

STATE OF NEW YORK

5285

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 -- 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

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.

§ 499-a. Establishment of commission. A state commission of prosecutorial conduct is hereby established. The commission shall have the authority to review the conduct of prosecutors upon the filing of a complaint with the commission to determine whether said conduct as

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

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1 alleged departs from the applicable statutes, case law, New York Rules
2 of Professional Conduct, 22 NYCRR 1200, including but not limited to
3 Rule 3.8 (Special Responsibilities of Prosecutors and Other Government
4 Lawyers).

5 § 499-b. Definitions. For the purposes of this article the following
6 terms have the following meanings:

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

8 2. "Prosecutor" means a district attorney or any assistant district
9 attorney of any county of the state, and the attorney general or any
10 assistant attorney general of the state, in an action to exact any crim-
11 inal penalty, fine, sanction or forfeiture.

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

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

16 § 499-c. State commission on prosecutorial conduct; organization. 1.
17 The commission shall consist of eleven members, of whom two shall be
18 appointed by the governor, two by the temporary president of the senate,
19 one by the minority leader of the senate, two by the speaker of the
20 assembly, one by the minority leader of the assembly and three by the
21 chief judge of the court of appeals. Of the members appointed by the
22 governor one shall be a public defender and one shall be a prosecutor.
23 Of the members appointed by the chief judge one person shall be a
24 justice of the appellate division of the supreme court and two shall be
25 judges of courts other than the court of appeals or appellate division.
26 Of the members appointed by the legislative leaders, there shall be an
27 equal number of prosecutors and attorneys providing defense services;
28 provided, however, that a temporary imbalance in the number of prosecu-
29 tors and defense attorneys pending new appointments shall not prevent
30 the commission from conducting business.

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

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

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

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

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

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

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

1. To conduct hearings and investigations, 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 it may deem relevant or material to an investigation; and the commission may designate any of its members or any member of its staff to exercise any such powers, provided, however, that except as is otherwise provided in section four hundred ninety-nine-e of this article, only a member of the commission or the administrator shall exercise the power to subpoena witnesses or require the production of books, records, documents or other evidence.

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

1 report shall conform to the provisions of this article relating to
2 confidentiality.

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

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

10 § 499-e. Panels; referees. 1. The commission may delegate any of its
11 functions, powers and duties to a panel of three of its members, one of
12 whom shall be a member of the bar, except that no panel shall confer
13 immunity in accordance with section 50.20 of the criminal procedure law.
14 No panel shall be authorized to take any action pursuant to subdivisions
15 four through nine of section four hundred ninety-nine-f of this article
16 or subdivision two of this section.

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

26 § 499-f. Complaint; investigation; hearing and disposition. 1. The
27 commission shall receive, initiate, investigate and hear complaints with
28 respect to the conduct, qualifications, fitness to perform, or perform-
29 ance of official duties of any prosecutor, and may determine that a
30 prosecutor be admonished, or censured; and make a recommendation to the
31 governor that a prosecutor be removed from office for cause, for,
32 including, but not limited to, misconduct in office, as evidenced by his
33 or her departure from his or her obligations under appropriate statute,
34 case law, and/or New York Rules of Professional Conduct, 22 NYCRR 1200,
35 including but not limited to Rule 3.8 (Special Responsibilities of
36 Prosecutors and Other Government Lawyers), persistent failure to perform
37 his or her duties, habitual intemperance and conduct, in and outside of
38 his or her office, prejudicial to the administration of justice, or that
39 a prosecutor be retired for mental or physical disability preventing the
40 proper performance of his or her prosecutorial duties. A complaint shall
41 be in writing and signed by the complainant and, if directed by the
42 commission, shall be verified. Upon receipt of a complaint (a) the
43 commission shall conduct an investigation of the complaint; or (b) the
44 commission may dismiss the complaint if it determines that the complaint
45 on its face lacks merit. If the complaint is dismissed, the commission
46 shall so notify the complainant. If the commission shall have notified
47 the prosecutor of the complaint, the commission shall also notify the
48 prosecutor of such dismissal. Pursuant to paragraph a of subdivision
49 four of section ninety of this chapter, any person being an attorney and
50 counselor-at-law who shall be convicted of a felony as defined in para-
51 graph e of subdivision four of section ninety of this chapter, shall
52 upon such conviction, cease to be any attorney and counselor-at-law, or
53 to be competent to practice law as such.

54 2. The commission may, on its own motion, initiate an investigation of
55 a prosecutor with respect to his or her qualifications, conduct, fitness
56 to perform or the performance of his or her official duties. Prior to

1 initiating any such investigation, the commission shall file as part of
2 its record a written complaint, signed by the administrator of the
3 commission, which complaint shall serve as the basis for such investi-
4 gation.

