TITLE 20

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PART 1

GENERAL PROVISIONS

20-1-101. Bond and oath or affirmation of district attorney and staff.

(1) Every district attorney, chief deputy district attorney, deputy district attorney, special deputy district attorney, and assistant district attorney shall take an oath or affirmation in accordance with section 24-12-101. A district attorney shall also execute to the people of the state of Colorado a bond in the sum of five thousand dollars with a good and sufficient individual, schedule, or blanket corporate surety bond or other acceptable security, to be approved by the secretary of state, conditioned for the faithful discharge of the duties of his or her office, as the same are prescribed by law, and upon any breach of such bond, an action shall lie thereon for the benefit of any county fund or person injured thereby.

(2) As the district attorney may direct, the assistant and deputy district attorneys and other employees appointed pursuant to this title may be required to file with the secretary of state the bond required by law to be filed by district attorneys.

Source: R.S. p. 262, § 3. **G.L.** omitted. **G.S.** § 1061. **R.S. 08:** § 2095. **C.L.** § 5774. **CSA:** C. 55, § 1. **CRS 53:** § 45-1-1. **C.R.S. 1963:** § 45-1-1. **L. 71:** p. 516, § 1. **L. 2018:** (1) amended, (HB 18-1138), ch. 88, p. 693, § 6, effective August 8.

Cross references: For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

ANNOTATION

Failure to file paperwork for oath with secretary of state in a timely fashion does not create a permanent vacancy. No permanent vacancy is created if an elected district attorney misses the deadline to timely file the necessary paperwork for his or her oath and bond requirements with the secretary of state. Therefore, the elected district attorney is authorized to prosecute defendants during a period of a temporary defect. The district attorney acts as a de facto officer whose acts performed in the discharge of his or her official duties were valid and binding. People v. Scott, 116 P.3d 1227 (Colo. App. 2004).

Applied in People v. District Court, 193 Colo. 528, 568 P.2d 445 (1977).

20-1-102. Appear on behalf of state and counties.

(1) Every district attorney shall appear in behalf of the state and the several counties of his or her district:

(a) In all indictments, actions, and proceedings which may be pending in the district court in any county within his district wherein the state or the people thereof or any county of his district may be a party;

(b) On the hearing of every writ of habeas corpus sued out by any person charged with or convicted of any public offense before the judge of his district;

(c) In any such indictment, action, or proceeding which may be removed from the district court of any county within his district for appellate review as provided by law and the Colorado appellate rules;

(d) In any such indictment, action, or proceeding which may be brought to the district court of any county in his or her district by change of venue from any other district;

(e) When he or she may deem it advisable to do so, in the preliminary examination of persons charged with any offense before any judge within his or her district; and

(f) In any probation probable cause hearing brought pursuant to the rules adopted under the "Interstate Compact for Adult Offender Supervision", part 28 of article 60 of title 24, C.R.S., or the interstate compact for juveniles, part 7 of article 60 of title 24, C.R.S.

(2) Nothing in this section shall be so construed as to prevent the county commissioners of any county from employing one or more attorneys to appear and prosecute or defend in behalf of the people of the state or of such county, in any such indictment, action, or proceeding.

(3) The district attorney, when enforcing support laws pursuant to statute or contract, may use any remedy, either civil or criminal, available under the laws of this state and may appear on behalf of the people of the state of Colorado in any judicial district in this state. When doing so, the district attorney represents the people of the state of Colorado, and nothing within this section creates an attorney-client relationship between the district attorney and any party, other than the people of the state of Colorado, or witness to the action; except that any district attorney who is a contractual agent for a county department of human or social services shall collect a fee pursuant to section 26-13-106 (2).

Source: R.S. p. 262, § 4. **G.L.** § 895. **G.S.** § 1056. **R.S. 08:** § 2096. **C.L.** § 5975. **CSA:** C. 55, § 2. **CRS 53:** § 45-1-2. **C.R.S. 1963:** § 45-1-2. **L. 64:** p. 392, § 32. **L. 81:** (3) added, p. 901, § 2, effective May 27. **L. 82:** (3) amended, p. 281, § 5, effective April 2. **L. 88:** (3) amended, p. 635, § 13, effective July 1. **L. 2005:** (3) amended, p. 499, § 4, effective August 8. **L. 2016:** IP(1), (1)(d), and (1)(e) amended and (1)(f) added, (HB 16-1268), ch. 141, p. 419, § 1, effective May 4. **L. 2018:** (3) amended, (SB 18-092), ch. 38, p. 434, § 82, effective August 8.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

ANNOTATION

Officer of court and member of executive branch. While a district attorney is an officer of the court as any other attorney, a district attorney is not a judicial officer nor a part of the judicial branch of the government. A district attorney belongs to the executive branch. People v. District Court, 186 Colo. 335, 527 P.2d 50 (1974).

The district attorney is part of the executive branch of government, and has broad discretion in selecting the deputies that will appear on his behalf. People v. District Court, 767 P.2d 239 (Colo. 1989).

District attorney is proper officer to institute quo warranto proceedings in inferior courts. The district attorney, and not the attorney general, is the proper officer

to institute proceedings in quo warranto in the inferior courts and he may also under this section follow the case into the supreme court, from which time the attorney general would at once be entitled to control its further progress. People ex rel. Jerome v. Regents of Univ. of Colo., 24 Colo. 175, 49 P. 286 (1897).

The district attorney may institute proceedings in the nature of quo warranto upon his own responsibility, and, if upon request he refuses so to do, a private person, as relator, may in a proper case institute them without leave of court. People ex rel. Jerome v. Regents of Univ. of Colo., 24 Colo. 175, 49 P. 286 (1897).

District attorney appears for state in criminal proceedings. The district attorney is under duty, as provided by this section, to appear in behalf of the state in all pending criminal proceedings. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

But is not a party in civil actions of habeas corpus. Proper procedure to be followed by one claiming to be imprisoned without legal authority is to file a civil action seeking a writ of habeas corpus, naming as respondent the person or persons in whose custody he is detained; the people of the state of Colorado is not a proper party to such proceedings since an application for a writ of habeas corpus is a civil action, independent of the criminal charge, and is not part of the inquiry based on the information. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

The district attorney is expressly authorized by this statute to appear on behalf of the people in all criminal cases for crimes committed within the geographical boundaries of the judicial district served by the district attorney. People v. Hastings, 903 P.2d 23 (Colo. App. 1994).

The district attorney, through the people's status as a party in an underlying civil forfeiture action, has standing to seek opposing counsel's disqualification, including disqualification of a public defender, unless an applicable rule or statute provides to the contrary. People v. Shank, 2018 CO 51, 420 P.3d 240.

Section 24-31-101 and this section are not inconsistent. Section 24-31-101, permitting the governor to appoint the attorney general to prosecute cases in which the state is a party or is interested, and this section, directing the district attorney to appear on behalf of the state or counties of his district where the state or the people thereof or any county may be a party, are not inconsistent. They may stand together. The specific duty imposed upon the district attorneys in no way limits or excludes the general authority of the attorney general upon the same subject. People ex rel. Witcher v. District Court, 190 Colo. 483, 549 P.2d 778 (1976); People v. Vickers, 199 Colo. 305, 608 P.2d 808 (1980).

In determining whom to prosecute for criminal activity and on what charge, a prosecutor has wide discretion. People v. MacFarland, 189 Colo. 363, 540 P.2d 1073 (1975).

A district attorney has wide prosecutorial discretion. Dresner v. County Court, 189 Colo. 374, 540 P.2d 1085 (1975).

Discretionary choice of statutes under which to prosecute. Where reasonable distinctions can be drawn between a specific statute and a general statute, it is a matter of prosecutorial discretion for the district attorney to choose under which statute he will prosecute. People v. Trigg, 184 Colo. 78, 518 P.2d 841 (1974).

And which charges to prosecute. A prosecutor has constitutional power to exercise his discretion in deciding which of several possible charges to press in a prosecution. Myers v. District Court, 184 Colo. 81, 518 P.2d 836 (1974).

Ultimate discretionary charging authority is vested in the district attorney and, unless such authority is delegated, a defendant may not assert that some other person exercised authority to make a binding governmental promise. Lucero v. Goldberger, 804 P.2d 206 (Colo. App. 1990).

But the conscious exercise of selectivity in the enforcement of laws is not in itself a constitutional violation, and equal protection is not denied absent a showing that a prosecutor has exercised a policy of selectivity based upon an unjustifiable standard such as race, religion, or any other arbitrary classification. People v. MacFarland, 189 Colo. 363, 540 P.2d 1073 (1975).

Defendant has the burden of proving discriminatory prosecution on the part of the prosecutor. People v. MacFarland, 189 Colo. 363, 540 P.2d 1073 (1975).

Power to dismiss case. The law does not vest in the district attorney power to dismiss cases subject to the approval of the court, but vests the absolute power of dismissal in that officer. Gray v. District Court, 42 Colo. 298, 94 P. 287 (1908).

Knowledge of staff imputed to district attorney. Knowledge of the chief deputy and of the chief investigator for the district attorney is knowledge to the entire office and the district attorney will be charged with that knowledge. DeLuzio v. People, 177 Colo. 389, 494 P.2d 589 (1972).

Disqualification of district attorney. When a prosecuting attorney purposefully exposes a jury to inadmissible and highly prejudicial evidence, such conduct will not be condoned and a new trial will be granted. Although the trial judge in such a case may impose a broad array of sanctions to prevent overzealous prosecution, disqualification of the prosecuting attorney assigned to a particular case does not lie within the scope of the trial judge's discretion. People v. District Court, 767 P.2d 239 (Colo. 1989).

Prosecutors absolutely immune from suit under 42 U.S.C. § 1983 for "advocatory" functions closely related to the judicial process, but only qualifiedly immune from suit for "investigative" or "administrative" functions, which have a more attenuated connection with the judicial process. Florey v. District Court, 713 P.2d 840 (Colo. 1985).

Test to determine whether prosecutor absolutely or only qualifiedly immune from suit under 42 U.S.C. § 1983 for certain acts. Factors to be considered in

determining whether acts of prosecutors are "advocatory" in nature and absolutely immune or "investigative" or "administrative" functions and only qualifiedly immune: (1) Whether the challenged conduct occurred prior to or subsequent to the filing of formal criminal charges against the person seeking redress; (2) whether there existed safeguards that could deter or mitigate prosecutorial abuse and thus reduce the need for civil action to redress the violation of constitutional rights; and (3) whether the challenged conduct more closely resembled traditional police conduct than prosecutorial conduct. Florey v. District Court, 713 P.2d 840 (Colo. 1985).

A district attorney was entitled to claim immunity from suit in federal court under the eleventh amendment to the U.S. Constitution when the suit arose out of the investigation of allegations relating to embezzlement by a professor at the university of Colorado. Rozek v. Topolnicki, 865 F.2d 1154 (10th Cir. 1989).

Power of county commissioners to employ attorney. The concluding sentence of this section reserves to the general assembly authority to confer upon county commissioners, or save to that body by legislation, the power to employ an attorney to appear and prosecute or defend in behalf of the people of the state or county in such indictments, suits, and proceedings as those in which the power and duty to appear have been delegated to the district attorney. The board, under this section, may employ other counsel, or counsel to assist the district attorney therein, but not to wrest from him power to control them. McMullin v. Bd. of Comm'rs, 29 Colo. 478, 68 P. 779 (1902).

