

## Chapter 49

### PROSECUTING ATTORNEYS

#### CRIMINAL PROCEEDINGS IN SUPREME COURT

##### Act 72 of 1887

AN ACT to require prosecuting attorneys to appear and conduct criminal proceedings in the supreme court in certain cases, and to provide for the payment of extra compensation therefor.

**History:** 1887, Act 72, Imd. Eff. Apr. 15, 1887

*The People of the State of Michigan enact:*

#### **49.11 Prosecuting attorney; preparation of briefs, attendance at criminal proceedings on supreme court, duties, compensation and expenses.**

##### Sec. 1.

That in all criminal proceedings removed to the supreme court by writ of error, mandamus or otherwise, it shall be the duty of the prosecuting attorney of the county from which any cause is so removed to prepare a brief on behalf of the people therein, and to furnish the same to the attorney general where such cause is a calendar cause, at least 20 days before the time at which such cause is set for hearing, and in all other cases such prosecuting attorney shall furnish such brief to the attorney general at least 2 days before the time for the hearing of such cause. It shall be the duty of the prosecuting attorney of the county from which any cause is so removed where such cause is made a calendar cause on the request of the attorney general to appear on behalf of the people in the supreme court, and to assist the attorney general to conduct such cause in such court, and for his services in such case such prosecuting attorney shall, in addition to his regular salary, receive a reasonable compensation; including his expenses in traveling to and from, and on his attendance in such court, when so requested by the attorney general. Such expenses in traveling to and from and compensation for attendance in such court to be certified to by the attorney general and ascertained and determined by the board of state auditors, and paid by the state out of any funds belonging to the state not otherwise appropriated, and the expenses of preparing and printing any brief or argument prepared in such case shall be paid by the county from which the case is removed.

**History:** 1887, Act 72, Imd. Eff. Apr. 15, 1887 ;-- How. 559a ;-- Am. 1891, Act 75, Eff. Oct. 2, 1891 ;-- CL 1897, 2564 ;-- CL 1915, 2413 ;-- CL 1929, 1294 ;-- CL 1948, 49.11

### CONVICTED ALIENS

##### Act 133 of 1929

AN ACT to require prosecuting attorneys to furnish federal authorities with information regarding aliens in certain cases.

**History:** 1929, Act 133, Imd. Eff. May 7, 1929

*The People of the State of Michigan enact:*

#### **49.21 Grounds for deportation of convicted aliens; determination by prosecuting attorney.**

Sec. 1.

Whenever any alien shall be convicted of any felony under the laws of this state, or of any offense involving moral turpitude, it shall be the duty of the prosecuting attorney having charge of the prosecution of such persons so convicted to ascertain if there be grounds upon which the deportation of such alien might be secured under the immigration laws of the United States.

**History:** 1929, Act 133, Imd. Eff. May 7, 1929 ;-- CL 1929, 1295 ;-- CL 1948, 49.21

**49.22 Grounds for deportation of convicted aliens; notification of federal officials.**

Sec. 2.

In case such investigation results in the discovery of facts material to a proceeding for the deportation of such alien, even though such facts alone may not be sufficient grounds for deportation, it shall be the duty of such prosecuting attorney to forthwith advise the secretary of labor of the United States and other proper federal officials of such facts and any evidence obtainable supporting their existence.

**History:** 1929, Act 133, Imd. Eff. May 7, 1929 ;-- CL 1929, 1296 ;-- CL 1948, 49.22

**ASSISTANTS, CLERKS, AND INVESTIGATORS**

**Act 329 of 1925**

AN ACT to authorize boards of supervisors to fix the number of assistant prosecuting attorneys, clerks, stenographers and investigators for prosecuting attorneys; to fix the terms of office and salaries of such assistants, clerks, stenographers and investigators, and to define the powers and duties of the same in counties of this state; and to repeal act number one hundred one of the public acts of nineteen hundred thirteen.

