

CHAPTER 388

COUNTY ATTORNEY

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388.01 ELECTION; QUALIFICATIONS; TERM.

There shall be elected in each county a county attorney who shall be learned in the law, and whose term of office shall be four years and until a successor qualifies. Before entering upon duties the county attorney shall take an oath. The oath must be filed for record with the county recorder.

History: (924) *RL s 563; 1943 c 355 s 1; 1959 c 189 s 1; 1965 c 749 s 1; 1973 c 524 s 6; 1976 c 181 s 2; 1986 c 444; 1991 c 326 s 20*

388.02 [Repealed, 1983 c 359 s 151]

388.03 [Obsolete]

388.04 [Repealed, 1969 c 649 s 2]

388.05 [Repealed, 1979 c 233 s 42]

388.051 DUTIES.

Subdivision 1. General provisions. The county attorney shall:

- (a) Appear in all cases in which the county is a party;
- (b) Give opinions and advice, upon the request of the county board or any county officer, upon all matters in which the county is or may be interested, or in relation to the official duties of the board or officer;
- (c) Prosecute felonies, including the drawing of indictments found by the grand jury, and, to the extent prescribed by law, gross misdemeanors, misdemeanors, petty misdemeanors, and violations of municipal ordinances, charter provisions and rules or regulations;
- (d) Attend before the grand jury, give them legal advice and examine witnesses in their presence;
- (e) Request the court administrator to issue subpoenas to bring witnesses before the grand jury or any judge or judicial officer before whom the county attorney is conducting a criminal hearing;
- (f) Attend any inquest at the request of the coroner; and
- (g) Appear, when requested by the attorney general, for the state in any case instituted by the attorney general in the county attorney's county or before the United States land office in case of application to preempt or locate any public lands claimed by the state and assist in the preparation and trial.

Subd. 2. Special provisions. (a) In Anoka, Carver, Dakota, Hennepin, Scott, and Washington counties, only the county attorney shall prosecute gross misdemeanor violations of sections 289A.63, subdivisions 1, 2, 4, and 6; 297B.10; 609.255, subdivision 3; 609.377; 609.378; 609.41; and 617.247.

(b) In Ramsey county, only the county attorney shall prosecute gross misdemeanor violations of sections 609.255, subdivision 3; 609.377; and 609.378.

(c) The county attorney shall prosecute failure to report physical or sexual child

abuse or neglect as provided under section 626.556, subdivision 6, violations of fifth-degree criminal sexual conduct under section 609.3451, and environmental law violations under sections 115.071, 299F.098, and 609.671.

Subd. 3. Charging and plea negotiation policies and practices; written guidelines required. (a) On or before January 1, 1995, each county attorney shall adopt written guidelines governing the county attorney's charging and plea negotiation policies and practices. The guidelines shall address, but need not be limited to, the following matters:

- (1) the circumstances under which plea negotiation agreements are permissible;
- (2) the factors that are considered in making charging decisions and formulating plea agreements; and
- (3) the extent to which input from other persons concerned with a prosecution, such as victims and law enforcement officers, is considered in formulating plea agreements.

(b) Plea negotiation policies and procedures adopted under this subdivision are public data, as defined in section 13.02.

History: 1979 c 233 s 3; 1983 c 177 s 5; 1983 c 345 s 9; 1984 c 573 s 8; 1985 c 248 s 57; 1985 c 266 s 1; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1988 c 529 s 1; 1989 c 52 s 1; 1989 c 337 s 11; 1990 c 480 art 1 s 46; 1994 c 636 art 2 s 9

388.06 [Repealed, 1965 c 749 s 5]

388.07 [Repealed, 1965 c 749 s 5]

388.08 PROHIBITIONS.

No county attorney or assistant county attorney shall receive or accept any fee or reward from, or which is paid or given on behalf of, any one for services rendered or to be rendered in the prosecution or conduct of any official duty or business. No person as an attorney who directly or indirectly advises in relation to, or aids or promotes the defense of, any action or proceeding in any court or prosecution which is carried on by a person as county attorney, with whom such attorney is directly or indirectly connected, or who, having prosecuted any action or proceeding as county attorney, shall afterwards advise in relation to or take any part in the defense thereof; nor shall any attorney be allowed to prosecute or assist such county attorney or assistant in any criminal prosecution or other official action where such attorney is interested in any other action or matter pending or to be commenced in which a recovery depends upon the matter involved in such prosecution or other official action. Any person offending against any provision of this section shall be guilty of a misdemeanor.