The general assembly did not take from office of district attorney any of the duties or characteristics belonging to it under this section, or attempt to vest the same in the office of county attorney, or authorize the board of county commissioners to do so. McMullin v. Bd. of Comm'rs, 29 Colo. 478, 68 P. 779 (1902).

Under this section the county commissioners are authorized to employ one or more attorneys on behalf of the county, and their action in the matter will not be reviewed by the courts unless it is made to appear that they acted unlawfully and corruptly. Morris v. Bd. of Comm'rs, 25 Colo. App. 416, 139 P. 582 (1914).

This section does not require district attorney to have prosecuted contempt proceedings on remand. This section provides for the representation of the state and counties in cases in which they are parties. It does not pertain to proceedings other than criminal ones. No basis for conclusion advocated by landowner that legislature intended section to protect the rights of defendants in contempt proceedings. To the contrary, like § 18-1-102, this section exists to protect the state's interests not the defendant's. Eichhorn v. Kelley, 111 P.3d 544 (Colo. App. 2004).

Applied in People ex rel. Tooley v. District Court, 190 Colo. 486, 549 P.2d 774 (1976); People ex rel. Losavio v. Gentry, 199 Colo. 153, 606 P.2d 57 (1980); People in Interest of W.M., 643 P.2d 794 (Colo.

App. 1982); People v. Castro, 657 P.2d 932 (Colo. 1983).

20-1-103. Collect forfeited recognizances.

It is the exclusive duty of the district attorney to provide for the collection of forfeited recognizances and turn the money so collected into the registry of the court declaring the forfeiture. In fulfilling such duty, the district attorney may contract with any person or entity and provide for payment of any fees and costs for the services of such person or entity out of such moneys collected.

Source: L. 1891: p. 135, § 1. **R.S.** 08, § 2097. **C.L.** § 5976. **CSA:** C. 55, § 3. **CRS 53:** § 45-1-3. **C.R.S. 1963:** § 45-1-3. **L. 73:** p. 1403, § 34. **L. 98:** Entire section amended, p. 962, § 5, effective May 27.

Cross references: For procedure in disposition of security deposits upon forfeiture or termination of bond and enforcement when forfeiture not set aside, see §§ 16-4-111 and 16-4-112.

ANNOTATION

Proper time for forfeiture of bond of a nonappearing defendant is on the day and hour specified in the bond for appearance. The district attorney should be present in court representing the people in the prosecution of defendant at the appointed time and, in the event of his failure to appear, should be in readiness to perform his statutory duties in connection with the forfeiture of defendant's bond. People v. Johnson, 155 Colo. 392, 395 P.2d 19 (1964).

Penal sum of breached bond should be reduced to judgment. After an order has been entered declaring a bond forfeited, whether in the nature of a declaration of default or an interlocutory decree, the claim in debt arising out of breach of the bond should be reduced to a judgment in behalf of the people and against the persons answerable for the amount of the penal sum specified in the bond. People v. Johnson, 155 Colo. 392, 395 P.2d 19 (1964).

The bonding agency, no matter how he is described or characterized, is not a bondsman in this case; he is not a party to this litigation; he is not accountable for defendant's appearance or nonappearance. Not being obligated, he is not in default; he owes no money, and no valid judgment could be entered against him. People v. Johnson, 155 Colo. 392, 395 P.2d 19 (1964).

Applied in People ex rel. Losavio v. Gentry, 199 Colo. 153, 606 P.2d 57 (1980).

20-1-104. Appear at inquests.

The district attorneys of the several judicial districts in the state of Colorado shall appear in their respective districts at all inquests held by any coroner and have power to subpoena and examine witnesses at any such inquest.

Source: L. 1889: p. 151, § 1. **R.S. 08:** § 2098. **C.L.** § 5977. **CSA:** C. 55, § 4. **CRS 53:** § 45-1-4. **C.R.S. 1963:** § 45-1-4.

20-1-105. Opinions to county officers - representation.

(1) The district attorney, upon request of any county officer of any county within his district, without fee, shall give his opinion in writing upon all questions of law having references to the duties of such officer which may be submitted and shall file and preserve in his office a copy of all such opinions.

(2) The district attorney, upon a request in the form of a resolution by the board of county commissioners of any county within his district, shall represent any county officer enumerated in article 10 of title 30, C.R.S., or the employees of any such officer in the defense of any civil suit or civil proceeding brought against such officer in any court of this state or any federal court if such action directly relates to the duties of the county officer.

(3) In any city and county, the district attorney, upon a request in the form of a resolution by city council, shall represent any city and county officer, as provided in the charter of such city and county, or the employees of any such officer in the defense of any civil suit or civil proceeding brought against such officer in any court of this state or any federal court if such action directly relates to the duties of any such officer.

Source: R.S. p. 262, § 5. **G.L.** § 896. **G.S.** § 1057. **R.S. 08:** § 2099. **C.L.** § 5978. **CSA:** C. 55, § 5. **CRS 53:** § 45-1-5. **C.R.S. 1963:** § 45-1-5. **L. 72:** p. 294, § 1.

Cross references: For public trustees authorized to cooperate and contract with one another and others, see § 38-37-111.

ANNOTATION

Services of county attorneys must be authorized. In view of this section, a county attorney should not be allowed to recover for services rendered to county officials other than the board of county commissioners, unless such other officials are first authorized by the commissioners to employ or consult an attorney. Morris v. Bd. of Comm'rs, 25 Colo. App. 416, 139 P. 582 (1914).

Before the county attorney can act for county clerk in making demand on former clerk to turn over funds, records, etc., the county clerk should show that the board of county commissioners has given authority or direction to such other officials to employ or consult an attorney. Marsh v. People, 112 Colo. 81, 146 P.2d 218 (1944).

20-1-106. Appear and advise grand juries.

The district attorneys for the several judicial districts in the state of Colorado shall appear in their respective districts at all sessions of any grand jury which may be convened in any county within their respective districts, and it is the duty of the district attorney to advise any grand jury convened within his district and to examine witnesses who may be subpoenaed before any such grand jury.

Source: L. 17: p. 165, § 1. **C.L.** § 5979. **CSA:** C. 55, § 6. **CRS 53:** § 45-1-6. **C.R.S. 1963:** § 45-1-6.

ANNOTATION

Duty to appear at grand juries. This section not only gives the district attorney the right to appear at all sessions of grand juries, but makes it his duty to do so. People ex rel. District Att'y v. District Court, 75 Colo. 412, 225 P. 829 (1924).

Purpose of section. This right and duty of the district attorney to appear before grand juries is but a recognition and indorsement of a practice which has long prevailed, not only in many of the states, and in the federal courts, but in England. The presence of the prosecuting officer tends to expedite the work of the grand jury, and the knowledge of the facts there obtained is of advantage to him in the preparation and trial of the indictments returned. People ex rel. District Att'y v. District Court, 75 Colo. 412, 225 P. 829 (1924).

Mere presence of investigators from the district attorney's staff at grand jury sessions may not in and of itself be sufficient to invalidate an indictment in a given case unless prejudice is shown. People v. Lewis, 183 Colo. 236, 516 P.2d 416 (1973).

Grand jurors must remain free to reach their own conclusions based on the facts presented to them. People v. Meyers, 617 P.2d 808 (Colo. 1980).

Prosecutor must exercise due care to assure that he does not unduly influence the grand jury. People v. Meyers, 617 P.2d 808 (Colo. 1980).

And transcript released to defense where misconduct affects indictment or probable cause determination. Only in cases where clear examples of inappropriate conduct by the district attorney may affect the validity of the defendant's indictment or the determination of probable cause should the trial court sacrifice the confidentiality of the grand jury proceedings and release a transcript of the grand jury colloquy between the district attorney and the grand jury to the defense counsel. People v. District Court, 199 Colo. 398, 610 P.2d 490 (1980).

Applied in People ex rel. Losavio v. Gentry, 199 Colo. 153, 606 P.2d 57 (1980).

20-1-106.1. Preparation and review of affidavits and warrants.

(1) The district attorneys of the several judicial districts in the state of Colorado shall:

(a) Render, in their quasi-judicial capacity, legal advice to peace officers, upon the request of such officers or of the court, pertaining to the preparation and review of affidavits and warrants for arrests, searches, seizures, nontestimonial identification items, and court orders for the production of records;

(b) Examine and evaluate each affidavit for a no-knock search warrant sought pursuant to part 3 of article 3 of title 16, C.R.S., and render legal advice regarding such affidavit to the peace officer submitting the affidavit before such affidavit is submitted to a judge. A district attorney, including any assistant district attorney, chief deputy district attorney, or deputy district attorney, shall indicate approval of an affidavit by placing the date and his or her signature and attorney registration number on the affidavit as allowed by statute or court rule. A district attorney shall only sign an affidavit for a no-knock search warrant sought pursuant to part 3 of article 3 of title 16, C.R.S., upon satisfaction that the information in such affidavit:

(I) Fulfills the requirements of section 16-3-303, C.R.S.; and

(II) Supports the lawful issuance of a search warrant pursuant to section 16-3-301, C.R.S.

(2) In the absence of the bad faith performance of the duties specified in this section, the district attorneys of the state of Colorado shall be immune from liability for the performance of said duties; except that such immunity shall not apply to charges of perjury in the first degree, perjury in the second degree, or false swearing brought pursuant to section 18-8-502, 18-8-503, or 18-8-504, C.R.S., respectively.

(3) The division of criminal justice within the Colorado department of public safety shall review existing policies relating to the issuance and use of no-knock search warrants pursuant to section 24-33.5-503 (1)(q), C.R.S.

Source: L. 85: Entire section added, p. 717, § 1, effective April 30. **L. 86:** Entire section amended, p. 772, § 13, effective July 1. **L. 2000:** Entire section amended, p. 651, § 2, effective July 1. **L. 2004:** (1)(a) amended, p. 1378, § 3, effective July 1.

Cross references: For the description of "peace officer", see § 16-2.5-101.

20-1-107. Disqualification - court to appoint prosecutor - legislative declaration.

(1) The general assembly finds that the office of the district attorney was created by the state constitution and that the state constitution gives to the general assembly the exclusive authority to prescribe the duties of the office of the district attorney. The general assembly finds and declares that this section is necessary to protect the independence of persons duly elected to the office of district attorney.

(2) A district attorney may only be disqualified in a particular case at the request of the district attorney or upon a showing that the district attorney has a personal or financial interest or finds special circumstances that would render it unlikely that the defendant would receive a fair trial. A motion to disqualify a district attorney shall be served upon the district attorney at least two weeks before the motion is heard. Such motion shall contain at least a statement of the facts setting forth the grounds for the claimed disqualification and the legal authorities relied upon by the movant and shall be supported by affidavits of witnesses who are competent to testify to the facts set forth in the affidavit. The district attorney may file a response in opposition to the motion and may appear at any hearing held on the motion. The judge shall review the pleadings and determine whether an evidentiary hearing is necessary. The motion shall not be granted unless requested by the district attorney or unless the court finds that the district attorney has a personal or financial interest or special circumstances exist that would render it unlikely that the defendant would receive a fair trial. The order disqualifying the district attorney shall be stayed pending any appeal authorized by this section. If the motion is brought at or before the preliminary hearing, it may not be renewed at the trial court on the basis of facts that were raised or could have been raised at the time of the original motion.

(3) An interlocutory appeal from an order of disqualification of a district attorney entered in the district court shall be filed in the supreme court pursuant to section 16-12-102 (2), C.R.S. An appeal from an order of disqualification filed in the county court shall be filed in the district

court. In computing the time period within which a trial must be commenced, the period during which an appeal pursuant to this section is pending shall be excluded.