**History:** 1925, Act 329, Eff. Aug. 27, 1925

*The People of the State of Michigan enact:*

**49.31 Assistant prosecuting attorneys, investigators and clerical employees; appointment.**

Sec. 1.

In each county of the state of Michigan, the board of supervisors of such counties, at their regular annual meeting, may, by resolution authorize the appointment by the prosecuting attorney of said county of as many assistant prosecuting attorneys as said board of supervisors shall deem necessary, and shall in addition authorize the appointment by said prosecuting attorney, of such investigating officers, clerks, stenographers and other clerical employees as said board of supervisors shall deem necessary.

**History:** 1925, Act 329, Eff. Aug. 27, 1925 ;-- CL 1929, 1297 ;-- CL 1948, 49.31  
**Former Law:** See Act 101 of 1913, being CL 1915, ÅÅ§ 2422 to 2430.

**49.32 Chief assistant prosecuting attorney; designation, duties.**

Sec. 2.

The prosecuting attorney shall designate 1 assistant prosecuting attorney as chief assistant prosecuting attorney, who shall in case of the absence, disability or sickness of the prosecuting attorney discharge all the functions and perform all the duties of the office of prosecuting attorney, and in case of the absence, disability or sickness of both the prosecuting attorney and the chief assistant prosecuting attorney, next ranking assistant shall discharge all the functions and perform all the duties of the office of prosecuting attorney.

**History:** 1925, Act 329, Eff. Aug. 27, 1925 ;-- CL 1929, 1298 ;-- CL 1948, 49.32

#### **49.33 Prosecuting attorney; statement of appointments, filing.**

Sec. 3.

The prosecuting attorney shall, within 10 days after entering on the execution of the duties of his office, file in the office of the county clerk a statement in writing of his appointments, designating 1 assistant prosecuting attorney as chief assistant prosecuting attorney and designating all other assistant prosecuting attorneys in the order in which they shall rank in discharging the functions and performing the duties of the office of prosecuting attorney.

**History:** 1925, Act 329, Eff. Aug. 27, 1925 ;-- CL 1929, 1299 ;-- CL 1948, 49.33

#### **49.34 Assistant prosecuting attorneys, investigators and clerical employees; compensation.**

Sec. 4.

The respective salaries of said assistant prosecuting attorneys and other employees appointed by said prosecuting attorney under this act shall be fixed by the board of supervisors at its regular annual meeting, and shall not be diminished during the term for which they shall be appointed.

**History:** 1925, Act 329, Eff. Aug. 27, 1925 ;-- CL 1929, 1300 ;-- CL 1948, 49.34

#### **49.35 Assistant prosecuting attorneys, investigators and clerical employees; tenure.**

Sec. 5.

Said assistant prosecuting attorneys and other employees appointed by said prosecuting attorney under this act shall hold office during the pleasure of the prosecuting attorney.

**History:** 1925, Act 329, Eff. Aug. 27, 1925 ;-- CL 1929, 1301 ;-- CL 1948, 49.35

### **ASSISTANT PROSECUTING ATTORNEYS**

#### **Act 41 of 1911**

AN ACT authorizing prosecuting attorneys in certain cases to appoint assistant prosecuting attorneys for their respective counties, and prescribing the powers and duties of such assistants.

**History:** 1911, Act 41, Eff. Aug. 1, 1911

*The People of the State of Michigan enact:*

**49.41 Assistant prosecuting attorneys; appointment.**

Sec. 1.

The prosecuting attorney of any county is hereby authorized and empowered to appoint an assistant prosecuting attorney. The appointment shall be in writing and filed with the clerk of his or her county.

**History:** 1911, Act 41, Eff. Aug. 1, 1911 ;-- CL 1915, 2419 ;-- CL 1929, 1303 ;-- CL 1948, 49.41 ;-- Am. 2012, Act 73, Imd. Eff. Apr. 6, 2012

**49.42 Assistant prosecuting attorneys; tenure, duties, oath of office, compensation.**

Sec. 2.