History: (929) *RL* s 568; 1986 c 444

388.09 OTHER ATTORNEY EMPLOYED.

Subdivision 1. General provisions. When there is no county attorney, the county board may employ any competent attorney to perform legal services for the county. The board may employ an attorney to assist the county attorney, to appear for the county or any county officer in any action in which the county or officer in an official capacity is a party, to advise the board or its members in relation to the action, or in relation to any other matter affecting the interests of the county. The county may pay the attorney out of the funds of the county.

Subd. 2. Misdemeanors; other prosecutions. Except in the counties of Ramsey and Hennepin, the county board with concurrence of the county attorney may enter into agreements with attorneys or firms of attorneys for the prosecution of gross misdemeanors, misdemeanors or petty misdemeanors, without making these attorneys or members of the firms assistant county attorneys or employees of the county where the county attorney has responsibility for the prosecution of these charges. If there is a contract between the county and any city within it which provides that the county attorney shall also prosecute municipal ordinance, municipal rule or regulation, and charter provi-

sion violations for that city, an attorney or firm engaged pursuant to this subdivision may also prosecute these violations.

History: (930) *RL s 569; 1983 c 177 s 6; 1986 c 444*

388.10 ASSISTANTS.

The county attorney of any county in this state who has no assistant is hereby authorized to appoint, with the consent of the county board of the county, one or more attorneys for assistance in the performance of duties. Each assistant shall have the same duties and be subject to the same liabilities as the county attorney and hold office during the pleasure of the county attorney. Each assistant shall be appointed in writing and the assistant's oath and appointment shall be filed for record with the county recorder. The county board of such county shall fix the salary of each assistant county attorney appointed pursuant to the provisions of this section, and the salary when so fixed by such county board shall thereafter be paid by the county in equal monthly installments upon the warrant of the county auditor during the period for which such salary is so fixed or during such portion thereof as an assistant county attorney continues in office.

History: (930 1/2) *1921 c 444 s 1; 1925 c 15 s 1; 1941 c 96 s 1; 1951 c 117 s 1; 1965 c 749 s 2; 1967 c 718 s 1; 1976 c 181 s 2; 1986 c 444*

388.103 ASSISTANTS AND DEPUTY SHERIFFS.

The board of county commissioners of any county in which a training camp is established for active training of military or naval forces, or of any adjoining county, may declare an emergency and, in addition to any salaries heretofore authorized by law for assistant county attorneys and deputy sheriffs, may authorize, fix, and pay the salaries of such additional assistant county attorneys and deputy sheriffs as the board deems necessary during such emergency.

History: *1941 c 347*

388.105 [Repealed, 1967 c 718 s 5]

388.11 LAW PARTNER NOT TO DEFEND.

No law partner of the county attorney, or attorney having an office with the county attorney, shall appear for the defendant in any criminal action which it is the duty of the county attorney to prosecute.

History: (931) *RL s 570; 1986 c 444*

388.12 ATTORNEY TO ASSIST.

The judge of any district court may by order entered in the minutes at any term of court appoint an attorney of such court to act as, or in the place of, or to assist, the county attorney at such term, either before the court or grand jury. The person so appointed shall take the oath required by law of county attorneys and thereupon may perform all duties at such term of court, but shall receive no compensation where the county attorney is present at such term, except by the county attorney's consent, and to be paid from the county attorney's salary.

History: (932) *RL s 571; 1986 c 444*

388.13 RENDER ACCOUNT; PAY OVER MONEYS.

On or before January first, in each year, the county attorney shall file in the office of the county auditor a verified account of all moneys received during the preceding year by virtue of office specifying therein the name of the person from whom received, the amount paid by each and on what account; and, unless previously paid, shall at the same time pay over such moneys to the county treasurer, and take duplicate receipts therefor, one of which shall be filed with the county auditor. If the county attorney shall refuse or neglect to account for and pay over any moneys so received, the auditor shall cause an action to be instituted upon the county attorney's bond to recover the same, and damages for failure to account.