(4) If the district attorney is disqualified in any case which it is his or her duty to prosecute or defend, the court having criminal jurisdiction may appoint a special prosecutor to prosecute or defend the cause. The judge shall appoint the special prosecutor from among the full-time district attorneys, assistant district attorneys, or deputy district attorneys who serve in judicial districts other than where the appointment is made; except that, upon the written approval of the chief justice of the supreme court, the judge may appoint any disinterested private attorney who is licensed to practice law in the state of Colorado to serve as the special prosecutor. Any special prosecutor appointed pursuant to this section shall be compensated as provided in section 20-1-308.

Source: L. 1876: p. 65, § 1. **G.L.** § 897. **G.S.** § 1058. **R.S. 08:** § 2109. **C.L.** § 5994. **CSA:** C. 55, § 22. **CRS 53:** § 45-1-7. **C.R.S. 1963:** § 45-1-7. **L. 77:** Entire section amended, p. 858, § 2, effective May 24. **L. 2002:** Entire section amended, p. 758, § 4, effective July 1.

Cross references: For procedure when district attorney refused without justification to prosecute, see § 16-5-209.

ANNOTATION

Law reviews. For article, "Disqualifying a District Attorney When a Government Witness was Once the District Attorney's Client: The Law Between the Courts and the State", see 85 Den. U.L. Rev. 369 (2007).

2002 amendment to this section eliminates "appearance of impropriety" as a basis for disqualification of district attorneys. People v. Chavez, 139 P.3d 649 (Colo. 2006); People v. Manzanares, 139 P.3d 655 (Colo. 2006); People ex rel. N.R., 139 P.3d 674 (Colo. 2006).

Disqualification for appearance of impropriety does not violate separation of powers. Although appearance of impropriety is not specifically codified, it is an acceptable basis for disqualification. Once the decision to prosecute is made, it becomes a matter of judicial responsibility, not a matter of legislative declaration. Thus, there is no separation of powers problem. People v. Witty, 35 P.3d 69 (Colo. App. 2000).

Purpose. This section is designed to authorize the disqualification of a district attorney and to allow for the appointment of a special prosecutor only when the district attorney has an interest in the litigation apart from his professional responsibility of upholding the law. People v. District Court,

189 Colo. 159, 538 P.2d 887 (1975); People ex rel. N.R., 139 P.3d 671 (Colo. 2006).

The 2002 amendment to subsection (2) eliminates "the appearance of impropriety" as a basis for disqualification. Under the current version of the statute, disqualification is proper only when (1) the district attorney requests his or her own disqualification, (2) the district attorney has either a personal or a financial interest in the prosecution, or (3) special circumstances exist that would make it unlikely that the defendant would receive a fair trial. People v. Lincoln, 161 P.3d 1274 (Colo. 2007).

The fundamental inquiry is whether disqualification of a district attorney appears reasonably necessary to ensure the integrity of the fact finding process, the fairness or appearance of fairness of trial, the orderly or efficient administration of justice, or public trust or confidence in the criminal justice system. People v. Palomo, 31 P.3d 879 (Colo. 2003); People v. Lee, 93 P.3d 544 (Colo. App. 2003) (decided under law in effect prior to the 2002 amendment).

District attorney's charging decision in February 2005 concerning crime allegedly committed in February 2002 was governed by the July 2002 amendment to this section rather than the version of this section in effect prior to the amendment. People ex rel. N.R., 139 P.3d 671 (Colo. 2006).

Appointment is to avoid appearance of impropriety. The most compelling rationale for requiring appointment of a special prosecutor is avoidance of the appearance of impropriety. People v. Stevens, 642 P.2d 39 (Colo. App. 1981).

Any inconvenience to the prosecution resulting from appointment of a special prosecutor is but a small price to pay to avoid the appearance of impropriety. People v. Stevens, 642 P.2d 39 (Colo. App. 1981).

Disqualification is proper when the district attorney has some involvement in the defendant's case, which would impair that office's ability to prosecute the case fairly. People ex rel. Sandstrom v. District Ct., 884 P.2d 707 (Colo. 1994).

A finding of "special circumstances" described in subsection (2) is to be made by the court and not the district attorney. People ex rel. N.R., 139 P.3d 671 (Colo. 2006).

To determine whether special circumstances render a fair trial unlikely, a court may evaluate the facts before it altogether to determine whether a defendant will receive a fair trial. People v. Arellano, 2020 CO 84, 476 P.3d 364.

A district attorney does not have a personal interest in a prosecution that warrants disqualification unless he or she stands to receive some personal benefit or suffer some detriment from the outcome of the prosecution that is unrelated to his or her duty to enforce the law. People ex rel. N.R., 139 P.3d 671 (Colo. 2006).

A district attorney must be disqualified in a criminal case where the attorney or member of his or her staff will appear as a witness and give testimony of sufficient

consequence to prevent a fair trial. People v. Dunlap, 124 P.3d 780 (Colo. App. 2004).

The fact that the defense intends to call a deputy district attorney as a witness does not, without more, require the court to disqualify the district attorney. People v. Dunlap, 124 P.3d 780 (Colo. App. 2004).

In a criminal case in which a judge was the victim, the routine performance of duties by the district attorney's office before the victim's court does not constitute special circumstances of the type contemplated by subsection (2). Specifically, the fact that the prosecutor in the case and other prosecutors in the district attorney's office appear in front of the judge who is the alleged victim, the proximity of the district attorney's office to the judge's chambers, the number of investigators and staff from the district attorney's office on the prosecution's witness list, and the recusal of the victim-judge's district court bench are not reasons to grant the defendant's motion to appoint a special prosecutor. People v. Chapman, 2025 CO 19, 586 P.3d 158.

Construction in pari materia. This section is in pari materia with § 16-5-201 et seq. and these sections should be construed, if possible, so as to be consistent and harmonious, one with the other, and in their several parts. People v. Gibson, 53 Colo. 231, 125 P. 531 (1912).

Section authorizes court to supplant district attorney where impartial trial cannot be had through that officer. Gray v. District Court, 42 Colo. 298, 94 P. 287 (1908).

And power to appoint is not limited to contingencies specified. The power of the district court to make an appointment of a special attorney in criminal cases to act for and in place of the district attorney is not limited to the contingencies specified in this and the following section. It is within the inherent power of the court to appoint in other cases where necessary in the furtherance of justice, and for the due administration of the law. Bd. of Comm'rs v. Crump, 18 Colo. App. 59, 70 P. 159 (1902).

But appointment cannot be made where officer is present and not disqualified. This and the following section are not broad enough to permit the court to appoint a district attorney to prosecute in criminal cases when that officer is present in the court room and not disqualified. Gray v. District Court, 42 Colo. 298, 94 P. 287 (1908).

And a writ of prohibition will lie against the appointment of a special prosecutor to act as district attorney where the facts disclosed were not sufficient to authorize the appointment. People ex rel. Morgan v. First Judicial Dist. Court, 54 Colo. 237, 130 P. 324 (1913).

Presumption is that statutory ground for appointment existed. The district court has authority, in certain cases specified in this and the following section, to appoint someone to discharge the duties of the office of district attorney. When such an appointment is made, and in the absence of anything in the record to the contrary, the supreme court must presume that one of the statutory grounds existed when the

appointment was made. Wilson v. People, 3 Colo. 325 (1877).

A second appointment may be made. Where the regular prosecuting officers are disqualified, and the special prosecutor declines to act further, it is not only within the power of the court, but is its clear duty to appoint an attorney to take action upon the matters thus presented. People ex rel. Morgan v. First Judicial Dist. Court, 54 Colo. 237, 130 P. 324 (1913).

Where all conditions are present to give the court authority under this section to appoint a special prosecutor, although such appointee be a second one, the court has power to again make an appointment. People ex rel. Morgan v. First Judicial Dist. Court, 54 Colo. 237, 130 P. 324 (1913).

Defendant should not have to demonstrate prejudice or lack of integrity. People v. Stevens, 642 P.2d 39 (Colo. App. 1981).

Defendant need not demonstrate prejudice where the issue is the authority to commence the prosecution itself. Even though a new district attorney had replaced a disqualified district attorney when motion to revoke a deferred judgment and sentence was heard and determined, the issue was authority to commence prosecution itself and the fact that there was no prejudice to the defendant was not determinative of defendant's motion to dismiss. People v. Hastings, 903 P.2d 23 (Colo. App. 1994).

District attorney to be given notice of grounds for disqualification. This section requires that the district attorney be given sufficient notice of the grounds for the disqualification to enable him to determine the facts behind the motion to disqualify and to consider the state of the law relating to the grounds for disqualification. People ex rel. Losavio v. Gentry, 199 Colo. 153, 606 P.2d 57 (1980).

Trial courts have broad discretion in determining whether they should disqualify a district attorney from prosecuting a particular case. People v. Lee, 93 P.3d 544 (Colo. App. 2003) (decided under law in effect prior to the 2002 amendment).

A court commits an abuse of discretion if it makes a manifestly arbitrary, unreasonable, or unfair decision. People v. Lee, 93 P.3d 544 (Colo. App. 2003) (decided under law in effect prior to the 2002 amendment).

The question of whether an appearance of impropriety exists and the remedy therefor are uniquely questions for the court and must be committed to the trial court's broad discretion. People v. County Court, City & County of Denver, 854 P.2d 1341 (Colo. App. 1992).

Interest requiring removal defined. The interest which requires the removal of a district attorney for the particular occasion is not that which results from his becoming biased in favor of a defendant, but is such a concern in the outcome of the matter that he will either reap some benefit or suffer some disadvantage. Gray v. District Court, 42 Colo. 298, 94 P. 287 (1908).

It is the district attorney's duty to hold himself under proper restraint and avoid violent partisanship, partiality, and

misconduct in the performance of his duties which may result in false accusations, and it is equally his duty to refrain from improper methods calculated to bring about a wrongful conviction as it is to use every legitimate means to obtain a just conviction. Wheeler v. District Court, 180 Colo. 275, 504 P.2d 1094 (1973).

The allegations of interest must show a concern in the outcome of the matter such that the district attorney will either reap some benefit or suffer some disadvantage; mere partiality will not suffice. People ex rel. Losavio v. Gentry, 199 Colo. 153, 606 P.2d 57 (1980).

Interest that creates the appearance of impropriety is sufficient to warrant disqualification. People ex rel. Sandstrom v. District Ct., 884 P.2d 707 (Colo. 1994).

Accusing prosecutor of wrongdoing does not automatically create a conflict of interest sufficient to merit disqualification. People v. Jimenez, 217 P.3d 841 (Colo. App. 2008).

Meaning of phrase "having criminal jurisdiction". The general assembly, by the words "having criminal jurisdiction", meant having such jurisdiction at the time when the appointment should become necessary, and when criminal jurisdiction is conferred all powers of criminal procedure are conferred with it. Glavino v. People, 75 Colo. 94, 224 P. 225 (1924).

It is incumbent upon one seeking to disqualify a prosecuting attorney to establish facts from which the trial court may reasonably conclude that the accused will probably not receive a fair trial to which he is entitled. Wheeler v. District Court, 180 Colo. 275, 504 P.2d 1094 (1973).

Appointment should be made where district attorney has private interest in criminal case. If a district attorney has a private interest in a criminal case under his jurisdiction, it is the court's duty to appoint another to act for him. In such a case the prosecutor should not act even by consent. People ex rel. Colo. Bar Ass'n v. ..., 90 Colo. 440, 9 P.2d 611 (1932); Wheeler v. District Court, 180 Colo. 275, 504 P.2d 1094 (1973).

