or any  
50 adjourned date thereof, make available to the prosecutor without cost  
51 copies of all documents which the commission intends to present at such  
52 hearing and any written statements made by witnesses who will be called  
53 to give testimony by the commission. The commission shall, in any case,  
54 make available to the prosecutor at least five days prior to the hearing  
55 or any adjourned date thereof any exculpatory evidentiary data and mate-  
56 rial relevant to the complaint. The failure of the commission to timely



1 furnish any documents, statements and/or exculpatory evidentiary data  
2 and material provided for herein shall not affect the validity of any  
3 proceedings before the commission provided that such failure is not  
4 substantially prejudicial to the prosecutor. The complainant may be  
5 notified of the hearing and unless he or she shall be subpoenaed as a  
6 witness by the prosecutor, his or her presence thereat shall be within  
7 the discretion of the commission. The hearing shall not be public unless  
8 the prosecutor involved shall so demand in writing. At the hearing the  
9 commission may take the testimony of witnesses and receive evidentiary  
10 data and material relevant to the complaint. The prosecutor shall have  
11 the right to be represented by counsel during any and all stages of the  
12 hearing and shall have the right to call and cross-examine witnesses and  
13 present evidentiary data and material relevant to the complaint. A tran-  
14 script of the proceedings and of the testimony of witnesses at the hear-  
15 ing shall be taken and kept with the records of the commission.

16 5. Subject to the approval of the commission, the administrator and  
17 the prosecutor may agree on a statement of facts and may stipulate in  
18 writing that the hearing shall be waived. In such a case, the commission  
19 shall make its determination upon the pleadings and the agreed statement  
20 of facts.

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

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

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 9. (a) The court of appeals may suspend a prosecutor from exercising  
9 the powers of his or her office while there is pending a determination  
10 by the commission for his or her removal or retirement, or while he or  
11 she is charged in this state with a felony by an indictment or an infor-  
12 mation filed pursuant to section six of article one of the constitution.  
13 The suspension shall terminate upon conviction of a felony resulting in  
14 such prosecutor's disbarment pursuant to paragraph a of subdivision four  
15 of section ninety of this chapter. If such conviction becomes final, he  
16 or she shall be removed from office. The suspension shall be terminated  
17 upon reversal of the conviction and dismissal of the accusatory instru-  
18 ment.

19 (b) Upon the recommendation of the commission or on its own motion,  
20 the court may suspend a prosecutor from office when he or she is charged  
21 with a crime punishable as a felony under the laws of this state, or any  
22 other crime which involves moral turpitude. The suspension shall termi-  
23 nate upon conviction of a felony resulting in such prosecutor's disbar-  
24 ment pursuant to paragraph a of subdivision four of section ninety of  
25 this chapter. The suspension shall continue upon conviction of any other  
26 crime which involves moral turpitude and, if such conviction becomes  
27 final, he or she shall be removed from office. The suspension shall be  
28 terminated upon reversal of the conviction and dismissal of the accusa-  
29 tory instrument.

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

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

39 10. If during the course of or after an investigation or hearing, the  
40 commission determines that the complaint or any allegation thereof  
41 warrants action, other than in accordance with the provisions of subdivi-  
42 sions seven through nine of this section, within the powers of: (a) a  
43 person having administrative jurisdiction over the prosecutor involved  
44 in the complaint; or (b) an appellate division of the supreme court; or  
45 (c) a presiding justice of an appellate division of the supreme court;  
46 or (d) the chief judge of the court of appeals; or (e) the governor  
47 pursuant to subdivision (b) of section thirteen of article thirteen of  
48 the constitution; or (f) an applicable district attorney's office or  
49 other prosecuting agency, the commission shall refer such complaint or  
50 the appropriate allegations thereof and any evidence or material related  
51 thereto to such person, agency or court for such action as may be deemed  
52 proper or necessary.

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

55 12. In the event of removal from office of any prosecutor, pursuant to  
56 subdivision seven or eight or paragraph (a) or (b) of subdivision nine

1 of this section, a vacancy shall exist pursuant to article three of the  
2 public officers law.

3 § 499-g. Confidentiality of records. Except as hereinafter provided,  
4 all complaints, correspondence, commission proceedings and transcripts  
5 thereof, other papers and data and records of the commission shall be  
6 confidential and shall not be made available to any person except pursu-  
7 ant to section four hundred ninety-nine-f of this article. The commis-  
8 sion and its designated staff personnel shall have access to confiden-  
9 tial material in the performance of their powers and duties. If the  
10 prosecutor who is the subject of a complaint so requests in writing,  
11 copies of the complaint, the transcripts of hearings by the commission  
12 thereon, if any, and the dispositive action of the commission with  
13 respect to the complaint, such copies with any reference to the identity  
14 of any person who did not participate at any such hearing suitably  
15 deleted therefrom, except the subject prosecutor or complainant, shall  
16 be made available for inspection and copying to the public, or to any  
17 person, agency or body designated by such prosecutor.