Any such assistant prosecuting attorney shall hold his office during the pleasure of the prosecuting attorney appointing him, perform any and all duties pertaining to the office of prosecuting attorney at such time or times as he may be required so to do by the prosecuting attorney and during the absence or disability from any cause of the prosecuting attorney, but he shall be subject to all the legal disqualifications and disabilities of the prosecuting attorney, and shall before entering upon the duties of his office take and subscribe the oath of office prescribed by the constitution of this state and file the same with the county clerk of his county. The compensation of any such assistant prosecuting attorney shall be paid by the prosecuting attorney appointing him.

**History:** 1911, Act 41, Eff. Aug. 1, 1911 ;-- CL 1915, 2420 ;-- CL 1929, 1304 ;-- CL 1948, 49.42

**Compiler's Notes:** In this section, "the constitution of this state" evidently refers to the Constitution of 1908. See now Const. 1963, Art. XI, Â§ 1.

**49.43 Construction of act.**

Sec. 3.

This act shall not be construed as repealing any general or local act heretofore passed providing for the appointment, powers, duties or compensation of assistant prosecuting attorneys of any counties.

**History:** 1911, Act 41, Eff. Aug. 1, 1911 ;-- CL 1915, 2421 ;-- CL 1929, 1305 ;-- CL 1948, 49.43

**SECOND ASSISTANT PROSECUTING ATTORNEYS**

**Act 393 of 1919**

AN ACT authorizing prosecuting attorneys to appoint second assistant prosecuting attorneys for their respective counties and prescribing the powers and duties of such assistants, in counties in this state having over 60,000 inhabitants and less than 350,000 inhabitants.

**History:** 1919, Act 393, Eff. Aug. 14, 1919

*The People of the State of Michigan enact:*

**49.51 Second assistant prosecuting attorneys; appointment.**

Sec. 1.

The prosecuting attorney of any county in this state having a population of over 60,000 inhabitants and less than 350,000 inhabitants is hereby authorized and empowered to appoint a second assistant prosecuting attorney, by and with the consent of the circuit judge or the presiding circuit judge of the judicial circuit in which such county may be situated, which appointment shall be in writing and filed with the clerk of his county.

**History:** 1919, Act 393, Eff. Aug. 14, 1919 ;-- CL 1929, 1306 ;-- CL 1948, 49.51

**49.52 Second assistant prosecuting attorneys; tenure, duties, oath of office, compensation.**

Sec. 2.

Any such assistant prosecuting attorney shall hold his office during the pleasure of the prosecuting attorney appointing him, perform any and all duties pertaining to the office of prosecuting attorney at such time or times as he may be required so to do by the prosecuting attorney and during the absence or disability from any cause of the prosecuting attorney, but he shall be subject to all the legal disqualifications and disabilities of the prosecuting attorney, and shall before entering upon the duties of his office, take and subscribe to oath of office prescribed by the constitution of this state and file the same with the county clerk of his county. Any such assistant prosecuting attorney shall be allowed by the county for his services such reasonable compensation as the board of supervisors shall determine.

**History:** 1919, Act 393, Eff. Aug. 14, 1919 ;-- CL 1929, 1307 ;-- CL 1948, 49.52

**Compiler's Notes:** In this section, "the constitution of this state" evidently refers to the Constitution of 1908. See now Const. 1963, Art. XI, Â§ 1.

**49.53 Construction of act.**

Sec. 3.

This act shall not be construed as repealing any general or local act heretofore passed providing for the appointment, powers, duties or compensation of assistant prosecuting attorneys of any counties.

**History:** 1919, Act 393, Eff. Aug. 14, 1919 ;-- CL 1929, 1308 ;-- CL 1948, 49.53

**MEETINGS OF ASSOCIATION**

**Act 189 of 1929**

AN ACT to provide for holding meetings of the prosecuting attorneys' association of Michigan, and to defray the expenses incident thereto.

**History:** 1929, Act 189, Eff. Aug. 28, 1929

*The People of the State of Michigan enact:*

**49.61 Prosecuting attorneys' association; annual meeting, time and place, notice.**

Sec. 1.