Where he files information or dismisses cause because of interest. If, because of his interest, the district attorney files an information, the court should appoint some person to try the cause; if he dismisses a cause because of his interest, the court can and should appoint someone to file a new information and to prosecute the cause. Gray v. District Court, 42 Colo. 298, 94 P. 287 (1908).

Or where connected with defense of another case whose facts were interwoven with those of present case. The connection of the district attorney with the defense of another case, the facts of which were interwoven with the facts in the case at bar, held sufficient to warrant his being excused from prosecuting. Roberts v. People, 11 Colo. 213, 17 P. 637 (1888).

Prosecutor to withdraw when appearing as witness. The proper course of conduct, when the prosecutor knows in advance that he is going to appear as a witness, is to secure a replacement and withdraw as prosecutor. People v. Spencer, 182 Colo. 189, 512 P.2d 260 (1973).

Disqualification proper if district attorney from office is material witness in the case. Pease v. District Ct., 708 P.2d 800 (Colo. 1985).

Disqualification not required merely because deputy district attorney called as defense witness. Trial court properly denied motion to disqualify district attorney because the testimony was entirely favorable to defendant; its significance would not have been enhanced had the case been prosecuted by a different office; and the testimony was not material in any event. People v. Victorian, 165 P.3d 890 (Colo. App. 2007).

Disqualification of district attorney due to involvement in suit against defendant. District attorney's employment, prior to filing criminal charges against defendant, as counsel in private capacity representing injured party in suit against defendant arising out of the circumstances leading to criminal prosecution, was grounds for disqualification in criminal action. People v. Jiminez, 187 Colo. 97, 528 P.2d 913 (1974).

Disqualification proper if prosecuting attorney had attorney-client relationship with defendant prior to employment as a prosecutor. People v. Stevens, 642 P.2d 39 (Colo. App. 1981).

Section requires the disqualification of an assistant district attorney who, as a private attorney, had developed an attorney-client relationship with the defendant in connection with the case for which the defendant was being prosecuted. People v. Chavez, 139 P.3d 649 (Colo. 2006); People v. Manzanares, 139 P.3d 655 (Colo. 2006); People ex rel. N.R., 139 P.3d 674 (Colo. 2006).

For motion to disqualify the district attorney's office when an employee of the office previously represented the defendant, trial court must determine whether "special circumstances" exist that render it unlikely that defendant would receive a fair trial if prosecuted by the district attorney's office. People v. Chavez, 139 P.3d 649 (Colo. 2006); People v. Manzanares, 139 P.3d 655 (Colo. 2006); People ex rel. N.R., 139 P.3d 674 (Colo. 2006).

Disqualification of the entire district attorney's office was an abuse of discretion where the district attorney who previously represented the defendant violated his office's screening policy with regard to a different former client and there is no evidence that the district attorney in question had violated this defendant's confidences or would breach the additional safeguards put in place to ensure confidential information is not shared in this defendant's case. People v. Solis, 2022 CO 53, 523 P.3d 427.

Prosecutor, a part-time district attorney, was permitted to practice law civilly in matters unrelated to the performance of his official duties. People v. Jiminez, 187 Colo. 97, 528 P.2d 913 (1974).

District attorney is disqualified from acting in grand jury's investigation of his own conduct. If, from any source which he deems sufficiently reliable to prompt him to act, the judge obtains information implicating the district attorney in any

alleged offense which he has called to the attention of the grand jury, and acting on such information, directs that body to investigate the district attorney with respect to such offense, such action ipso facto disqualifies the district attorney from acting in such matters. People ex rel. Lindsey v. District Court, 29 Colo. 5, 66 P. 896 (1901).

It is neither manifestly arbitrary, unreasonable, nor unfair for the county court, in the exercise of its discretion, to hold that a public perception was created that intervenor was likely to be unfairly prosecuted where a deputy district attorney, on his own volition and without apparent necessity, had a warrant check run on intervenor he recognized in the county courthouse as a defendant in a pending county court criminal case, and, when instructed by the court not to have intervenor arrested, initiated and became involved in physically subduing intervenor and in effecting just such an arrest, and then becoming the complaining witness against intervenor in a new complaint filed against him for violation of city ordinances arising out of the altercation. People v. County Court, City & County of Denver, 854 P.2d 1341 (Colo. App. 1992).

But is free to act as to all other matters before such grand jury. As to all matters which come before the grand jury other than those for which a special prosecutor has been appointed, the regular district attorney is free, and it is his duty, to act. People ex rel. Lindsey v. District Court, 29 Colo. 5, 66 P. 896 (1901).

Unsworn allegations that petitioner had testified against district attorney insufficient. Where petitioner's motion to disqualify sought to recuse the district attorney and his deputies and two special prosecutors because of conflict of interest because petitioner had testified against the district attorney before a grand jury, but petitioner offered no testimony or evidence to support the unsworn allegations, the trial court's denial of the motion will be upheld. Wheeler v. District Court, 180 Colo. 275, 504 P.2d 1094 (1973).

No grounds shown for disqualification. The language of a newspaper editorial which has been reproduced as a paid political advertisement by the district attorney, who is a candidate for mayor, indicates only the newspaper's belief that the district attorney is properly performing his responsibilities and duties as district attorney in the defendant's case and there are no other inferences which could be drawn from the language. It would be beyond belief that anyone could state on the basis of the editorial that defendant would be subjected to an unfair trial because of this district attorney's past, current, or future participation in the case, and hence, the district attorney is not to be disqualified under this section. People v. District Court, 189 Colo. 159, 538 P.2d 887 (1975).

District attorney's potential political benefit from the defendant's conviction was not sufficiently distinct from his or her professional responsibilities to warrant any finding of an improper interest in the outcome of the case. People v. Lee, 93 P.3d 544 (Colo. App. 2003) (decided under law in effect prior to the 2002 amendment).

Involvement in forfeiture proceeding too attenuated to create a conflict of interest. People ex rel. Sandstrom v. District Ct., 884 P.2d 707 (Colo. 1994).

District attorney's interest in forfeiture action is part of obligation to enforce the laws of the state and therefore not an interest in the outcome of the case apart from upholding the law. People ex rel. Sandstrom v. District Ct., 884 P.2d 707 (Colo. 1994).

Trial court abused its discretion in disqualifying the district attorney as the alleged interest did not rise to such a level as to impede or impugn his professional responsibility to uphold the law. To allow disqualification in this case would essentially provide defendants the unfettered option of disqualifying a prosecutor whenever a district attorney had knowledge of any fact surrounding a case. People v. C.V., 64 P.3d 272 (Colo. 2003).

Trial court had insufficient evidence to reach the conclusion that the district attorney had an interest in the case or that an appearance of impropriety existed such that the public would perceive the continued prosecution by the district attorney as so unjust and improper as to undermine their confidence in the criminal justice system. People v. C.V., 64 P.3d 272 (Colo. 2003).

District attorney's or his or her office's financial interest is a statutorily authorized basis for disqualification only if the financial interest would render it unlikely that defendant would receive a fair trial. For a financial interest to implicate the fairness of a trial, it must be outcome dependent or have a substantial impact on the district attorney's discretionary functions, such that the district attorney's conduct interferes with, is contrary to, or is inconsistent with his or her duty of seeking justice. People v. Perez, 238 P.3d 665 (Colo. 2010).

The special circumstances provision of subsection (2) requires a showing that facts exist rendering it unlikely that the defendant would receive a fair trial. People v. Perez, 238 P.3d 665 (Colo. 2010).

Trial court erred in disqualifying district attorney because none of the four grounds cited by the trial court constituted "special circumstances . . . that would render it unlikely that the defendant would receive a fair trial". The inquiry into whether an entire district attorney's office should be disqualified because of a prior representation by an individual prosecutor depends on whether confidential information gained from that prior representation has been or could be passed from the individual prosecutor to other members of the office who continue to prosecute the case. People v. Perez, 201 P.3d 1220 (Colo. 2009); People v. Solis, 2022 CO 53, 523 P.3d 427.

District attorney who had previously represented defendant did not have confidential information that could have been passed on to prosecutors because district attorney did not recall prior representation of defendant, did not perform any substantive work on case, and never received any information from defendant. People v. Perez, 201 P.3d 1220 (Colo. 2009).

District attorney's previous representation of potential witness and possible alternate

suspect did not constitute a special circumstance. District attorney who aided preliminary investigation and who had previously represented potential witness and possible alternate suspect did not have confidential information and left the office before charges were filed. People v. Perez, 201 P.3d 1220 (Colo. 2009).

Discovery violation not a special circumstance warranting disqualification. For allegedly inadequate witness list, trial court should impose the least restrictive sanction that preserves the truth-finding process, restores a level playing field, and deters prosecutorial misconduct, not disqualification. People v. Perez, 201 P.3d 1220 (Colo. 2009).

Finally, funding arrangement whereby district attorney's office billed department of corrections for costs related to prosecuting crimes committed in a prison and department then forwarding reimbursements to counties was not a "special circumstance". District attorney's office did not obtain any intentional financial gain nor was there any double-billing. People v. Perez, 201 P.3d 1220 (Colo. 2009).

Facts showing an appearance of impropriety are no longer relevant in court's determination whether to disqualify a district attorney. The general assembly amended the statute, eliminating the "appearance of impropriety" as a ground for disqualifying a district attorney. People v. Loper, 241 P.3d 543 (Colo. 2010); People v. West, 2025 CO 61, 578 P.3d 832.

The "special circumstances" justifying disqualification of a district attorney must be extreme and must render it unlikely that a defendant would receive a fair trial. The suspicious manner in which the charges were brought and the involvement and possible influence on the district attorney by a probation officer employed by the judicial department raises concerns of potential impropriety, but this evidence does not bear on whether defendant would be unlikely to receive a fair trial. People v. Loper, 241 P.3d 543 (Colo. 2010).

The prosecutor's unacceptable and indefensible statement about public defenders to the victim's family was improper. However, the fundamental inquiry is whether special circumstances exist that are so extreme that they make it unlikely that the defendant will receive a fair trial. The district court misapplied the law and abused its discretion by incorrectly applying the impropriety standard and failing to explain why the impropriety rendered it unlikely that the defendant would receive a fair trial. People v. West, 2025 CO 61, 578 P.3d 832.

Court erred in disqualifying district attorney based on finding of "special circumstances". The appearance of impropriety is no longer a valid reason for disqualifying a district attorney, and the ordered defense disclosure did not constitute extreme circumstances under the statute. People v. Kendrick, 2017 CO 82, 396 P.3d 1124.

District court abused its discretion in granting defendant's motion to disqualify district attorney from prosecuting the case. The district court found that none of the identified circumstances alone supported

disqualification of the district attorney's office from prosecution but viewed the circumstances collectively as "problematic" or "potentially problematic". The supreme court reiterated that the appearance of impropriety is not pertinent by statute. People v. Kent, 2020 CO 85, 476 P.3d 762.

Appointment of special prosecutor constituted an abuse of discretion where the only fact relied upon by the court was that one of the deputy district attorneys, not assigned to the case, was the brother of a state trooper who would be testifying in the case. People v. County Court, Jefferson County, 902 P.2d 413 (Colo. App. 1994).

Trial court abused its discretion in finding the present appearance of impropriety sufficient to warrant removal of the district attorney and the capital crimes unit. Where there are other remedies for the trial court to consider when timely, the remedy of disqualification for the appearance of impropriety in relationship to the victim's medical records is too severe. People v. Palomo, 31 P.3d 879 (Colo. 2001).