History: (933) *RL s 572; 1986 c 444*

388.14 CONTINGENT FUND; EXPENSES.

The county board may set apart yearly a sum, not exceeding \$7,500, except in counties containing cities of the first class, where the sum shall not exceed \$10,000, as a contingent fund for defraying necessary expenses not especially provided for by law, in preparing and trying criminal cases, conducting investigations by the grand jury, making contributions to a statewide county attorney's organization, and paying the necessary expenses of the county attorney incurred in the business of the county. All disbursements from such fund shall be made upon written request of the county attorney by auditor's warrant, countersigned by a judge of the district court. Any balance remaining at the end of the year shall be transferred to the revenue fund.

History: (934) *RL s 574; 1909 c 233 s 1; 1917 c 307; 1965 c 749 s 4; 1981 c 357 s 104; 1989 c 290 art 9 s 11*

388.15 MS 1949 [Renumbered 388.15, subdivision 1]**388.15 FUNDS FOR INVESTIGATION.**

Subdivision 1. **Appropriation.** The county board of any county in this state, upon the request of the county attorney of such county, may appropriate, for the use of the county attorney, such funds, not otherwise appropriated, as the county attorney deems necessary for the investigation and the procuring of evidence when the county attorney has reason to believe that any closed bank, savings bank, trust company, or building and loan association incorporated under the laws of the state of Minnesota, has violated any provision of law. Such amount shall be in addition to the contingent fund of such county now allowed by law and shall be disbursed only on order of a district judge of the district in which any such county is located, approving such expenditure.

Subd. 2. **Borrowing money.** The county board, if no funds are available, may borrow such money as it deems necessary to carry out the provisions of this section, but such loan shall not run over one year.

History: (934-1, 934-2) *1925 c 264 s 1,2; 1986 c 444*

388.16 [Renumbered 388.15, subd 2]**388.17 [Repealed, 1949 c 597 s 5]****388.18 COMPENSATION SCHEDULE, SALARIES.**

Subdivision 1. **Minimum salaries.** The county attorneys in all counties in this state with less than 100,000 inhabitants, according to the 1960 federal census shall receive as compensation for services rendered by them for their respective counties annual salaries not less than the following amounts based on the population according to the then last preceding federal census:

- (a) In counties with less than 10,000 inhabitants \$4,000;
- (b) In counties with 10,000 but less than 20,000 inhabitants \$5,000;
- (c) In counties with 20,000 but less than 30,000 inhabitants \$6,000;
- (d) In counties with 30,000 but less than 40,000 inhabitants \$7,000;
- (e) In counties with 40,000 or more inhabitants \$8,000.

Subd. 2. **Set by board.** The county board of each of the counties specified in subdivision 1 annually shall set by resolution the salary of the county attorney which shall be paid to the county attorney at such intervals as the board shall determine but not less often than once each month. At the January meeting prior to the first date on which applicants may file for the office of county attorney the board shall set by resolution the minimum salary to be paid the county attorney for the term next following. In the event a vacancy occurs in the office of county attorney the board may set the annual salary for the remainder of the calendar year at an amount less than was set for that year. The board in any case specified in this section may not set the annual salary at an amount less than the minimums provided in subdivision 1 but it may set the salary in excess

of such minimums. The salary of the county attorney shall not be reduced during the term for which the county attorney is elected or appointed.

Subd. 3. MS 1949 [Repealed, 1951 c 327 s 6]

Subd. 3. MS 1974 [Repealed, 1975 c 301 s 16]

Subd. 4. **Effect upon certain sections.** Subdivisions 1 to 3 shall not be construed as repealing any existing law which provides for a higher minimum salary in any county than the amount provided in subdivision 1, but shall be deemed to supersede the provisions of any act setting a maximum salary for the county attorney in any of the counties specified in subdivision 1.