18 § 499-h. Breach of confidentiality of commission information. 1. Any  
19 staff member, employee or agent of the state commission on prosecutorial  
20 conduct who violates any of the provisions of section four hundred nine-  
21 ty-nine-g of this article shall be subject to a reprimand, a fine,  
22 suspension or removal by the commission.

23 2. Within ten days after the commission has acquired knowledge that a  
24 staff member, employee or agent of the commission has or may have  
25 breached the provisions of section four hundred ninety-nine-g of this  
26 article, written charges against such staff member, employee or agent  
27 shall be prepared and signed by the chairman of the commission and filed  
28 with the commission. Within five days after receipt of charges, the  
29 commission shall determine, by a vote of the majority of all the members  
30 of the commission, whether probable cause for such charges exists. If  
31 such determination is affirmative, within five days thereafter a written  
32 statement specifying the charges in detail and outlining his or her  
33 rights under this section shall be forwarded to the accused staff  
34 member, employee or agent by certified mail. The commission may suspend  
35 the staff member, employee or agent, with or without pay, pending the  
36 final determination of the charges. Within ten days after receipt of the  
37 statement of charges, the staff member, employee or agent shall notify  
38 the commission in writing whether he or she desires a hearing on the  
39 charges. The failure of the staff member, employee or agent to notify  
40 the commission of his or her desire to have a hearing within such period  
41 of time shall be deemed a waiver of the right to a hearing. If the hear-  
42 ing has been waived, the commission shall proceed, within ten days after  
43 such waiver, by a vote of a majority of all the members of such commis-  
44 sion, to determine the charges and fix the penalty or punishment, if  
45 any, to be imposed as hereinafter provided.

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

51 4. The commission shall have the power to establish necessary rules  
52 and procedures for the conduct of hearings under this section. Such  
53 rules shall not require compliance with technical rules of evidence. All  
54 such hearings shall be held before a hearing panel composed of three  
55 members of the commission selected by the commission. Each hearing shall  
56 be conducted by the chairman of the panel who shall be selected by the



1 panel. The staff member, employee or agent shall have a reasonable  
2 opportunity to defend himself and to testify on his or her own behalf.  
3 He or she shall also have the right to be represented by counsel, to  
4 subpoena witnesses and to cross-examine witnesses. All testimony taken  
5 shall be under oath which the chairman of the panel is hereby authorized  
6 to administer. A record of the proceedings shall be made and a copy of  
7 the transcript of the hearing shall, upon written request, be furnished  
8 without charge to the staff member, employee or agent involved.

9 5. Within five days after the conclusion of a hearing, the panel shall  
10 forward a report of the hearing, including its findings and recommenda-  
11 tions, including its recommendations as to penalty or punishment, if one  
12 is warranted, to the commission and to the accused staff member, employ-  
13 ee or agent. Within ten days after receipt of such report the commission  
14 shall determine whether it shall implement the recommendations of the  
15 panel. If the commission shall determine to implement such recommenda-  
16 tions, which shall include the penalty or punishment, if any, of a  
17 reprimand, a fine, suspension for a fixed time without pay or dismissal,  
18 it shall do so within five days after such determination. If the charges  
19 against the staff member, employee or agent are dismissed, he or she  
20 shall be restored to his or her position with full pay for any period of  
21 suspension without pay and the charges shall be expunged from his or her  
22 record.

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

26 § 499-i. Resignation not to divest commission or court of appeals of  
27 jurisdiction. The jurisdiction of the court of appeals and the commis-  
28 sion pursuant to this article shall continue notwithstanding that a  
29 prosecutor resigns from office after a recommendation by the commission  
30 that the prosecutor be removed from office has been transmitted to the  
31 chief judge of the court of appeals, or in any case in which the commis-  
32 sion's recommendation that a prosecutor should be removed from office  
33 shall be transmitted to the chief judge of the court of appeals within  
34 one hundred twenty days after receipt by the chief administrator of the  
35 courts of the resignation of such prosecutor. Any determination by the  
36 governor that a prosecutor who has resigned should be removed from  
37 office shall render such prosecutor ineligible to hold any other prose-  
38 cutorial office.

39 § 499-j. Effect. 1. The powers, duties, and functions of the state  
40 commission on prosecutorial conduct shall not supersede the powers and  
41 duties of the governor as outlined in section thirteen of article thir-  
42 teen of the New York state constitution.

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

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

50 § 3. This act shall take effect on the first of January next succeed-  
51 ing the date upon which it shall have become a law.