Special prosecutor, if ineligible because of membership in general assembly, is nevertheless an officer de facto. Glavino v. People, 75 Colo. 94, 224 P. 225 (1924).

When a special prosecutor is appointed, that person becomes the district attorney for that particular case, exercising plenary power. People v. Hastings, 903 P.2d 23 (Colo. App. 1994).

When an indictment is procured by or with the assistance of a prosecuting attorney who is disqualified to conduct the prosecution or when an information is presented by a disqualified prosecuting attorney, it is invalid. Once the disqualification of a district attorney is entered and the appointment of a special prosecutor becomes effective, the special prosecutor, and only the special prosecutor, is the authorized prosecuting attorney on the case. People v. Hastings, 903 P.2d 23 (Colo. App. 1994).

The scope of a special prosecutor's responsibility to prosecute cases after being appointed pursuant to this section includes not only the guilt phase of a case but also the means adopted to impose punishment upon an offender. Therefore, only the special prosecutor was authorized to make determinations regarding the necessity of filing a motion to revoke a deferred judgment and sentence. People v. Hastings, 903 P.2d 23 (Colo. App. 1994).

Trial court does not have discretion in ruling on the disqualification of a prosecuting attorney where the district attorney has confessed a disqualification and a special prosecutor has already been appointed. Trial court should have granted defendant's motion to dismiss even though disqualified district attorney's term of office was due to expire before a motion to revoke a deferred judgment and sentence filed by the district attorney was heard on the merits. The district attorney was not authorized to act after special prosecutor was appointed and an abuse of discretion standard of review has no application under these circumstances. People v. Hastings, 903 P.2d 23 (Colo. App. 1994).

Where district attorney seeks to disqualify himself or herself, no

evidentiary showing is required. The statute only requires the filing of a motion by the district attorney. However, the standard is different when a defendant seeks to disqualify a district attorney; in that case, the defendant must show that the district attorney has a personal or financial interest in the case or that there are special circumstances that would render it unlikely that the defendant would receive a fair trial. People v. Aryee, 2014 COA 94, 356 P.3d 918.

Applied in People v. Epps, 2017 CO 112, 406 P.3d 860.

20-1-108. When sick or absent, court to appoint.

If he is sick or absent, such court shall appoint some person to discharge the duties of the office until the proper officer resumes the discharge of his duties.

Source: L. 1876: p. 65, § 2. **G.L.** § 898. **G.S.** § 1059. **R.S. 08:** § 2110. **C.L.** § 5995. **CSA:** C. 55, § 23. **CRS 53:** § 45-1-8. **C.R.S. 1963:** § 45-1-8.

ANNOTATION

"Absent" means absent from court. Glavino v. People, 75 Colo. 94, 224 P. 225 (1924).

The district attorney is supposed to be always present in court, and if absent the court may appoint some fit person to perform his duties. Glavino v. People, 75 Colo. 94, 224 P.2d 225 (1924).

20-1-109. Powers of appointee.

The person thus appointed shall possess the same power as the proper officer would if he were present.

Source: L. 1876: p. 65, § 3. **G.L.** § 899. **G.S.** § 1060. **R.S. 08:** § 2111. **C.L.** § 5996. **CSA:** C. 55, § 24. **CRS 53:** § 45-1-9. **C.R.S. 1963:** § 45-1-9.

ANNOTATION

Special prosecutor becomes, to all intents and purposes, the district attorney. People v. Gibson, 53 Colo. 231, 125 P. 531 (1912).

When the governor or the general assembly requires the attorney general to prosecute a criminal case in which the state is a party, he becomes to all intents and purposes the district attorney, and may in his own name and official capacity exercise all the powers of such officer, for he is then, and in that case, the public prosecutor. People v. Gibson, 53 Colo. 231, 125 P. 531 (1912).

But he is independent of that official. A special appointee should be of the court's own selection, and as to the matters for which he is appointed, he becomes vested with all the powers of the district attorney, but independent of that official. People ex rel. Lindsey v. District Court, 29 Colo. 5, 66 P. 896 (1901).

And is authorized to sign information in his own name. Where the district attorney is disqualified from prosecuting a case and the court appoints a special prosecutor, the prosecutor so appointed is authorized to sign an information in the case in his own name, and the fact that he placed before his name the name of the district attorney and added to his own signature the words "special deputy" neither added to, nor detracted from, the proper authentication in his own name. The additions will be treated as surplusage. Williams v. People, 26 Colo. 272, 57 P. 701 (1899).

When special prosecutor has plenary powers. The special prosecutor has the plenary powers of a district attorney only when he is acting within the scope of a valid court order granting him that power. People ex rel. Losavio v. Gentry, 199 Colo. 153, 606 P.2d 57 (1980).

Special prosecutor's actions exceeded scope of authority when he prosecuted a county commissioner for the sale of a stolen trailer to the county but the court order granting him investigating power was limited to budgetary irregularities. People ex rel. Losavio v. Gentry, 199 Colo. 153, 606 P.2d 57 (1980).

20-1-110. Intergovernmental cooperation and contracts.

Every district attorney has the power to authorize and approve the participation of his judicial district in intergovernmental cooperative relationships concerning criminal prosecution and may enter into contracts on behalf of his judicial district for cooperation with other district attorneys concerning such prosecution and prosecution-related services; except that no district attorney shall be authorized or empowered by this section to obligate county funds which have not been appropriated by the affected boards of county commissioners in his judicial district.

Source: L. 77: Entire section added, p. 1033, § 1, effective July 1.

20-1-111. District attorneys may cooperate or contract - contents - appropriation.

(1) District attorneys may cooperate or contract with one another to provide any function or service lawfully authorized to each of the cooperating or contracting district attorneys, including the sharing of costs and the administration and distribution of moneys received for mandated costs.

(2) Any such contract shall set forth fully the purposes, powers, rights, obligations, and responsibilities, financial and otherwise, of the contracting district attorneys.

(3) Any such contract may provide for the joint exercise of the function or service, including the establishment of a separate legal entity to do so. The district attorneys may allocate up to five percent of the moneys received for mandated costs authorized by the general assembly for administrative expenses.

(4) (a) The statewide organization representing district attorneys or any other organization established pursuant to this article may receive, manage, and expend state funds in the manner prescribed by the general assembly on behalf of the district attorneys who are members of the organization.

(b) (I) The general assembly shall annually appropriate three hundred fifty thousand dollars to the department of law for allocation to the Colorado district attorneys' council, the statewide organization representing district attorneys, or its successor, for the public purpose of providing prosecution training, seminars, continuing education programs, and other prosecution-related services on behalf of the district attorneys who are members of the organization, including, but not limited to, costs and expenses for personnel, administration, materials, and travel.

(II) Repealed.

(c) For state fiscal year 2026-27, and for each state fiscal year thereafter, the general assembly shall appropriate one hundred fifty thousand dollars to the department of law for allocation to the statewide organization representing district attorneys for the public purpose of providing prosecution training seminars, continuing education programs, and other prosecution-related services on behalf of district attorneys who are members of the organization, including, but not limited to, costs and expenses for personnel, administration, materials, and travel, concerning any issues related to determinations of competency to proceed for juveniles and adults, competency evaluation reports, services to restore competency, civil commitments, protective placements, enhanced protective placements, and certification proceedings governed by article 65 of title 27.

(d) The general assembly shall annually appropriate necessary funds to the department of law for allocation to the Colorado district attorneys' council, or its successor, for the public purpose of providing grants to local district attorneys' offices to cover costs and expenses related to complying with the bond hearing requirements of section 16-4-102 (2)(a). By November 1 of

each year, the Colorado district attorneys' council shall submit a request to the joint budget committee for necessary funds consistent with this subsection (4)(d).

Source: L. 77: Entire section added, p. 1033, § 1, effective July 1. **L. 2002:** (1) and (3) amended, p. 761, § 13, effective July 1. **L. 2013:** (4) added, (SB 13-250), ch. 333, p. 1943, § 69, effective October 1. **L. 2014:** (4) amended, (HB 14-1144), ch. 201, p. 732, § 1, effective May 15. **L. 2019:** (4)(c) added, (SB 19-223), ch. 227, p. 2291, § 15, effective July 1. **L. 2020:** (4)(b) amended, (HB 20-1369), ch. 206, p. 1011, § 1 effective June 30. **L. 2021:** (4)(d) added, (HB 21-1280), ch. 457, p. 3051, § 4, effective September 7. **L. 2026:** (4)(c) amended, (SB 26-149), ch. 142, p. 795, § 45, effective May 21.

Editor's note: Subsection (4)(b)(II)(B) provided for the repeal of subsection (4)(b)(II), effective July 1, 2021. (See L. 2020, p. 1011.)

20-1-112. Financial audits.

Each office of district attorney in each of the several judicial districts in the state of Colorado shall submit audited annual financial statements prepared in conformance with generally accepted accounting principles to the state auditor. The expenses of such audits shall be paid by each office of district attorney and shall be considered a necessary expense of maintaining his office for the transaction of his official business.

Source: L. 89: Entire section added, p. 934, § 1, effective April 4.

20-1-113. Reporting of criminal proceedings involving public school students.

(1) On or before August 1, 2013, and continuing through August 1, 2014, the district attorney of each judicial district, or his or her designee, shall report to the division of criminal justice created in section 24-33.5-502, C.R.S., information about offenses alleged to have been committed by a student that have occurred on school grounds, in a school vehicle, or at a school activity or sanctioned event within the judicial district during the preceding twelve months. Failure to submit a timely report to the division of criminal justice pursuant to this subsection (1) does not relieve a district attorney of his or her responsibility to file the report required by this subsection (1). A district attorney who has failed to file a timely report shall file all such reports with the division of criminal justice no later than August 15, 2015.

(2) The information reported by each district attorney pursuant to subsection (1) of this section shall include the number of offenses filed in court, including the total number of each type of such offenses, the disposition of each case, and the age, gender, school, and race or ethnicity of each student that the district attorney prosecuted.

(3) The information reported by each district attorney pursuant to subsection (1) of this section shall include, to the extent practicable and to the extent that such information is collected by the district attorney as of May 19, 2012:

(a) The number of offenses that were referred to the district attorney by a law enforcement agency and were not filed in court, including the total number of each type of such offenses; and

(b) The number of offenses for which the district attorney referred an offender to a juvenile diversion program or other alternative program, including the total number of each type of such offenses.

(4) Notwithstanding section 19-1-303 (5), commencing August 1, 2015, and continuing every August 1 every year thereafter, each district attorney shall report to the division of criminal justice in the department of public safety the name of any student who was granted juvenile or adult diversion for a ticket, summons, or offense that occurred at a public elementary school, middle or junior high school, or high school; in a school vehicle; or at a school activity or sanctioned event. In addition to the full name of the student, the district attorney shall report the student's date of birth, race, ethnicity, and gender and the arrest or incident report number, as recorded by a law enforcement agency. Information, including expunged record information, released by a district attorney to the division of criminal justice pursuant to this section must only be used for research purposes related to school discipline.

(5) Notwithstanding the provisions of section 19-1-303 (4.7), C.R.S., a district attorney or his or her designee is not subject to any criminal or civil penalty for compliance with the reporting obligations of this section.

Source: L. 2012: Entire section added, (HB 12-1345), ch. 188, p. 745, § 30, effective May 19. **L. 2015:** (1) amended and (4) added, (HB 15-1273), ch. 323, p. 1321, § 4, effective June 5. **L. 2016:** (4) amended and (5) added, (HB 16-1098), ch. 103, p. 298, § 3, effective April 15. **L. 2021:** (4) amended, (SB 21-066), ch. 64, p. 258, § 4, effective April 29.