At such time before the first day of December of each year as the president of the prosecuting attorneys' association shall designate by written notice to all prosecuting attorneys of the state at least a month in advance of the date so selected, the prosecuting attorneys of the state may meet at a place designated by the president for the annual meeting of the prosecuting attorneys' association of Michigan. In case of death, removal or disability of the president of the prosecuting attorneys' association, the duty shall fall upon the vice-president of said association or upon another officer in order of their position according to the constitution and by-laws of such association.

**History:** 1929, Act 189, Eff. Aug. 28, 1929 ;-- CL 1929, 1309 ;-- Am. 1937, Act 301, Eff. Oct. 29, 1937 ;-- CL 1948, 49.61 ;-- Am. 1952, Act 142, Eff. Sept. 18, 1952

**49.62 Prosecuting attorneys' association; duty to inform members as to changes in legislation.**

Sec. 2.

It shall be the duty of the prosecuting attorneys' association to keep the prosecuting attorneys of the state informed of all changes in legislation, law and matters pertaining to their office through the department of the attorney general of the state of Michigan, to the end that a uniform system of conduct, duty and procedure be established in each county of the state.

**History:** 1929, Act 189, Eff. Aug. 28, 1929 ;-- CL 1929, 1310 ;-- CL 1948, 49.62

**49.63 Repealed. 1952, Act 142, Eff. Sept. 18, 1952.**

**Compiler's Notes:** The repealed section provided for expenses of prosecuting attorney incurred in attending annual meeting.

**COUNTY CIVIL COUNSEL**

**Act 15 of 1941**

AN ACT to authorize boards of commissioners in certain counties to employ attorneys to represent the county or county officers in civil matters.

**History:** 1941, Act 15, Eff. Jan. 10, 1942 ;-- Am. 1978, Act 508, Imd. Eff. Dec. 13, 1978

*The People of the State of Michigan enact:*

#### **49.71 County civil attorney; employment, compensation.**

##### **Sec. 1.**

The board of supervisors of any county by a majority vote of the members-elect may employ an attorney to represent the county in civil matters, whenever the board determines that the prosecuting attorney is unable to properly represent the county. Such attorney shall receive such compensation as shall be determined by the board of supervisors.

**History:** 1941, Act 15, Eff. Jan. 10, 1942 ;-- Am. 1945, Act 18, Eff. Sept. 6, 1945 ;-- CL 1948, 49.71 ;-- Am. 1952, Act 16, Eff. Sept. 18, 1952 ;-- Am. 1957, Act 5, Imd. Eff. Mar. 20, 1957

#### **49.72 Prosecuting attorney; limitation of action in civil matters.**

##### **Sec. 2.**

In case the board of supervisors of any such county shall employ an attorney under this act to represent the county in civil matters, the prosecuting attorney of such county shall not act with respect to such matters, unless requested to do so by the board of supervisors.

**History:** 1941, Act 15, Eff. Jan. 10, 1942 ;-- CL 1948, 49.72

#### **49.73 Employment of attorney to represent elected county officers; compensation; MCL 691.1408 not superseded.**

##### **Sec. 3.**

The board of commissioners of a county shall employ an attorney to represent elected county officers, including the sheriff, prosecuting attorney, clerk, treasurer, county surveyor, county executive, register of deeds, drain commissioner, mine inspector, public works commissioner, and judges of the county district, probate, and circuit courts in civil matters, as a defendant, when neither the prosecuting attorney or county corporation counsel is able to represent the particular officer. Legal advice, counsel, or court action shall be required under this section only in a case which involves an official act or duty of the office of the county officer. The attorney shall receive reasonable compensation as shall be determined by the board of commissioners. This section shall not supersede section 8 of Act No. 170 of the Public Acts of 1964, being section 691.1408 of the Michigan Compiled Laws.

