

STATE OF NEW YORK

2412

2017-2018 Regular Sessions

IN SENATE

January 13, 2017

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and
when printed to be committed 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 Assem-
bly, 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.

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.

16 § 499-a. Establishment of commission. A state commission of prosecuto-
17 rial conduct is hereby established. The commission shall have the
18 authority to review the conduct of prosecutors upon the filing of a
19 complaint with the commission to determine whether said conduct as
20 alleged departs from the applicable statutes, case law, New York Rules
21 of Professional Conduct, 22 NYCRR 1200, including but not limited to
22 Rule 3.8 (Special Responsibilities of Prosecutors and Other Government
23 Lawyers).

24 § 499-b. Definitions. For the purposes of this article the following
25 terms have the following meanings:

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

LBD08062-01-7

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

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

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

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

10 § 499-c. State commission on prosecutorial conduct; organization. 1.
11 The commission shall consist of eleven members, of whom two shall be
12 appointed by the governor, two by the temporary president of the senate,
13 one by the minority leader of the senate, two by the speaker of the
14 assembly, one by the minority leader of the assembly and three by the
15 chief judge of the court of appeals. Of the members appointed by the
16 governor one shall be a public defender and one shall be a prosecutor.
17 Of the members appointed by the chief judge one person shall be a
18 justice of the appellate division of the supreme court and two shall be
19 judges of courts other than the court of appeals or appellate division.
20 Of the members appointed by the legislative leaders, there shall be an
21 equal number of prosecutors and attorneys providing defense services;
22 provided, however, that a temporary imbalance in the number of prosecu-
23 tors and defense attorneys pending new appointments shall not prevent
24 the commission from conducting business.

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

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

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

1 fitness to perform, or performance of his or her official duties, he or
2 she shall be disqualified from participating in any and all proceedings
3 with respect thereto.

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

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

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

22 § 499-d. Functions; powers and duties. The commission shall have the
23 following functions, powers and duties:

24 1. To conduct hearings and investigations, administer oaths or affir-
25 mations, subpoena witnesses, compel their attendance, examine them under
26 oath or affirmation and require the production of any books, records,
27 documents or other evidence that it may deem relevant or material to an
28 investigation; and the commission may designate any of its members or
29 any member of its staff to exercise any such powers, provided, however,
30 that except as is otherwise provided in section four hundred ninety-
31 nine-e of this article, only a member of the commission or the adminis-
32 trator shall exercise the power to subpoena witnesses or require the
33 production of books, records, documents or other evidence.

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

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

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

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

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

3 § 499-e. Panels; referees. 1. The commission may delegate any of its
4 functions, powers and duties to a panel of three of its members, one of
5 whom shall be a member of the bar, except that no panel shall confer
6 immunity in accordance with section 50.20 of the criminal procedure law.
7 No panel shall be authorized to take any action pursuant to subdivisions
8 four through nine of section four hundred ninety-nine-f of this article
9 or subdivision two of this section.

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

19 § 499-f. Complaint; investigation; hearing and disposition. 1. The
20 commission shall receive, initiate, investigate and hear complaints with
21 respect to the conduct, qualifications, fitness to perform, or perform-
22 ance of official duties of any prosecutor, and may determine that a
23 prosecutor be admonished, or censured; and make a recommendation to the
24 governor that a prosecutor be removed from office for cause, for,
25 including, but not limited to, misconduct in office, as evidenced by his
26 or her departure from his or her obligations under appropriate statute,
27 case law, and/or New York Rules of Professional Conduct, 22 NYCRR 1200,
28 including but not limited to Rule 3.8 (Special Responsibilities of
29 Prosecutors and Other Government Lawyers), persistent failure to perform
30 his or her duties, habitual intemperance and conduct, in and outside of
31 his or her office, prejudicial to the administration of justice, or that
32 a prosecutor be retired for mental or physical disability preventing the
33 proper performance of his or her prosecutorial duties. A complaint shall
34 be in writing and signed by the complainant and, if directed by the
35 commission, shall be verified. Upon receipt of a complaint (a) the
36 commission shall conduct an investigation of the complaint; or (b) the
37 commission may dismiss the complaint if it determines that the complaint
38 on its face lacks merit. If the complaint is dismissed, the commission
39 shall so notify the complainant. If the commission shall have notified
40 the prosecutor of the complaint, the commission shall also notify the
41 prosecutor of such dismissal. Pursuant to paragraph a of subdivision
42 four of section ninety of this chapter, any person being an attorney and
43 counselor-at-law who shall be convicted of a felony as defined in para-
44 graph e of subdivision four of section ninety of this chapter, shall
45 upon such conviction, cease to be any attorney and counselor-at-law, or
46 to be competent to practice law as such.

47 2. The commission may, on its own motion, initiate an investigation of
48 a prosecutor with respect to his or her qualifications, conduct, fitness
49 to perform or the performance of his or her official duties. Prior to
50 initiating any such investigation, the commission shall file as part of
51 its record a written complaint, signed by the administrator of the
52 commission, which complaint shall serve as the basis for such investi-
53 gation.

54 3. In the course of an investigation, the commission may require the
55 appearance of the prosecutor involved before it, in which event the
56 prosecutor shall be notified in writing of his or her required appear-

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

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

49 5. Subject to the approval of the commission, the administrator and
50 the prosecutor may agree on a statement of facts and may stipulate in
51 writing that the hearing shall be waived. In such a case, the commission
52 shall make its determination upon the pleadings and the agreed statement
53 of facts.