Cross references: (1) For the legislative declaration contained in the 2012 act adding this section, see section 21 of chapter 188, Session Laws of Colorado 2012. However, section 21 of chapter 188 was repealed by section 7 of chapter 323 (HB 15-1273), Session Laws of Colorado 2015.

(2) For the legislative declaration in HB 15-1273, see section 1 of chapter 323, Session Laws of Colorado 2015.

20-1-114. Peace officer-involved shooting investigations - disclosure.

(1) The district attorney shall, if no criminal charges are filed following the completion of an investigation pursuant to section 16-2.5-302, release a report and publicly disclose the report explaining the district attorney's findings, including the basis for the decision not to charge the officer with any criminal conduct. The district attorney shall post the written report on its website or, if it does not have a website, make it publicly available upon request.

(2) If the district attorney refers the matter under investigation to the grand jury, the district attorney shall release a statement at the time the matter is referred to the grand jury disclosing the general purpose of the grand jury's investigation. If no true bill is returned, the grand jury shall issue and publish a report.

(3) All disclosures required by this section remain subject to the criminal justice records act.

Source: L. 2015: Entire section added, (SB 15- 219), ch. 210, p. 769, § 3, effective May 20. **L. 2020:** (2) amended, (SB 20-217), ch. 110, p. 456, § 8, effective June 19. **L. 2026:** (1) amended, (SB 26-190), ch. 337, p. 2052, § 6, effective June 3.

Cross references: (1) For the legislative declaration in SB 15-219, see section 1 of chapter 210, Session Laws of Colorado 2015. For the legislative declaration in SB 20-217, see section 1 of chapter 110, Session Laws of Colorado 2020. For the legislative declaration in SB 26-190, see section 1 of chapter 337, Session Laws of Colorado 2026.

(2) For the criminal justice records act referred to in subsection (3), see part 3 of article 72 of title 24.

20-1-115. Reporting of children in diversion programs.

(1) On or before July 1, 2024, and each July 1 thereafter, the district attorney of each judicial district shall submit a report, either individually or through the Colorado district attorneys' council, to the house of representatives judiciary committee and the senate judiciary committee, or their successor committees, that includes the following from the previous twelve months in the judicial district:

(a) The number of children ten years of age or older but under thirteen years of age who were offered an opportunity to participate in a diversion program but declined to participate;

(b) The number of children ten years of age or older but under thirteen years of age who participated in a diversion program;

(c) The number of children ten years of age or older but under thirteen years of age who were charged with an offense in a juvenile proceeding as a consequence of failing to successfully complete a diversion program; and

(d) The number of children ten years of age or older but under thirteen years of age who enter into a diversion program and, at the time of entry into the diversion program or during participation in the diversion program, are known to the diversion program or district attorney's office to receive services from a county department of human or social services, including services provided through prevention programs, assessment, a department of human services case without court involvement, or a dependency and neglect case.

Source: L. 2023: Entire section added, (HB 23-1249), ch. 287, p. 1730, § 12, effective August 7.

Cross references: For the legislative declaration in HB 23-1249, see section 1 of chapter 287, Session Laws of Colorado 2023.

PART 2

DEPUTIES, ASSISTANTS, AND EMPLOYEES

20-1-201. Deputies - chief deputies - staff.

(1) (a) The district attorney in every judicial district is authorized to appoint such deputy district attorneys as he deems necessary to properly discharge the duties of his office, with the approval of the board of county commissioners or boards of county commissioners of multicounty districts or the city council of a city and county affected, and such deputies shall hold their offices during the pleasure of such district attorney. Such deputies shall not engage in the private practice of law nor receive any income from any private law firm.

(b) The district attorney in every judicial district is authorized to appoint one or more part-time deputies to fulfill the duties of the district attorney. The part-time deputies shall be entitled to receive as compensation for services rendered a sum as provided in section 20-1-203. The part-time deputy may engage in the private practice of law; except that he or she may not engage

in the practice of criminal defense in the same judicial district as the district attorney's office where he or she is employed.

(c) The district attorney in every judicial district is authorized to appoint such special deputy district attorneys as he deems necessary to properly discharge the duties of his office, and such special deputies shall hold their offices during the pleasure of such district attorney. Such special deputies shall receive no compensation for their services from the county or counties of the judicial district; except that such special deputies may be reimbursed their ordinary and necessary expenses, including travel. Such special deputies shall only be appointed from among those persons holding office as attorney general, deputy attorney general, assistant attorney general, or special assistant attorney general of the state of Colorado, or as district attorney, assistant district attorney, chief deputy district attorney, or deputy district attorney of another judicial district, or as United States attorney or assistant United States attorney for the district of Colorado, or as city attorney or assistant city attorney of a city and county in this state, or an attorney employed by the Colorado district attorneys' council and actively licensed to practice law in the state of Colorado.

(d) To prosecute felony nonsupport actions pursuant to article 6 of title 14, the district attorney in every judicial district is authorized to appoint any attorney performing child support enforcement services for the county department of human or social services pursuant to article 13 of title 26 as a special deputy district attorney, whether the attorney is employed by the department directly, as a contractual agent for the department, or through the services of a private company under contract with the department. A special deputy district attorney appointed pursuant to this subsection (1) shall not be granted all of the powers enumerated in section 16-2.5-101. The powers granted by this appointment are limited to the prosecutions delineated in this subsection (1).

(2) The district attorney in every judicial district may designate and appoint chief deputy district attorneys, who shall be attorneys-at-law admitted to practice within this state. All chief deputy district attorneys shall hold office at the pleasure of the district attorney; except that no district attorney may appoint more than one chief deputy district attorney without the prior approval of the board of county commissioners or boards of county commissioners of multicounty districts or the city council of the city and county affected. Such chief deputies shall not engage in the private practice of law nor receive any income from any private law firm.

(3) Repealed.

(4) The district attorney shall provide that any member of his staff be assigned regular duties or duty hours in accordance with the schedule of compensation paid such staff member.

Source: L. 1885: p. 176, § 1. **L. 1889:** p. 150, § 1. **R.S. 08:** § 2102. **C.L.** § 5983. **CSA:** C. 55, § 11. **CRS 53:** § 45-3-1. **C.R.S. 1963:** § 45-3-1. **L. 67:** p. 596, § 2. **L. 71:** p. 516, § 2. **L. 73:** p.

550, § 1. **L. 75:** (1) and (2) amended, pp. 656, 657, §§ 1, 2, effective July 1. **L. 79:** (1)(c) added, p. 769, § 1, effective May 18. **L. 80:** (1)(c) amended, p. 549, § 1, effective March 17. **L. 96:** (1)(d) added and (3) amended, p. 613, §§ 17, 18, effective July 1. **L. 2004:** (1)(d) amended, p. 1199, § 54, effective August 4. **L. 2013:** (1)(b) and (1)(c) amended, (SB 13-229), ch. 272, p. 1431, § 14, effective July 1. **L. 2018:** (1)(d) amended, (SB 18-092), ch. 38, p. 434, § 83, effective August 8; (3) repealed, (HB 18-1138), ch. 88, p. 693, § 7, effective August 8.

Editor's note: The amendments made to this section in 1975 were in an act with a July 1, 1975, effective date, but the Governor did not sign the act until July 14, 1975.

Cross references: (1) For oath and bond of deputies and chief deputies, see § 20-1-101.

(2) For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018. For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

ANNOTATION

Law reviews. For article, "Controlling the Criminal Justice System: Colorado as a Case Study", see 94 Denv. L. Rev. 497 (2017).

This section is valid. Nesbit v. People, 19 Colo. 441, 36 P. 221 (1894).

Proper appointment of deputies presumed. Where the district court recognizes such deputies, it is to be presumed, in the absence of anything to the contrary, that such deputies were duly appointed and qualified. Nesbit v. People, 19 Colo. 441, 36 P. 221 (1894).

District attorney's subordinates hold office at his pleasure. Johns v. Powell, 35 Colo. App. 108, 532 P.2d 971 (1975).

Part-time deputy district attorneys need not be residents of the counties they serve. Johns v. Powell, 35 Colo. App. 108, 532 P.2d 971 (1975).

If board of county commissioners objects to district attorney's appointees, the burden is on the board to show that there is no reasonable necessity for the part-time deputies the district attorney seeks to employ. Johns v. Powell, 35 Colo. App. 108, 532 P.2d 971 (1975).

Private practice of deputy was not disqualifying under former section. Pieramico v. People, 173 Colo. 276, 478 P.2d 304 (1970).

Enlargement of attorney general's prosecutorial power must be sought from general assembly. People ex rel. Brown v. District Court, 196 Colo. 359, 585 P. 2d 593 (1978).

Where assistant attorney general cannot serve as deputy district attorney. An assistant attorney general cannot serve for one case as deputy district attorney by special appointment of a district attorney whose district has a population over 25,000. People ex rel. Brown v. District Court, 196 Colo. 359, 585 P.2d 593 (1978).

Knowledge of deputies imputed to district attorney. Deputies and assistant district attorneys function only by virtue of the district attorney's authority, and their knowledge and official actions are imputed to the district attorney for purposes of the compulsory joinder statute. Corr v. District Court, 661 P.2d 668 (Colo. 1983).

Deputy district attorneys are not "every other officer" for purposes of art. XII, § 9, because they are appointed not elected; thus, subsection (3) controls. Subsection (3) requires that deputy district attorneys must file their oaths with the secretary of state. Leske v. Golder, 124 P.3d 863 (Colo. App. 2005).

Applied in Beacom v. Bd. of County Comm'rs, 657 P.2d 440 (Colo. 1983).

20-1-202. Powers of deputies.

The deputy has all the powers of the district attorney.

Source: L. 1885: p. 176, § 2. **R.S. 08:** § 2103. **C.L.** § 5984. **CSA:** C. 55, § 12. **CRS 53:** § 45-3-2. **C.R.S. 1963:** § 45-3-2.

ANNOTATION

Proper appointment of deputy presumed. Where the district court recognizes such deputies, it is to be presumed, in the absence of anything to the contrary, that such deputies were duly appointed and qualified. Nesbit v. People, 19 Colo. 441, 36 P. 221 (1894).

Matters within knowledge of deputy district attorneys are imputed to the district attorney. Jeffrey v. District Court, 626 P.2d 631 (Colo. 1981).

20-1-203. Compensation of deputy, chief deputy, and assistant district attorneys.

(1) Compensation for all deputy, chief deputy, and part-time deputy district attorneys is fixed by the district attorney with the approval of the board of county commissioners or boards of county commissioners of multicounty districts or the city council of a city and county affected, and each county comprising the judicial district shall pay such deputies' and chief deputies'

salaries in the proportion that the population of such county bears to the whole population of such judicial district.

(1.5) Except as provided in subsection (2) of this section and section 20-1-306 (2), the district attorney, with the approval of the board or boards of county commissioners of the county or counties comprising the judicial district or the city council of a city and county affected, shall set the compensation of all assistant and part-time assistant district attorneys, and each county comprising the judicial district shall pay the salaries in proportion to the population of the county to the whole population of the judicial district.

(2) (a) Effective July 1, 2026, and for each year thereafter, an assistant district attorney in every judicial district must receive compensation for their services in an annual amount that is not less than the compensation earned by a full-time county court judge within this state.