Subd. 5. **Budget for office.** The county board by resolution shall provide the budget for (1) the salary of the county attorney, any assistant county attorneys and employees in the county attorney's office; (2) the salary or other fees of any attorneys or firms of attorneys employed or engaged to prosecute misdemeanors, petty misdemeanors, gross misdemeanors, municipal ordinance violations, or municipal charter, rule or regulation violations, if any; (3) other expenses necessary in the performance of the duties of the office; and (4) the payment of premiums of any bonds required of the county attorney and any assistant county attorney or employee in the county attorney's office. The board is authorized to appropriate funds for those purposes.

Subd. 6. **Appeal from resolution of the board.** The county attorney, if dissatisfied with the action of the county board in setting the amount of the county attorney's salary or the amount of the budget for the office of county attorney, may appeal to the district court on the grounds that the determination of the county board in setting such salary or budget was arbitrary, capricious, oppressive or in unreasonable disregard for the responsibilities and duties of said office, and the county attorney's experience, qualifications, and performance. The appeal shall be taken within 15 days after the date of the resolution setting such salary or budget by serving a notice of appeal on the county auditor and filing same with the court administrator of the district court. The county board may retain special counsel pursuant to section 388.09 to represent it in the appeal proceedings. The court either in term or vacation and upon ten days notice to the chair of the board shall hear such appeal. On the hearing of the appeal the court shall review the decision or resolution of the board in like manner as though reviewed by certiorari, except new or additional evidence may be taken. The court may order the officer appealing and the board to submit briefs or other memoranda and may dispose of the appeal on such writings. If the court shall find that the board acted in an arbitrary, capricious, oppressive or unreasonable manner it shall remand the matter to the county board for further action consistent with the court's finding.

History: 1945 c 525 s 1,2; 1949 c 597 s 2-4; 1951 c 327 s 6; 1967 c 718 s 2; 1983 c 177 s 7; 1983 c 345 s 10; 1985 c 281 s 11; 1986 c 444; 1Sp1986 c 3 art 1 s 82

388.19 COUNTY ATTORNEYS COUNCIL.

Subdivision 1. **Creation.** There is hereby created a county attorneys council hereinafter designated as the "council" to be composed of the county attorney from each of the 87 counties and the attorney general of the state of Minnesota. The members shall meet annually in November of each year and, commencing at the annual meeting in November 1973, shall elect a president, a president-elect, a secretary, and a treasurer, and such other officers and directors as the county attorneys council shall determine. Each of these officers shall hold office for a term of one year and until their successors are elected and qualified. The county attorneys council may adopt such rules as are necessary for the carrying out of its duties. A county attorney may designate in writing an assistant who may act in the county attorney's stead in carrying out any function of the county attorneys council except serving as an officer. The county attorneys council may acquire and hold property, accept gifts, grants, and contributions and may charge fees for services, for seminars, workshops and publications it conducts and produces. All receipts from these sources shall be deposited in one or more special accounts in the state treasury and are appropriated to the county attorneys council for carrying out the duties described in subdivision 4.

Subd. 2. **First meeting.** The first meeting of the county attorneys council shall be called by the attorney general within 60 days of final enactment of Laws 1973, chapter 564. The attorney general, the president, president-elect, secretary, treasurer and immediate past president of the Minnesota county attorneys association shall be the officers of the council until the meeting in November 1973, and shall be the board of governors and shall exercise all the powers and duties of the board of governors until the annual meeting in November 1973.

Subd. 3. **Governing body.** The board of governors of the county attorneys council shall be composed of the president, the president-elect, the secretary, the treasurer, the immediate past president and the attorney general. A vacancy in any office of the board of governors of the county attorneys council shall be filled by appointment of the remaining members of the board of governors of the county attorneys council.

The board of governors shall have such authority and duties as delegated to it by the council.

Subd. 4. **Duties of the council.** The council shall perform such functions as in its opinion shall strengthen the criminal justice system and strengthen and increase efficiency in county government in Minnesota, including but not limited to the following:

- (a) Provide training and continuing education for county attorneys and assistants.
- (b) Gather and disseminate information to county attorneys including changes in the law by rule, case decisions, and legislative enactment.
- (c) Coordinate with law enforcement, courts and corrections providing interdisciplinary seminars to augment effectiveness of the system.