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

21 4. If in the course of an investigation, the commission determines
22 that a hearing is warranted it shall direct that a formal written
23 complaint signed and verified by the administrator be drawn and served
24 upon the prosecutor involved, either personally or by certified mail,
25 return receipt requested. The prosecutor shall file a written answer to
26 the complaint with the commission within twenty days of such service.
27 If, upon receipt of the answer, or upon expiration of the time to
28 answer, the commission shall direct that a hearing be held with respect
29 to the complaint, the prosecutor involved shall be notified in writing
30 of the date of the hearing either personally, at least twenty days prior
31 thereto, or by certified mail, return receipt requested, at least twen-
32 ty-two days prior thereto. Upon the written request of the prosecutor,
33 the commission shall, at least five days prior to the hearing or any
34 adjourned date thereof, make available to the prosecutor without cost
35 copies of all documents which the commission intends to present at such
36 hearing and any written statements made by witnesses who will be called
37 to give testimony by the commission. The commission shall, in any case,
38 make available to the prosecutor at least five days prior to the hearing
39 or any adjourned date thereof any exculpatory evidentiary data and mate-
40 rial relevant to the complaint. The failure of the commission to timely
41 furnish any documents, statements and/or exculpatory evidentiary data
42 and material provided for herein shall not affect the validity of any
43 proceedings before the commission provided that such failure is not
44 substantially prejudicial to the prosecutor. The complainant may be
45 notified of the hearing and unless he or she shall be subpoenaed as a
46 witness by the prosecutor, his or her presence thereat shall be within
47 the discretion of the commission. The hearing shall not be public unless
48 the prosecutor involved shall so demand in writing. At the hearing the
49 commission may take the testimony of witnesses and receive evidentiary
50 data and material relevant to the complaint. The prosecutor shall have
51 the right to be represented by counsel during any and all stages of the
52 hearing and shall have the right to call and cross-examine witnesses and
53 present evidentiary data and material relevant to the complaint. A tran-
54 script of the proceedings and of the testimony of witnesses at the hear-
55 ing shall be taken and kept with the records of the commission.

1 5. Subject to the approval of the commission, the administrator and
2 the prosecutor may agree on a statement of facts and may stipulate in
3 writing that the hearing shall be waived. In such a case, the commission
4 shall make its determination upon the pleadings and the agreed statement
5 of facts.

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

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

41 8. If the prosecutor requests a review of the determination of the
42 commission, in its review of a determination of the commission pursuant
43 to the second undesignated paragraph of subdivision b of section three
44 of article six of the state constitution, the court of appeals shall
45 review the commission's findings of fact and conclusions of law on the
46 record of the proceedings upon which the commission's determination was
47 based. After such review, the court may accept or reject the determined
48 sanction; impose a different sanction including admonition or censure,
49 recommend removal or retirement for the reasons set forth in subdivision
50 one of this section; or impose no sanction. However, if the court of
51 appeals recommends removal or retirement, it shall, together with the
52 commission, transmit the entire record to the governor who will inde-
53 pendently determine whether a prosecutor should be removed or retired.
54 Notwithstanding any provision of this subdivision to the contrary, if
55 the court of appeals recommends the removal or retirement of the attor-
56 ney general, it shall, together with the commission, transmit the entire

1 record to the governor who may recommend the removal of the attorney
2 general pursuant to section thirty-two of the public officers law.

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

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

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

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

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

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

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

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

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

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

3. Upon receipt of a request for a hearing, the commission shall schedule a hearing, to be held at the commission offices, within twenty days after receipt of the request therefor, and shall immediately notify in writing the staff member, employee or agent of the time and place thereof.

4. The commission shall have the power to establish necessary rules and procedures for the conduct of hearings under this section. Such

1 rules shall not require compliance with technical rules of evidence. All
2 such hearings shall be held before a hearing panel composed of three
3 members of the commission selected by the commission. Each hearing shall
4 be conducted by the chairman of the panel who shall be selected by the
5 panel. The staff member, employee or agent shall have a reasonable
6 opportunity to defend himself and to testify on his or her own behalf.
7 He or she shall also have the right to be represented by counsel, to
8 subpoena witnesses and to cross-examine witnesses. All testimony taken
9 shall be under oath which the chairman of the panel is hereby authorized
10 to administer. A record of the proceedings shall be made and a copy of
11 the transcript of the hearing shall, upon written request, be furnished
12 without charge to the staff member, employee or agent involved.

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

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

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

43 § 499-j. Effect. 1. The powers, duties, and functions of the state
44 commission on prosecutorial conduct shall not supersede the powers and
45 duties of the governor as outlined in section thirteen of article thir-
46 teen of the New York state constitution.

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

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

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