(b) A district attorney may set compensation for an assistant or part-time assistant district attorney in excess of the minimum compensation set forth in subsection (2)(a) of this section.

Source: L. 1891: p, 308, § 3. **L. 1899:** p. 333, § 3. **L. 03:** p. 207, § 1. **R.S. 08:** § 2584. **L. 15:** p. 244, § 1. **C.L.** § 7949. **L. 33:** p. 435, § 1. **CSA:** C. 66, § 98. **L. 41:** p. 409, § 2. **L. 49:** p. 406, § 1. **CRS 53:** § 45-3-3. **L. 55:** p. 290, § 3. **L. 59:** p. 378, § 2. **C.R.S. 1963:** § 45-3-3. **L. 67:** pp. 597, 599, §§ 3, 6. **L. 71:** p. 517, § 3. **L. 73:** p. 550, § 2. **L. 75:** Entire section R&RE, p. 657, § 3, effective July 1. **L. 2013:** Entire section amended, (SB 13-229), ch. 272, p. 1432, § 15, effective July 1. **L. 2024:** Entire section amended, (SB 24-013), ch. 403, p. 2770, § 1, effective August 7.

Editor's note: The amendments made to this section in 1975 were in an act with a July 1, 1975, effective date, but the Governor did not sign the act until July 14, 1975.

ANNOTATION

Private practice of deputy was nonprejudicial under former § 20-1-201. Pieramico v. People, 173 Colo. 276, 478 P.2d 304 (1970).

Applied in Beacom v. Bd. of County Comm'rs, 657 P.2d 440 (Colo. 1983).

20-1-204. Powers of chief deputy.

The chief deputy district attorney has all the powers of the district attorney.

Source: L. 09: p. 343, § 2. **C.L.** § 5986. **CSA:** C. 55, § 14. **L. 41:** p. 387, § 5. **CRS 53:** § 45-3-11. **C.R.S. 1963:** § 45-3-7.

20-1-205. Assistant district attorneys.

(1) (a) In every judicial district, the district attorney is authorized to appoint an assistant district attorney who shall be an attorney-at-law admitted to practice within this state and who shall actually have practiced law not less than two years.

(b) Repealed.

(c) The district attorney in every judicial district having a population not exceeding fifty thousand may appoint one part-time assistant district attorney. Such part-time assistant may engage in the private practice of law.

(2) and (3) Repealed.

Source: L. 33: p. 433, § 1. **CSA:** C. 55, § 10. **L. 41:** p. 384, § 1. **L. 51:** p. 349, § 1. **CRS 53:** § 45-3-5. **L. 55:** p. 290, § 4. **L. 59:** p. 379, § 3. **C.R.S. 1963:** § 45-3-8. **L. 67:** pp. 598, 599, §§ 4, 6. **L. 71:** p. 517, § 4. **L. 73:** p. 551, § 3. **L. 75:** (1)(a) and (1)(c) amended and (1)(b) repealed, p. 657, §§ 4, 5, effective July 1. **L. 2018:** (2) repealed, (HB 18-1138), ch. 88, p. 694, § 8, effective August 8. **L. 2024:** (3) amended, (SB 24-013), ch. 403, p. 2771, § 2, effective August 7.

Editor's note: (1) The amendments made to this section in 1975 were in an act with a July 1, 1975, effective date, but the Governor did not sign the act until July 14, 1975.

(2) Subsection (3)(b) provided for the repeal of subsection (3), effective July 1, 2026. (See L. 2024, p. 2771.)

Cross references: For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

ANNOTATION

Applied in Johnson v. Bd. of County Comm'rs, 174 Colo. 350, 483 P.2d 1344 (1971).

20-1-206. Powers.

All matters and things required or which may be done by the district attorney may be done with like force and effect by his assistant under the direction and control of the district attorney, and he has all the powers of the district attorney by whom he was appointed; except that such acts shall all be done in the name of the district attorney.

Source: L. 19: p. 294, § 2. **C.L.** § 5988. **CSA:** C. 55, § 16. **CRS 53:** § 45-3-7. **C.R.S. 1963:** § 45-3-10.

ANNOTATION

Knowledge of staff imputed to district attorney. Knowledge of the chief deputy and of the chief investigator for the district attorney is knowledge to the entire office and the district attorney will be charged with that knowledge. DeLuzio v. People, 177 Colo. 389, 494 P.2d 589 (1972); Jeffrey v. District Court, 626 P.2d 631 (Colo. 1981).

Applied in People v. Castro, 657 P.2d 932 (Colo. 1983).

20-1-207. Powers of assistant.

The assistant district attorney has all the powers of the district attorney.

Source: L. 1893: p. 236, § 2. **R.S. 08:** § 2101. **C.L.** § 5982. **CSA:** C. 55, § 9. **L. 41:** p. 387, § 3. **CRS 53:** § 45-3-9. **C.R.S. 1963:** § 45-3-11.

20-1-208. Special officers - stenographers - salaries.

(1) The district attorney of each judicial district in this state having more than one hundred thousand population, as shown by the last decennial census, except the city and county of Denver, is authorized by and with the consent of the district judges of the judicial district to appoint one or two special officers, each at an annual salary to be determined by such district judges of not to exceed five thousand dollars, and actual and necessary expenses; and in his district he is authorized by and with the consent of the district judges of the judicial district to appoint a stenographer at an annual salary to be determined by such district judges of not to exceed three thousand dollars. Said salaries shall be paid monthly and shall be borne and paid monthly by the several counties comprising said judicial districts. Each county shall pay its

proportionate part of said salaries as the population of such county bears to the whole population of the judicial district, according to the last preceding decennial census.

(2) The district attorney of each judicial district in the state having a population of less than one hundred thousand as shown by the last decennial census is authorized to appoint a special investigator, a stenographer, and such other technical and professional assistants as are necessary to assist him in properly transacting all of the business of his office. The salary and compensation for such employees and assistants shall be fixed by such district attorney in an amount commensurate with the services performed and the duties and responsibilities of such employees. The salaries of such persons so appointed shall be paid by the various counties within the judicial district, each county paying its proportionate part of said salaries as the population of such county bears to the whole population of such judicial district, according to the last preceding decennial census. Such budget shall be approved by the boards of county commissioners.

Source: L. 07: p. 370, § 2. **R.S. 08:** § 2105. **C.L.** § 5990. **CSA:** C. 55, § 18. **L. 47:** p. 394, § 1. **L. 51:** p. 353, § 1. **L. 52:** p. 104, § 1. **L. 53:** p. 254, § 1. **CRS 53:** § 45-3-14. **L. 57:** p. 339, § 1. **C.R.S. 1963:** § 45-3-12.

ANNOTATION

Purpose of section. The general assembly intended that district attorney's offices should be staffed with such employees as are reasonably necessary to perform the duties incumbent on the district attorney. Johnson v. Bd. of County Comm'rs, 174 Colo. 350, 483 P.2d 1344 (1971).

The term "stenographer" as used in this section is descriptive and not exclusive. Johnson v. Bd. of County Comm'rs, 174 Colo. 350, 483 P.2d 1344 (1971).

Review of hiring and salary set by district attorney. It would be an unreasonable interpretation of subsection (2) to declare that the county commissioners must rubber-stamp the hiring of an employee or the salary of the employees appointed by the district attorney. Johnson v. Bd. of County Comm'rs, 174 Colo. 350, 483 P.2d 1344 (1971).

The burden is upon the board of county commissioners, if they choose to challenge the wisdom of the district attorney's decision to employ personnel to staff his office in accordance with subsection (2), to show that there is no reasonable necessity for such employment and that in employing personnel the district attorney acted arbitrarily, capriciously, and abused his discretion in making such appointment and in setting the salary for such appointed employee. Johnson v. Bd. of County Comm'rs, 174 Colo. 350, 483 P.2d 1344 (1971).

Position of clerk-typist approved. From the record the supreme court finds that the

county commissioners failed to sustain their burden of proof and did not establish that the district attorney acted arbitrarily and capriciously in appointing a clerk-typist and in fixing her salary. The district attorney of a district having a population of less than 100,000 under the provisions of subsection (2) can hire a clerk-typist, in addition to a stenographer. Johnson v. Bd. of County Comm'rs, 174 Colo. 350, 483 P.2d 1344 (1971).

20-1-209. Investigators and other employees.

(1) The district attorney of each judicial district is authorized to appoint a chief investigator and such other investigators as he may deem necessary in the conduct of his office and such stenographers, office employees, and other technical and professional assistants as are necessary to properly transact the business of his office. The salary and compensation in each instance for such employees and assistants shall be fixed by such district attorney in an amount commensurate with the services performed and the duties and responsibilities of such employees, subject to the approval of the board of county commissioners of the county or the city council of a city and county affected.

(2) The salaries of any personnel so appointed shall be paid by the various counties within the judicial district, each county paying its proportionate part of said salaries as the population of such county bears to the whole population of such judicial district, according to the last preceding federal census.

Source: L. 45: p. 314, § 2. **CSA:** C. 55, § 15 (1). **CRS 53:** § 45-3-15. **C.R.S. 1963:** § 45-3-13. **L. 67:** p. 598, § 5.

ANNOTATION

District court has power to appoint counsel to assist district attorney in criminal trials, the exercise of such power not being prohibited by statute, and belonging to the court independent of any express statutory grant or sanction. Bd. of Comm'rs v. Crump, 18 Colo. App. 59, 70 P. 159 (1902).

The exercise of the power to appoint counsel to assist the district attorneys is of course discretionary with the court, and this discretion is subject to review in the appellate tribunals as in other cases. Bd. of Comm'rs v. Crump, 18 Colo. App. 59, 70 P. 159 (1902).

Compensation. Where counsel was appointed by the district court to assist the district attorney in the prosecution of a criminal case, an allowance by the court of compensation to such counsel for his services is at least prima facie evidence of

the value of the services. Bd. of Comm'rs v. Crump, 18 Colo. App. 59, 70 P. 159 (1902).

District attorney not bound by union agreements entered by county. The district attorney is a state officer serving in a particular judicial district, independent of the county government, with authority to hire and fire his own employees, and since the district attorney is not an agent or employee of the county, union agreements entered into by the county are not binding upon him. Anderson v. County of Adams, 41 Colo. App. 441, 592 P.2d 3 (1978).

Applied in Beacom v. Bd. of County Comm'rs, 657 P.2d 440 (Colo. 1983).

20-1-210. Prohibition of practice of law - associates - members of district attorney's staff.

No attorney-at-law practicing law in the state of Colorado who is a member of a private law firm with which a district attorney, assistant district attorney, or deputy district attorney is associated may defend any person or persons who are being prosecuted by a salaried staff member of the office of said district attorney; nor may any such salaried staff member defend any person or persons who are being prosecuted in any judicial district in the state of Colorado.

Source: L. 59: p. 382, § 4. **CRS 53:** § 45-3-16. **C.R.S. 1963:** § 45-3-14. **L. 71:** p. 518, § 5.

PART 3

COMPENSATION AND EXPENSES

20-1-301. Compensation of district attorneys.

(1) (a) (I) Commencing January 1, 1997, in every judicial district the district attorney shall receive as compensation for his or her services the sum of not less than sixty-seven thousand dollars per annum.

(II) Effective January 1, 2009, in every judicial district the district attorney shall receive as compensation for his or her services the sum of not less than one hundred thousand dollars per annum.

(III) Effective January 1, 2010, in every judicial district the district attorney shall receive as compensation for his or her services the sum of not less than one hundred ten thousand dollars per annum.