**History:** Add. 1978, Act 508, Imd. Eff. Dec. 13, 1978

### **PROSECUTING ATTORNEYS COORDINATING OFFICE ACT OF 1972**

#### **Act 203 of 1972**

AN ACT to create the office of prosecuting attorneys coordination; and to prescribe its powers and duties.

**History:** 1972, Act 203, Imd. Eff. June 30, 1972

*The People of the State of Michigan enact:*

#### **49.101 Short title.**

##### **Sec. 1.**

This act shall be known and may be cited as the "prosecuting attorneys coordinating office act of 1972".

**History:** 1972, Act 203, Imd. Eff. June 30, 1972

#### **49.102 Definitions.**

##### **Sec. 2.**

As used in this act:

- (a) "Council" means the prosecuting attorneys coordinating council.
- (b) "Executive secretary" means the executive secretary of the council.
- (c) "Office" means the office of prosecuting attorneys coordination as created in section 3.

**History:** 1972, Act 203, Imd. Eff. June 30, 1972

#### **49.103 Office of prosecuting attorneys coordination; creation; council; chief executive; personnel.**

##### **Sec. 3.**

(1) The office of prosecuting attorneys coordination is created as an autonomous entity in the department of attorney general.

(2) The head of the office is the prosecuting attorneys coordinating council.

(3) The chief executive officer of the office is the executive secretary who shall be appointed by the council, and who shall hold office during the pleasure of the council. He shall perform the functions and duties as may be assigned to him by the council. The council may employ other persons as it deems necessary to implement the intent and purpose of this act.

**History:** 1972, Act 203, Imd. Eff. June 30, 1972

#### **49.104 Council; membership; terms; vacancy.**

##### **Sec. 4.**

(1) The council consists of 5 members selected as follows:

(a) The attorney general, or his designated representative.

(b) The president of the prosecuting attorneys association of Michigan.

(c) One member appointed to the council for a 1-year term, to be elected by the prosecuting attorneys association of Michigan, who shall be a prosecuting attorney from a county having a population of over 400,000 persons.

(d) One member appointed to the council for a 1-year term, to be elected by the prosecuting attorneys association of Michigan, who shall be a prosecuting attorney from a county having a population of between 100,000 and 400,000 persons.

(e) One member appointed to the council for a 1-year term, to be elected by the prosecuting attorneys association of Michigan, who shall be a prosecuting attorney from a county having a population under 100,000



persons.

(2) A member shall vacate his appointment upon termination of his official position as a prosecuting attorney or attorney general. A vacancy shall be filled in the same manner as the original appointment. A member appointed to fill a vacancy created other than by expiration of a term shall be appointed for the unexpired term of the member who he is to succeed in the same manner as the original appointment. Any member may be reappointed for additional terms.

(3) The terms of the members first appointed shall begin January 1 following the effective date of this act.

**History:** 1972, Act 203, Imd. Eff. June 30, 1972

#### **49.105 Council; officers; membership as holding public office.**

Sec. 5.

The council shall designate from among its members a chairman and vice-chairman who shall serve for 1-year terms and who may be reelected. Membership on the council shall not constitute holding a public office, and members of the council shall not be required to take and file oaths of office before serving on the council. The council shall not have the right to exercise any portion of the sovereign power of the state. A member of the council shall not be disqualified from holding any public office or employment by reason of his appointment or membership on the council, nor shall he forfeit the office or employment, by reason of his appointment hereunder, notwithstanding the provisions of any general, special or local law, ordinance or city charter.

**History:** 1972, Act 203, Imd. Eff. June 30, 1972

#### **49.106 Council; meetings.**

Sec. 6.

The council shall meet at least 4 times in each year and shall hold special meetings when called by the chairman, or in the absence of the chairman, by the vice-chairman or when called by the chairman upon the written request of 3 members of the council. The council shall establish its own procedures and requirements with respect to quorum, place and conduct of its meetings and other matters.

**History:** 1972, Act 203, Imd. Eff. June 30, 1972

#### **49.107 Council; annual report.**

Sec. 7.