History: 1973 c 564 s 1; 1979 c 337 s 22; 1981 c 357 s 105; 1985 c 248 s 70; 1986 c 444

388.20 EXECUTIVE DIRECTOR.

Subdivision 1. **Appointment.** In order to carry out the duties of the county attorneys council, the council shall employ an executive director, hereinafter referred to as the director, which office is hereby created. The board of governors of the county attorneys council shall appoint and supervise the executive director.

Subd. 2. **Term, vacancy.** The term of office of the director shall be six years and until a successor is appointed and qualified. The director shall be learned in the law. The director shall be in the unclassified service of the state. The term of office for the first director shall commence on July 1, 1973. Vacancies in the office of director shall be filled for the unexpired term by the appointing authority. The director shall devote full time to duties and shall not engage in the private practice of law.

Subd. 3. **Employees, office space.** The director may hire such employees as are necessary to carry out duties. Such employees shall be in the unclassified service of the state.

The commissioner of administration shall provide the director with suitable office space.

Subd. 4. **Duties.** The director shall carry out the duties assigned to the county attorneys council by Laws 1973, chapter 564 and shall perform such other functions as may be assigned from time to time by the county attorneys council.

History: 1973 c 564 s 2 subs 1-4; 1986 c 444

388.21 FULL-TIME POSITION; ESTABLISHMENT.

Subdivision 1. The county board of any county in Minnesota by resolution may provide that the office of the county attorney shall be a full-time position and require that one elected to the office not engage in the private practice of law.

Subd. 2. If the office of county attorney is made a full-time position, the action shall be taken at the January meeting prior to the first date on which applicants may file for the office of county attorney. The salary shall be set by the county board as provided in section 388.18, subdivision 2.

History: 1974 c 262 s 1

388.22 SALARY; APPEAL.

Subdivision 1. The county board shall pay the salary of the county attorney at intervals as the board shall determine but not less than once each month.

Subd. 2. The county board by resolution shall provide the budget for the salary of the full time county attorney.

Subd. 3. The county attorney, if dissatisfied with the action of the county board in setting the amount of the county attorney's salary, may appeal on the same grounds and in the same manner as provided in section 388.18, subdivision 6.

History: 1974 c 262 s 2; 1986 c 444

388.23 COUNTY ATTORNEY; ADMINISTRATIVE SUBPOENAS.

Subdivision 1. **Authority.** The county attorney, or any deputy or assistant county attorney whom the county attorney authorizes in writing, has the authority to subpoena and require the production of any records of telephone companies, cellular phone companies, paging companies, electric companies, gas companies, water utilities, chemical suppliers, hotels and motels, pawn shops, airlines, buses, taxis, and other entities engaged in the business of transporting people, and freight companies, warehousing companies, self-service storage facilities, package delivery companies, and other entities engaged in the businesses of transport, storage, or delivery, and records of the existence of safe deposit box account numbers and customer savings and checking account numbers maintained by financial institutions and safe deposit companies, insurance records relating to the monetary payment or settlement of claims, and wage and employment records of an applicant or recipient of public assistance who is the subject of a welfare fraud investigation relating to eligibility information for public assistance programs. Subpoenas may only be issued for records that are relevant to an ongoing legitimate law enforcement investigation. Administrative subpoenas may only be issued in welfare fraud cases if there is probable cause to believe a crime has been committed. This provision applies only to the records of business entities and does not extend to private individuals or their dwellings. Subpoenas may only be served by peace officers as defined by section 626.84, subdivision 1, paragraph (c).

Subd. 2. **Enforcement.** The subpoena shall be enforceable through the district court.

Subd. 3. **Expenses.** The person directed to produce the records shall be paid reasonable expenses incurred in producing the records.

Subd. 4. **Disclosure prohibited.** The subpoena must state that the person to whom the subpoena is directed may not disclose the fact that the subpoena was issued or the fact that the requested records have been given to law enforcement personnel except:

- (1) insofar as the disclosure is necessary to find and disclose the records; or
- (2) pursuant to court order.