(IV) Effective January 1, 2011, in every judicial district the district attorney shall receive as compensation for his or her services the sum of not less than one hundred twenty thousand dollars per annum.

(V) Effective January 1, 2012, and for each year thereafter, in every judicial district the district attorney shall receive as compensation for his or her services the sum of not less than one hundred thirty thousand dollars per annum.

(VI) Effective July 1, 2026, and every July 1 thereafter, the district attorney in every judicial district must receive compensation for their services in an annual amount that is not less than the compensation earned by a full-time district court judge within the state of Colorado at the time the four-year district attorney term begins.

(b) Any amount in excess of the compensation amount set pursuant to paragraph (a) of this subsection (1) shall be set by the board or boards of county commissioners of the county or counties comprising the judicial district or the city council of the city and county of Denver for the second judicial district.

(c) Repealed.

(2) A district attorney shall not engage in the private practice of law, nor shall he receive any income from any private law firm.

Source: L. 48, Ex. Sess.: p. 21, §§ 1, 2. **CSA:** C. 66, § 52(4). **CRS 53:** § 45-2-1. **L. 55:** p. 289, § 1. **L. 59:** pp. 378, 380, §§ 1, 4. **C.R.S. 1963:** § 45-2-1. **L. 67:** pp. 596, 599, §§ 1, 6. **L. 72:** p. 295, § 2. **L. 75:** (1) amended, p. 659, § 1, effective June 26. **L. 76:** (1) amended, p. 592, § 3, effective July 1. **L. 80:** (1) amended, p. 577, § 3, effective July 1. **L. 84:** (1) amended, p. 577, § 1, effective May 9. **L. 95:** (1) amended, p. 580, § 1, effective May 22. **L. 2004:** (1) amended, p. 194, § 12, effective August 4. **L. 2007:** (1) amended, p. 1609, § 1, effective May 31. **L. 2024:** (1)(a)(VI) added and (1)(c) repealed, (SB 24-013), ch. 403, p. 2771, § 3, effective August 7.

ANNOTATION

Once salary ratified, county commissioners cannot reduce during term of office. By paying the plaintiff a certain sum of money, the county commissioners ratified an annual salary, and once they had ratified the salary paid at the commencement of the plaintiff's term of office, the county commissioners were without the power to reduce the salary during the plaintiff's four-year term. Tisdel v. Bd. of County Comm'rs, 621 P.2d 1357 (Colo. 1980).

Trial court may review budgeting and taxing actions of board of county commissioners, but must give great deference to the board's discretionary acts. Decisions by the board in these areas may be

nullified only where the trial court determines that the board abused their discretion by acting arbitrarily or unreasonably. Johns v. Miller, 42 Colo. App. 97, 594 P.2d 590 (1979).

20-1-302. Expenses.

Except as otherwise specifically provided, the district attorneys of each judicial district in the state of Colorado shall be entitled to collect and receive at the end of each month, of and from the respective counties in the district attorney's judicial district, the necessary expenses of maintaining an office for the transaction of official business, which expenses shall be borne by the various counties in the judicial district, each in the proportion that the population of such county bears to the population of the whole judicial district, according to the last preceding population estimate that is prepared before May 1 of the current year by the division of planning in the department of local affairs pursuant to section 24-32-204, C.R.S. With the agreement of all of the boards of county commissioners of the judicial district, the funding allocation provisions of this section may be modified. Nothing in part 2 of this article or this part 3 shall prohibit any municipality, county, or government entity from agreeing to fund programs, projects, personnel, or salaries that are in addition to the funds provided for the reasonable and necessary expenses of the district attorney with the agreement of the relevant board of county commissioners.

Source: L. 41: p. 411, § 2. **CSA:** C. 66, § 93. **CRS 53:** § 45-2-4. **C.R.S. 1963:** § 45-2-4. **L. 95:** Entire section amended, p. 188, § 1, effective April 13. **L. 2004:** Entire section amended, p. 1884, § 1, effective June 4.

ANNOTATION

This section contemplates the maintenance of but one office of the district attorney, in each county of his district, and the district attorney himself is authorized to contract, and recover from the county, the attendant necessary expenses. Trowbridge v. Bd. of Comm'rs, 57 Colo. 106, 140 P. 195 (1914).

And not separate offices for assistants and deputies. It would be unreasonable to hold that this section contemplates that the district attorney, his assistant, and deputies may each maintain separate offices, as such officers, in each county of a judicial district, upon the claim that the expense is necessarily incurred in the performance of official duties imposed by law. Trowbridge v. Bd. of Comm'rs, 57 Colo. 106, 140 P. 195 (1914).

Budget proportioned by county. This section specifically provides for proportional payment by each county in a judicial district of the necessary expense of maintenance of an office by the district attorney for the

transaction of official business therein. Trowbridge v. Bd. of Comm'rs, 57 Colo. 106, 140 P. 195 (1914).

Under this section the district attorney is entitled to the reasonable and necessary expense of maintaining an office, including the fees of a stenographer. The expense of the office is to be apportioned among the different counties of the district. Bd. of Comm'rs v. Walker, 66 Colo. 312, 181 P. 195 (1919).

This section requires that the budget submitted by the district attorney to each of the counties in the district be prorated on the basis of population. Johnson v. Bd. of County Comm'rs, 174 Colo. 350, 483 P.2d 1344 (1971).

Applied in Beacom v. Bd. of County Comm'rs, 657 P.2d 440 (Colo. 1983).

20-1-303. District attorneys allowed necessary expenses.

Except as otherwise specifically provided, the district attorney of each judicial district in the state of Colorado, and each of his assistants and deputies, shall be allowed to collect and receive from each of the counties in his district the expenses necessarily incurred in the discharge of his official duties for the benefit of such county.

Source: L. 07: p. 371, § 1. **R.S. 08:** § 2107. **C.L.** § 5992. **CSA:** C. 55, § 20. **CRS 53:** § 45-2-5. **C.R.S. 1963:** § 45-2-5.

ANNOTATION

This section relates generally to expenses necessarily incurred by the district attorney, his assistant, and deputies, in the discharge of official duties. Trowbridge v. Bd. of Comm'rs, 57 Colo. 106, 140 P. 195 (1914).

Expenses arising from a lawsuit based on conduct of the district attorney within performance of his duties and scope of his employment are contemplated by this section. Colo. Counties Cas. & Prop. Pool v. Bd. of County Comm'rs, 51 P.3d 1100 (Colo. App. 2002).

Attorney fees and costs incurred by a district attorney defending against professional misconduct charges, when the ethical violations were committed recklessly or knowingly, are not "expenses necessarily incurred in the discharge of his official duties for the benefit of such county". Ruybalid v. Bd. of County Comm'rs Las Animas County, 2019 CO 49, 442 P.3d 423.

Judicial notice is taken that the aid of a stenographer is indispensable to the efficient discharge of duties like those of the

district attorney. Bd. of Comm'rs v. Walker, 66 Colo. 312, 181 P. 195 (1919).

Expert witnesses may recover for their services. Expert witnesses whose services are procured by the district attorney and utilized in the prosecution of a criminal case were held entitled to recover the reasonable value thereof from the county under the provisions of this section. Crane v. Bd. of County Comm'rs, 80 Colo. 230, 250 P. 388 (1926).

Applied in Beacom v. Bd. of County Comm'rs, 657 P.2d 440 (Colo. 1983).

20-1-304. District attorney and employees authorized to receive benefits. (Repealed)

Source: L. 63: p. 343, § 1. **C.R.S. 1963:** § 45-2-7. **L. 76:** Entire section repealed, p. 637, § 2, effective January 11, 1977.

20-1-305. Benefits not considered compensation or increase in emoluments. (Repealed)

Source: L. 63: p. 343, § 2. **C.R.S. 1963:** § 45-2-8. **L. 76:** Entire section repealed, p. 637, § 2, effective January 1, 1977.

20-1-306. Compensation paid from state and county funds.

(1) The compensation of district attorneys in every judicial district of the state as set forth in section 20-1-301 (1)(a) must be paid in twelve equal monthly installments of which the state shall contribute eighty percent of the minimum amount required by section 20-1-301 (1)(a) annually, and the county or the counties comprising the judicial district shall contribute the balance, with each county's payment to be in the same proportion as provided in section 20-1-302.

(2) Effective July 1, 2026, the salaries of assistant district attorneys in every judicial district of the state as set forth in section 20-1-203 must be paid in twelve equal monthly installments of which the state shall contribute twenty-five percent of the minimum amount required by section 20-1-203 (2) annually, and the county or counties comprising the judicial district shall contribute the balance, with each county's payment to be in the same proportion as provided in section 20-1-302.

Source: L. 72: p. 295, § 3. **C.R.S. 1963:** § 45-2-9. **L. 75:** Entire section amended, p. 659, § 2, effective June 26. **L. 76:** Entire section amended, p. 592, § 3, effective July 1. **L. 80:** Entire section amended, p. 577, § 4, effective July 1. **L. 84:** Entire section amended, p. 577, § 2, effective May 9. **L. 95:** Entire section amended, p. 188, § 2, effective April 13; entire section amended, p. 580, § 2, effective May 22. **L. 2004:** Entire section amended, p. 195, § 13, effective August 4. **L. 2007:** Entire section amended, p. 1610, § 2, effective May 31. **L. 2024:** Entire section amended, (SB 24-013), ch. 403, p. 2771, § 4, effective August 7. **L. 2025:** (2) amended, (SB 25-244), ch. 121, p. 485, § 1, effective August 6.

Editor's note: Amendments to this section in House Bill 95-1215 and House Bill 95-1340 were harmonized.

20-1-307. Social security coverage.

The office of district attorney, including the district attorney and the employees of each office within each judicial district, is a juristic entity as described in section 24-53-101, C.R.S. Each office of district attorney shall enter into an agreement with the director of the division of unemployment insurance in the department of labor and employment for the purpose of including the district attorney and the employees of the district attorney's office under the state's federal-state social security coverage agreement with the secretary of the United States department of health and human services pursuant to section 24-53-104, C.R.S.

Source: L. 75: p. 661, § 1, effective March 21. **L. 87:** Entire section amended, p. 1092, § 7, effective July 1. **L. 2012:** Entire section amended, (HB 12-1120), ch. 27, p. 107, § 20, effective June 1.

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012.)

ANNOTATION

Applied in Beacom v. Bd. of County Comm'rs, 657 P.2d 440 (Colo. 1983).

20-1-308. Compensation and expenses - special prosecutors.

(1) The compensation and expenses of special prosecutors appointed pursuant to section 16-5-209 or 20-1-107 shall be paid as follows:

(a) When the special prosecutor is a full-time district attorney, assistant district attorney, or deputy district attorney, the county or counties in the judicial district for which the appointment is made shall pay only the ordinary and necessary expenses, including travel, of the special prosecutor, as the judge of the court, which has jurisdiction of the offense being prosecuted, may direct.

(b) In all other cases, the county or counties in the judicial district for which the appointment is made shall pay only the ordinary and necessary expenses, including travel, of the special prosecutor as directed by the judge in addition to a fee for the services of the special prosecutor, which fee shall be approved by the judge but which may not exceed the amount of salary payable to a retired judge sitting in that court or district pursuant to section 5 (3) of article VI of the state constitution.

Source: L. 77: Entire section added, p. 859, § 3, effective May 24. **L. 87:** IP(1) amended, p. 539, § 2, effective July 1. **L. 2021:** IP(1) amended, (SB 21-271), ch. 462, p. 3221, § 393, effective March 1, 2022.