The council shall make an annual report to the governor and to the prosecuting attorneys association of Michigan regarding its efforts to implement the purposes of this act.

**History:** 1972, Act 203, Imd. Eff. June 30, 1972

#### **49.108 Council; compensation; expenses.**

Sec. 8.

The members of the council shall serve without compensation but shall be entitled to their actual expenses in attending meetings and in the performance of their duties hereunder.

**History:** 1972, Act 203, Imd. Eff. June 30, 1972

#### **49.109 Council; duties.**

Sec. 9.

The council shall keep the prosecuting attorneys and assistant prosecuting attorneys of the state informed of all changes in legislation, law and matters pertaining to their office, to the end that a uniform system of conduct, duty and procedure is established in each county of the state.

**History:** 1972, Act 203, Imd. Eff. June 30, 1972

#### **49.110 Council; powers.**

Sec. 10.

The council may:

- (a) Enter into agreements with other public or private agencies or organizations to implement the intent of this act.
- (b) Cooperate with and assist other public or private agencies or organizations to implement the intent of this act.
- (c) Make recommendations to the legislature on matters pertaining to its responsibilities under this act.

**History:** 1972, Act 203, Imd. Eff. June 30, 1972

#### **49.111 Council; accepting funds, grants, and gifts.**

Sec. 11.

The council may accept funds, grants and gifts from any public or private source which shall be used to defray the expenses incident to implementing its responsibilities under this act.

**History:** 1972, Act 203, Imd. Eff. June 30, 1972

### **Revised Statutes of 1846**

#### **R.S. of 1846**

Chapter 14  
Chapter 14. Of County Officers.  
PROSECUTING ATTORNEY.

**49.153 Prosecuting attorney; duties.**

Sec. 53.

The prosecuting attorneys shall, in their respective counties, appear for the state or county, and prosecute or defend in all the courts of the county, all prosecutions, suits, applications and motions whether civil or criminal, in which the state or county may be a party or interested.

**History:** R.S. 1846, Ch. 14 ;-- CL 1857, 393 ;-- CL 1871, 529 ;-- How. 551 ;-- CL 1897, 2556 ;-- CL 1915, 2405 ;-- CL 1929, 1286 ;-- CL 1948, 49.153

**Compiler's Notes:** The above section as originally enacted was numbered section 54.

**49.154 Prosecuting attorney; appearance before magistrate.**

Sec. 54.

Each prosecuting attorney shall, when requested by any magistrate of the county, appear in behalf of the people of this state before any such magistrate, other than those exercising the police jurisdiction of incorporated cities and villages, and prosecute all complaints made in behalf of the people of this state, of which such magistrate shall have jurisdiction.

**History:** R.S. 1846, Ch. 14 ;-- CL 1857, 394 ;-- CL 1871, 530 ;-- How. 552 ;-- CL 1897, 2557 ;-- CL 1915, 2406 ;-- CL 1929, 1287 ;-- CL 1948, 49.154

**Compiler's Notes:** The above section as originally enacted was numbered section 55.

**49.155 Opinions of prosecuting attorney or county corporation counsel.**

Sec. 55.

The prosecuting attorney, or county corporation counsel in a county which has employed an attorney in lieu of the prosecuting attorney to represent the county in civil matters, shall give opinions, in cases where this state, a county, or a county officer may be a party or interested, when required by a civil officer in the discharge of the officer's respective official duties relating to an interest of the state or county.

**History:** R.S. 1846, Ch. 14 ;-- CL 1857, 395 ;-- CL 1871, 531 ;-- How. 553 ;-- CL 1897, 2558 ;-- CL 1915, 2407 ;-- CL 1929, 1288 ;-- CL 1948, 49.155 ;-- Am. 1978, Act 535, Imd. Eff. Dec. 21, 1978

**Compiler's Notes:** The above section as originally enacted was numbered section 56.

**49.158 Prosecuting attorney; acceptance of fees, interest in proceedings prohibited.**

Sec. 58.