54 6. If, after a formal written complaint has been served pursuant to
55 subdivision four of this section, or during the course of or after a
56 hearing, the commission determines that no further action is necessary,

1 the complaint shall be dismissed and the complainant and the prosecutor
2 shall be so notified in writing.

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

33 8. If the prosecutor requests a review of the determination of the
34 commission, in its review of a determination of the commission, the
35 court of appeals shall review the commission's findings of fact and
36 conclusions of law on the record of the proceedings upon which the
37 commission's determination was based. After such review, the court may
38 accept or reject the determined sanction; impose a different sanction
39 including admonition or censure, recommend removal or retirement for the
40 reasons set forth in subdivision one of this section; or impose no sanc-
41 tion. However, if the court of appeals recommends removal or retire-
42 ment, it shall, together with the commission, transmit the entire record
43 to the governor who will independently determine whether a prosecutor
44 should be removed or retired. Notwithstanding any provision of this
45 subdivision to the contrary, if the court of appeals recommends the
46 removal or retirement of the attorney general, it shall, together with
47 the commission, transmit the entire record to the governor who may
48 recommend the removal of the attorney general pursuant to section thir-
49 ty-two of the public officers law.

50 9. (a) The court of appeals may suspend a prosecutor from exercising
51 the powers of his or her office while there is pending a determination
52 by the commission for his or her removal or retirement, or while he or
53 she is charged in this state with a felony by an indictment or an infor-
54 mation filed pursuant to section six of article one of the constitution.
55 The suspension shall terminate upon conviction of a felony resulting in
56 such prosecutor's disbarment pursuant to paragraph a of subdivision four

1 of section ninety of this chapter. If such conviction becomes final, he
2 or she shall be removed from office provided, however, that if such
3 conviction is of the attorney general, he or she shall be removed from
4 office pursuant to paragraph e of subdivision one of section thirty of
5 the public officers law, if applicable, or may be removed from office
6 pursuant to section thirty-two of such law. The suspension shall be
7 terminated upon reversal of the conviction and dismissal of the accusa-
8 tory instrument.

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

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

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

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

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

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

53 § 499-g. Confidentiality of records. Except as hereinafter provided,
54 all complaints, correspondence, commission proceedings and transcripts
55 thereof, other papers and data and records of the commission shall be
56 confidential and shall not be made available to any person except pursu-

1 ant to section four hundred ninety-nine-f of this article. The commis-
2 sion and its designated staff personnel shall have access to confiden-
3 tial material in the performance of their powers and duties. If the
4 prosecutor who is the subject of a complaint so requests in writing,
5 copies of the complaint, the transcripts of hearings by the commission
6 thereon, if any, and the dispositive action of the commission with
7 respect to the complaint, such copies with any reference to the identity
8 of any person who did not participate at any such hearing suitably
9 deleted therefrom, except the subject prosecutor or complainant, shall
10 be made available for inspection and copying to the public, or to any
11 person, agency or body designated by such prosecutor.

12 § 499-h. Breach of confidentiality of commission information. 1. Any
13 staff member, employee or agent of the state commission on prosecutorial
14 conduct who violates any of the provisions of section four hundred nine-
15 ty-nine-g of this article shall be subject to a reprimand, a fine,
16 suspension or removal by the commission.

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

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

45 4. The commission shall have the power to establish necessary rules
46 and procedures for the conduct of hearings under this section. Such
47 rules shall not require compliance with technical rules of evidence. All
48 such hearings shall be held before a hearing panel composed of three
49 members of the commission selected by the commission. Each hearing shall
50 be conducted by the chairman of the panel who shall be selected by the
51 panel. The staff member, employee or agent shall have a reasonable
52 opportunity to defend himself and to testify on his or her own behalf.
53 He or she shall also have the right to be represented by counsel, to
54 subpoena witnesses and to cross-examine witnesses. All testimony taken
55 shall be under oath which the chairman of the panel is hereby authorized
56 to administer. A record of the proceedings shall be made and a copy of

1 the transcript of the hearing shall, upon written request, be furnished
2 without charge to the staff member, employee or agent involved.

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

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

20 § 499-i. Resignation not to divest commission or court of appeals of
21 jurisdiction. The jurisdiction of the court of appeals and the commis-
22 sion pursuant to this article shall continue notwithstanding that a
23 prosecutor resigns from office after a recommendation by the commission
24 that the prosecutor be removed from office has been transmitted to the
25 chief judge of the court of appeals, or in any case in which the commis-
26 sion's recommendation that a prosecutor should be removed from office
27 shall be transmitted to the chief judge of the court of appeals within
28 one hundred twenty days after receipt by the chief administrator of the
29 courts of the resignation of such prosecutor. Any determination by the
30 governor that a prosecutor who has resigned should be removed from
31 office shall render such prosecutor ineligible to hold any other prose-
32 cutorial office.

33 § 499-j. Effect. 1. The powers, duties, and functions of the state
34 commission on prosecutorial conduct shall not supersede the powers and
35 duties of the governor as outlined in section thirteen of article thir-
36 teen of the New York state constitution.

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

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

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