Subd. 5. **Penalty.** The willful failure to produce the documents required by the subpoena is a misdemeanor.

Subd. 6. **Ex parte order.** Upon the ex parte request of the attorney issuing the subpoena, the district court may issue an order directing the production of the records. It is not necessary for either the request or the order to be filed with the court administrator. Failure to comply with the court order subjects the person who fails to comply to civil or criminal contempt of court, or both.

History: 1989 c 336 art 2 s 2; 1992 c 569 s 24; 1993 c 326 art 7 s 10; 1Sp1993 c 1 art 6 s 41; 1994 c 636 art 2 s 10

388.24 PRETRIAL DIVERSION PROGRAMS FOR JUVENILES.

Subdivision 1. **Definition.** As used in this section:

- (1) a child under the jurisdiction of the juvenile court is an "offender" if:
 - (i) the child is petitioned for, or probable cause exists to petition or take the child into custody for, a felony, gross misdemeanor, or misdemeanor offense, other than an offense against the person, but has not yet entered a plea in the proceedings;

(ii) the child has not previously been adjudicated in Minnesota or any other state for any offense against the person; and

(iii) the child has not previously been petitioned for an offense in Minnesota and then had the petition dismissed as part of a diversion program, including a program that existed before July 1, 1995; and

(2) "pretrial diversion" means the decision of a prosecutor to refer an offender to a diversion program on condition that the delinquency petition against the offender will be dismissed or the petition will not be filed after a specified period of time if the offender successfully completes the program.

Subd. 2. Establishment of program. By July 1, 1995, every county attorney shall establish a pretrial diversion program for offenders. If the county attorney's county participates in the community corrections act as part of a group of counties under section 401.02, the county attorney may establish a pretrial diversion program in conjunction with other county attorneys in that group of counties. The program must be designed and operated to further the following goals:

(1) to provide eligible offenders with an alternative to adjudication that emphasizes restorative justice;

(2) to reduce the costs and caseload burdens on juvenile courts and the juvenile justice system;

(3) to minimize recidivism among diverted offenders;

(4) to promote the collection of restitution to the victim of the offender's crime;

(5) to develop responsible alternatives to the juvenile justice system for eligible offenders; and

(6) to develop collaborative use of demonstrated successful culturally specific programming, where appropriate.

Subd. 3. Program components. A diversion program established under this section may:

(1) provide screening services to the court and the prosecuting authorities to help identify likely candidates for pretrial diversion;

(2) establish goals for diverted offenders and monitor performance of these goals;

(3) perform chemical dependency assessments of diverted offenders where indicated, make appropriate referrals for treatment, and monitor treatment and aftercare;

(4) provide individual, group, and family counseling services;

(5) oversee the payment of victim restitution by diverted offenders;

(6) assist diverted offenders in identifying and contacting appropriate community resources;

(7) provide educational services to diverted offenders to enable them to earn a high school diploma or GED; and

(8) provide accurate information on how diverted offenders perform in the program to the court, prosecutors, defense attorneys, and probation officers.

Subd. 4. Reporting of data to criminal justice information system (CJIS). Every county attorney who establishes a diversion program under this section shall report the following information to the bureau of criminal apprehension:

(1) the name and date of birth of each diversion program participant and any other identifying information the superintendent considers necessary;

(2) the date on which the individual began to participate in the diversion program;

(3) the date on which the individual is expected to complete the diversion program;

(4) the date on which the individual successfully completed the diversion program, where applicable; and

(5) the date on which the individual was removed from the diversion program for failure to successfully complete the individual's goals, where applicable.

The superintendent shall cause the information described in this subdivision to be entered into and maintained in the criminal history file of the Minnesota criminal justice information system.

Subd. 5. **Reports.** By January 1, 1996, and biennially thereafter, each county attorney shall report to the department of corrections and the legislature on the operation of a pretrial diversion program required by this section. The report shall include a description of the program, the number of offenders participating in the program, the number and characteristics of the offenders who successfully complete the program, the number and characteristics of the offenders who fail to complete the program, and an evaluation of the program's effect on the operation of the juvenile justice system in the county.

History: 1994 c 576 s 42