No prosecuting attorney shall receive any fee or reward from or on behalf of any prosecutor or other individual for services in any prosecution or business to which it shall be his official duty to attend, nor be concerned as attorney or counsel for either party other than the state or county in any civil action depending upon the same state

of facts upon which any criminal prosecution commenced or prosecuted shall depend, or in any action for malicious prosecution brought in consequence of any criminal prosecution commenced or prosecuted during his term of office in the county of which he is prosecuting attorney; nor shall any attorney be permitted to prosecute or aid in prosecuting any person for an alleged criminal offense where he is engaged or interested in any civil suit or proceeding depending upon the same state of facts against such person directly or indirectly.

**History:** R.S. 1846, Ch. 14 ;-- CL 1857, 398 ;-- CL 1871, 534 ;-- Am. 1883, Act 32, Eff. Sept. 8, 1883 ;-- How. 557 ;-- CL 1897, 2561 ;-- CL 1915, 2410 ;-- CL 1929, 1291 ;-- CL 1948, 49.158

#### **49.159 Prosecuting attorney; compensation.**

Sec. 59.

(1) The prosecuting attorney shall receive compensation for his or her services, as the county board of commissioners, by an annual salary or otherwise, orders and directs.

(2) Notwithstanding subsection (1), for a county which has a county officers compensation commission, the compensation of the prosecuting attorney of that county shall be determined by that commission.

**History:** R.S. 1846, Ch. 14 ;-- CL 1857, 399 ;-- CL 1871, 535 ;-- How. 558 ;-- CL 1897, 2562 ;-- CL 1915, 2411 ;-- CL 1929, 1292 ;-- CL 1948, 49.159 ;-- Am. 1978, Act 489, Imd. Eff. Dec. 1, 1978

**Compiler's Notes:** This section as originally enacted was numbered section 60.

#### **49.160 Special prosecuting attorney; appointment; powers and duties; assistant prosecuting attorney.**

Sec. 60.

(1) If the prosecuting attorney of a county determines himself or herself to be disqualified by reason of conflict of interest or is otherwise unable to attend to the duties of the office, he or she shall file with the attorney general a petition stating the conflict or the reason he or she is unable to serve and requesting the appointment of a special prosecuting attorney to perform the duties of the prosecuting attorney in any matter in which the prosecuting attorney is disqualified or until the prosecuting attorney is able to serve.

(2) If the attorney general determines that a prosecuting attorney is disqualified or otherwise unable to serve, the attorney general may elect to proceed in the matter or may appoint a prosecuting attorney or assistant prosecuting attorney who consents to the appointment to act as a special prosecuting attorney to perform the duties of the prosecuting attorney in any matter in which the prosecuting attorney is disqualified or until the prosecuting attorney is able to serve.

(3) A special prosecuting attorney appointed under this section is vested with all of the powers of the prosecuting attorney for the purpose of the appointment and during the period of appointment, including the power to investigate and initiate charges. The cost of prosecution, other than personnel costs, in any matter handled by a special prosecuting attorney shall be borne by the office of the prosecuting attorney who has been determined to be disqualified or otherwise unable to serve.

(4) This section does not apply if an assistant prosecuting attorney has been or can be appointed by the prosecuting attorney pursuant to section 18 of chapter 16 of the code of criminal procedure, 1927 PA 175, MCL 776.18, to perform the necessary duties within the constraints of that section or if an assistant prosecuting attorney has been otherwise appointed by the prosecuting attorney pursuant to law and is not disqualified from acting in place of the prosecuting attorney.

**History:** R.S. 1846, Ch. 14 ;-- CL 1857, 400 ;-- CL 1871, 536 ;-- How. 559 ;-- CL 1897, 2563 ;-- CL 1915, 2412 ;-- CL 1929, 1293 ;-- CL 1948, 49.160 ;-- Am. 1978, Act 535, Imd. Eff. Dec. 21, 1978 ;-- Am. 2002, Act 706, Eff. Feb. 1, 2003

**Compiler's Notes:** This section as originally enacted was numbered section 61.